inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring the person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than $25,000.00 for each day of continued noncompliance.

(9) In addition to any civil fines or criminal penalties imposed under this part or the criminal laws of this state, the person found responsible shall repay any money obtained directly or indirectly under this part. Money owed pursuant to this section constitutes a claim and lien by the fund upon any real or personal property owned either directly or indirectly by the person. This lien shall attach regardless of whether the person is insolvent and may not be extinguished or avoided by bankruptcy. The lien imposed by this section has the force and effect of a first in time and right judgment lien.

(10) Subsection (1) does not preclude prosecutions under other laws of the state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, 1931 PA 328, MCL 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422.

(11) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by that office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department that is entitled to payment under this subdivision, the money shall be forwarded to the state treasurer for deposit into the refined petroleum fund.

324.21550 Repeal of MCL 324.21508; obligation to pay off bonds or notes.

Sec. 21550. (1) Section 21508 is repealed effective December 31, 2010.

(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508.

324.21552 Refined petroleum cleanup advisory council; creation; repeal.

Sec. 21552. (1) The refined petroleum cleanup advisory council is created.

(2) The council shall consist of all of the following:

(a) Two members appointed by the senate majority leader, 1 of whom shall be a representative of the petroleum industry.

(b) Two members appointed by the speaker of the house of representatives, 1 of whom shall be a representative of the petroleum industry.

(c) Three members appointed by the governor, 1 of whom shall be a representative of the petroleum industry.

(3) The members first appointed to the council shall be appointed not later than 60 days after the effective date of the amendatory act that added this section.

(4) Members of the council shall serve until a successor is appointed.

(5) If a vacancy occurs on the council, the unexpired term shall be filled in the same manner as the original appointment was made.

(6) The first meeting of the council shall be called by the director. At the first meeting, the council shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 2 or more members.

(7) Five of the members of the council constitute a quorum for the transaction of business at a meeting of the council. An affirmative vote of a majority of the members of the council is required for official action of the council.

(8) Members of the council shall serve without compensation. However, members of the council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the council.

(9) As soon as practical, but not later than 60 days after all members of the council have been appointed under subsection (2), the council shall make a recommendation to the governor and the legislature on how the money transferred under section 21506(6), less any amounts appropriated for the fiscal year ending September 30, 2004, should be expended.

(10) By April 1, 2005, the council shall submit to the governor and the legislature a report that does all of the following:

(a) Evaluates and makes recommendations for a refined petroleum cleanup program that provides for corrective actions necessary to address releases of refined petroleum products. The recommended refined petroleum cleanup program shall be designed to benefit owners and operators and to provide for corrective actions at locations for which an owner or operator who is liable for corrective actions has not been identified or is insolvent.

(b) Makes recommendations on an appropriate limitation on administrative costs under section 21506a(4)(c).

(c) Makes recommendations to update obsolete provisions of this part.

(11) Effective 180 days after the council submits its report under subsection (10), the council is dissolved.

(12) This section is repealed August 1, 2006.

Retroactivity of certain provisions.

Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

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

[No. 391]

(HB 6227)

AN ACT to amend 1933 PA 62, entitled "An act to provide limits on the rate of taxation on property; to provide for a division of the rate of taxation between counties, townships, municipal corporations, intermediate school districts, and other local units; to earmark funds raised by increasing the total tax limitation; to prescribe penalties and provide remedies; and to repeal all acts and parts of acts and charters and parts of charters of municipal corporations inconsistent with or contravening the provisions of this act," by amending section 5i (MCL 211.205i), as amended by 2001 PA 146.

The People of the State of Michigan enact:

211.205i Separate tax limitations; effective date.

Sec. 5i. (1) Except as otherwise provided in this section, upon the filing in the offices of the secretary of state and the county clerk of a copy of the initiatory petition; the separate tax limitations recommended by the county tax allocation board; all resolutions of the board; and the certificate of the county board of canvassers showing that a majority of the electors voting on either the separate tax limitations proposed by petition of electors or of the county tax allocation board, or both, has approved the separate tax limitations and stating the number of votes cast on the separate questions and the number cast for and against the questions, the separate tax limitations for the county and for the townships and intermediate school districts in the county are effective and shall apply to all subsequent tax levies until altered by another vote under this act or expiration of the period for which the separate tax limitations were voted.

(2) Except as otherwise provided in subsections (3) and (4), if the election is held after April 1 in any year, the adopted limitations shall be first effective in the immediately succeeding calendar year.

(3) In 2001 only, if the election is held August 7, 2001, the adopted limitations shall be first effective in 2001.

(4) In 2004 only, if the election is held August 3, 2004, the adopted limitations shall be first effective in 2004.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 13, 2004.

[No. 392]

(SB 1280)

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 section 74101 (MCL 324.74101), as added by 1995 PA 58, and by adding section 74102a.

The People of the State of Michigan enact:

324.74101 Definitions.

Sec. 74101. As used in this part:

(a) "Committee" means the citizens committee for Michigan state parks created in section 74102a.

(b) "Fund" means the state park improvement fund created in section 74108.

(c) "Improvement program" means the construction, reconstruction, development, improvement, bettering, operating, maintaining, and extending a facility at a state park, including a site improvement, impoundment, road and parking lot, toilet building, concession building, shelter building, bathhouse, utility, outdoor center, visitor service facility, ski area, ski tow, ski shelter, and administration unit.

(d) "Motor vehicle" means a vehicle that is self-propelled.

(e) "State park" means a state park or state recreation area designated by the director.

(f) "State park revenues" means all revenues collected for state parks, including but not limited to, motor vehicle permits, concession fees, nonmotorized trail permits, fees, leases, camping fees, sale of farm animals from Maybury state park, donations, and gifts.

324.74102a Create citizens committee for Michigan state parks; membership; functions.

Sec. 74102a. (1) The citizens committee for Michigan state parks is created within the department.

(2) The committee shall consist of 17 individuals appointed by the director with the advice of the commission.

(3) The members first appointed to the committee shall be appointed within 60 days after the effective date of the amendatory act that added this section.

(4) Members of the committee shall serve for terms of 4 years or until a successor is appointed, whichever is later, except that of the members first appointed 6 shall serve for 4 years, 6 shall serve for 3 years, and 5 shall serve for 2 years.

(5) If a vacancy occurs on the committee, the director shall make an appointment for the unexpired term in the same manner as the original appointment.

(6) The committee may remove a member of the committee for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause upon a majority vote of the members. An individual shall be removed from the committee if he or she does not attend 4 consecutive meetings of the committee.

(7) The first meeting of the committee shall be called by the director. At the first meeting, the committee shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the committee shall meet at least twice each year, or more frequently at the call of the chairperson or if requested by 9 or more members.

(8) Nine members of the committee constitute a quorum for the transaction of business at a meeting of the committee. A majority of the members present and serving are required for official action of the committee.

(9) The business that the committee may perform shall be conducted at a public meeting of the committee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(10) A writing prepared, owned, used, in the possession of, or retained by the committee in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) Members of the committee shall serve without compensation. However, members of the committee may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the committee.

(12) The committee shall do all of the following:

(a) Advise and make recommendations to the governor, the commission, and the legislature on state parks policy and provide guidance on state parks development, management, and planning issues.

(b) Seek the development of a broad variety of programs, facilities, and services for our citizens utilizing the state parks.

(c) Inform and educate the public about the importance of and need for state parks.

(d) Strive to involve citizens in the planning and development of state parks and to ensure that the facilities, programs, and projects are barrier-free and accessible to all citizens.

(e) Establish and maintain effective public relations regarding state parks, utilizing all appropriate communications media.

(f) Advise on financial planning and pursue adequate budget support for state parks.

(g) Serve as a liaison and coordinate with other agencies to ensure a cooperative effort to provide the most effective and economical services possible at state parks.

(h) Evaluate the state parks programs, facilities, services, and relationships periodically to assure that the committee's goals and objectives are being achieved.

(i) Advise and make recommendations to the department on the gem of the parks award, the state parks volunteer of the year award, and the state parks employee of the year award established under section 74124.

(13) The chairperson of the committee shall ensure that all proposed policy positions of the committee are sent to the committee members at least 1 week in advance of the meeting at which the policy position will be acted upon. The committee may adopt an emergency resolution that has not been sent to committee members at least 1 week prior to a meeting of the committee, but only upon the approval of 3/4 of those present at the meeting.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 393]

(SB 1146)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 20161 (MCL 333.20161), as amended by 2003 PA 234.

The People of the State of Michigan enact:

333.20161 Fees and assessments for health facility and agency licenses and certificates of need; medicaid reimbursement rates; appropriations to department of community health; use of quality assurance assessment; "medicaid" defined.

Sec. 20161. (1) The department shall assess fees and other assessments for health facility and agency licenses and certificates of need on an annual basis as provided in this

article. Except as otherwise provided in this article, fees and assessments shall be paid in accordance with the following schedule:

(a) Freestanding surgical outpatient facilities	$238.00 per facility.
(b) Hospitals	$8.28 per licensed bed.
(c) Nursing homes, county medical care facilities, and hospital long-term care units	$2.20 per licensed bed.
(d) Homes for the aged	$6.27 per licensed bed.
(e) Clinical laboratories	$475.00 per laboratory.
(f) Hospice residences	$200.00 per license survey; and $20.00 per licensed bed.
(g) Subject to subsection (13), quality assurance assessment for nongovernmentally owned nursing homes and hospital long-term care units	an amount resulting in not more than 6% of total industry revenues.
(h) Subject to subsection (14), quality assurance assessment for hospitals	at a fixed or variable rate that generates funds not more than the maximum allowable under the federal matching requirements, after consideration for the amounts in subsection (14)(a) and (j).

(2) If a hospital requests the department to conduct a certification survey for purposes of title XVIII or title XIX of the social security act, the hospital shall pay a license fee surcharge of $23.00 per bed. As used in this subsection, "title XVIII" and "title XIX" mean those terms as defined in section 20155.

(3) The base fee for a certificate of need is $750.00 for each application. For a project requiring a projected capital expenditure of more than $150,000.00 but less than $1,500,000.00, an additional fee of $2,000.00 shall be added to the base fee. For a project requiring a projected capital expenditure of $1,500,000.00 or more, an additional fee of $3,500.00 shall be added to the base fee.

(4) If licensure is for more than 1 year, the fees described in subsection (1) are multiplied by the number of years for which the license is issued, and the total amount of the fees shall be collected in the year in which the license is issued.

(5) Fees described in this section are payable to the department at the time an application for a license, permit, or certificate is submitted. If an application for a license, permit, or certificate is denied or if a license, permit, or certificate is revoked before its expiration date, the department shall not refund fees paid to the department.

(6) The fee for a provisional license or temporary permit is the same as for a license. A license may be issued at the expiration date of a temporary permit without an additional fee for the balance of the period for which the fee was paid if the requirements for licensure are met.

(7) The department may charge a fee to recover the cost of purchase or production and distribution of proficiency evaluation samples that are supplied to clinical laboratories pursuant to section 20521(3).

(8) In addition to the fees imposed under subsection (1), a clinical laboratory shall submit a fee of $25.00 to the department for each reissuance during the licensure period of the clinical laboratory's license.

(9) Except for the licensure of clinical laboratories, not more than half the annual cost of licensure activities as determined by the department shall be provided by license fees.

(10) The application fee for a waiver under section 21564 is $200.00 plus $40.00 per hour for the professional services and travel expenses directly related to processing the application. The travel expenses shall be calculated in accordance with the state standardized travel regulations of the department of management and budget in effect at the time of the travel.

(11) An applicant for licensure or renewal of licensure under part 209 shall pay the applicable fees set forth in part 209.

(12) Except as otherwise provided in this section, the fees and assessments collected under this section shall be deposited in the state treasury, to the credit of the general fund.

(13) The quality assurance assessment collected under subsection (1)(g) and all federal matching funds attributed to that assessment shall be used only for the following purposes and under the following specific circumstances:

(a) The quality assurance assessment and all federal matching funds attributed to that assessment shall be used to finance medicaid nursing home reimbursement payments. Only licensed nursing homes and hospital long-term care units that are assessed the quality assurance assessment and participate in the medicaid program are eligible for increased per diem medicaid reimbursement rates under this subdivision.

(b) The quality assurance assessment shall be implemented on May 10, 2002.

(c) The quality assurance assessment is based on the number of licensed nursing home beds and the number of licensed hospital long-term care unit beds in existence on July 1 of each year, shall be assessed upon implementation pursuant to subdivision (b) and subsequently on October 1 of each following year, and is payable on a quarterly basis, the first payment due 90 days after the date the assessment is assessed.

(d) Beginning October 1, 2007, the department shall no longer assess or collect the quality assurance assessment or apply for federal matching funds.

(e) Upon implementation pursuant to subdivision (b), the department of community health shall increase the per diem nursing home medicaid reimbursement rates for the balance of that year. For each subsequent year in which the quality assurance assessment is assessed and collected, the department of community health shall maintain the medicaid nursing home reimbursement payment increase financed by the quality assurance assessment.

(f) The department of community health shall implement this section in a manner that complies with federal requirements necessary to assure that the quality assurance assessment qualifies for federal matching funds.

(g) If a nursing home or a hospital long-term care unit fails to pay the assessment required by subsection (1)(g), the department of community health may assess the nursing home or hospital long-term care unit a penalty of 5% of the assessment for each month that the assessment and penalty are not paid up to a maximum of 50% of the assessment. The department of community health may also refer for collection to the department of treasury past due amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

(h) The medicaid nursing home quality assurance assessment fund is established in the state treasury. The department of community health shall deposit the revenue raised through the quality assurance assessment with the state treasurer for deposit in the medicaid nursing home quality assurance assessment fund.

(i) The department of community health shall not implement this subsection in a manner that conflicts with 42 USC 1396b(w).

(j) The quality assurance assessment collected under subsection (1)(g) shall be prorated on a quarterly basis for any licensed beds added to or subtracted from a nursing home or hospital long-term care unit since the immediately preceding July 1. Any adjustments in payments are due on the next quarterly installment due date.

(k) In each fiscal year governed by this subsection, medicaid reimbursement rates shall not be reduced below the medicaid reimbursement rates in effect on April 1, 2002 as a direct result of the quality assurance assessment collected under subsection (1)(g).

(*l*) In fiscal year 2004-2005, $21,900,000.00 of the quality assurance assessment collected pursuant to subsection (1)(g) shall be appropriated to the department of community health to support medicaid expenditures for long-term care services. These funds shall offset an identical amount of general fund/general purpose revenue originally appropriated for that purpose.

(14) The quality assurance dedication is an earmarked assessment collected under subsection (1)(h). That assessment and all federal matching funds attributed to that assessment shall be used only for the following purposes and under the following specific circumstances:

(a) Part of the quality assurance assessment shall be used to maintain the increased medicaid reimbursement rate increases as provided for in subdivision (d). A portion of the funds collected from the quality assurance assessment may be used to offset any reduction to existing intergovernmental transfer programs with public hospitals that may result from implementation of the enhanced medicaid payments financed by the quality assurance assessment. Any portion of the funds collected from the quality assurance assessment reduced because of existing intergovernmental transfer programs shall be used to finance medicaid hospital appropriations.

(b) The quality assurance assessment shall be implemented on October 1, 2002.

(c) The quality assurance assessment shall be assessed on all net patient revenue, before deduction of expenses, less medicare net revenue, as reported in the most recently available medicare cost report and is payable on a quarterly basis, the first payment due 90 days after the date the assessment is assessed. As used in this subdivision, "medicare net revenue" includes medicare payments and amounts collected for coinsurance and deductibles.

(d) Upon implementation pursuant to subdivision (b), the department of community health shall increase the hospital medicaid reimbursement rates for the balance of that year. For each subsequent year in which the quality assurance assessment is assessed and collected, the department of community health shall maintain the hospital medicaid reimbursement rate increase financed by the quality assurance assessments.

(e) The department of community health shall implement this section in a manner that complies with federal requirements necessary to assure that the quality assurance assessment qualifies for federal matching funds.

(f) If a hospital fails to pay the assessment required by subsection (1)(h), the department of community health may assess the hospital a penalty of 5% of the assessment for each month that the assessment and penalty are not paid up to a maximum of 50% of the assessment. The department of community health may also refer for collection to the department of treasury past due amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

(g) The hospital quality assurance assessment fund is established in the state treasury. The department of community health shall deposit the revenue raised through the quality assurance assessment with the state treasurer for deposit in the hospital quality assurance assessment fund.

(h) In each fiscal year governed by this subsection, the quality assurance assessment shall only be collected and expended if medicaid hospital inpatient DRG and outpatient reimbursement rates and disproportionate share hospital and graduate medical education payments are not below the level of rates and payments in effect on April 1, 2002 as a direct result of the quality assurance assessment collected under subsection (1)(h), except as provided in subdivision (i).

(i) The quality assurance assessment collected under subsection (1)(h) shall no longer be assessed or collected after September 30, 2007, or in the event that the quality assurance assessment is not eligible for federal matching funds. Any portion of the quality assurance assessment collected from a hospital that is not eligible for federal matching funds shall be returned to the hospital.

(j) In fiscal year 2004-2005, $18,900,000.00 of the quality assurance assessment collected pursuant to subsection (1)(h) shall be appropriated to the department of community health to support medicaid expenditures for hospital services and therapy. These funds shall offset an identical amount of general fund/general purpose revenue originally appropriated for that purpose.

(15) The quality assurance assessment provided for under this section is a tax that is levied on a health facility or agency.

(16) As used in this section, "medicaid" means that term as defined in section 22207.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 394]

(HB 5534)

AN ACT to amend 1967 PA 281, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts," by amending section 30 (MCL 206.30), as amended by 2002 PA 615.

The People of the State of Michigan enact:

206.30 "Taxable income" defined; personal exemption; single additional exemption; certain deduction not considered allowable federal exemption for purposes of subsection (2); allowable exemption or deduction for nonresident or part-year resident; subtraction of prizes under MCL 432.1 to 432.47 from adjusted gross income prohibited; adjusted personal exemption; "retirement or pension benefits" defined.

Sec. 30. (1) "Taxable income" means, for a person other than a corporation, estate, or trust, adjusted gross income as defined in the internal revenue code subject to the following adjustments under this section:

(a) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that has been excluded from adjusted

gross income less related expenses not deducted in computing adjusted gross income because of section 265(a)(1) of the internal revenue code.

(b) Add taxes on or measured by income to the extent the taxes have been deducted in arriving at adjusted gross income.

(c) Add losses on the sale or exchange of obligations of the United States government, the income of which this state is prohibited from subjecting to a net income tax, to the extent that the loss has been deducted in arriving at adjusted gross income.

(d) Deduct, to the extent included in adjusted gross income, income derived from obligations, or the sale or exchange of obligations, of the United States government that this state is prohibited by law from subjecting to a net income tax, reduced by any interest on indebtedness incurred in carrying the obligations and by any expenses incurred in the production of that income to the extent that the expenses, including amortizable bond premiums, were deducted in arriving at adjusted gross income.

(e) Deduct, to the extent included in adjusted gross income, compensation, including retirement benefits, received for services in the armed forces of the United States.

(f) Deduct the following to the extent included in adjusted gross income:

(*i*) Retirement or pension benefits received from a federal public retirement system or from a public retirement system of or created by this state or a political subdivision of this state.

(*ii*) Retirement or pension benefits received from a public retirement system of or created by another state or any of its political subdivisions if the income tax laws of the other state permit a similar deduction or exemption or a reciprocal deduction or exemption of a retirement or pension benefit received from a public retirement system of or created by this state or any of the political subdivisions of this state.

(*iii*) Social security benefits as defined in section 86 of the internal revenue code.

(*iv*) Before October 1, 1994, retirement or pension benefits from any other retirement or pension system as follows:

(A) For a single return, the sum of not more than $7,500.00.

(B) For a joint return, the sum of not more than $10,000.00.

(*v*) After September 30, 1994, retirement or pension benefits not deductible under subparagraph (*i*) or subdivision (e) from any other retirement or pension system or benefits from a retirement annuity policy in which payments are made for life to a senior citizen, to a maximum of $30,000.00 for a single return and $60,000.00 for a joint return. The maximum amounts allowed under this subparagraph shall be reduced by the amount of the deduction for retirement or pension benefits claimed under subparagraph (*i*) or subdivision (e) and for tax years after the 1996 tax year by the amount of a deduction claimed under subdivision (r). For the 1995 tax year and each tax year after 1995, the maximum amounts allowed under this subparagraph shall be adjusted by the percentage increase in the United States consumer price index for the immediately preceding calendar year. The department shall annualize the amounts provided in this subparagraph and subparagraph (*iv*) as necessary for tax years that end after September 30, 1994. As used in this subparagraph, "senior citizen" means that term as defined in section 514.

(*vi*) The amount determined to be the section 22 amount eligible for the elderly and the permanently and totally disabled credit provided in section 22 of the internal revenue code.

(g) Adjustments resulting from the application of section 271.

(h) Adjustments with respect to estate and trust income as provided in section 36.

(i) Adjustments resulting from the allocation and apportionment provisions of chapter 3.

(j) Deduct political contributions as described in section 4 of the Michigan campaign finance act, 1976 PA 388, MCL 169.204, or section 301 of title III of the federal election campaign act of 1971, Public Law 92-225, 2 USC 431, not in excess of $50.00 per annum, or $100.00 per annum for a joint return.

(k) Deduct, to the extent included in adjusted gross income, wages not deductible under section 280C of the internal revenue code.

(*l*) Deduct the following payments made by the taxpayer in the tax year:

(*i*) The amount of payment made under an advance tuition payment contract as provided in the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1444.

(*ii*) The amount of payment made under a contract with a private sector investment manager that meets all of the following criteria:

(A) The contract is certified and approved by the board of directors of the Michigan education trust to provide equivalent benefits and rights to purchasers and beneficiaries as an advance tuition payment contract as described in subparagraph (*i*).

(B) The contract applies only for a state institution of higher education as defined in the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1444, or a community or junior college in Michigan.

(C) The contract provides for enrollment by the contract's qualified beneficiary in not less than 4 years after the date on which the contract is entered into.

(D) The contract is entered into after either of the following:

(I) The purchaser has had his or her offer to enter into an advance tuition payment contract rejected by the board of directors of the Michigan education trust, if the board determines that the trust cannot accept an unlimited number of enrollees upon an actuarially sound basis.

(II) The board of directors of the Michigan education trust determines that the trust can accept an unlimited number of enrollees upon an actuarially sound basis.

(m) If an advance tuition payment contract under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1444, or another contract for which the payment was deductible under subdivision (*l*) is terminated and the qualified beneficiary under that contract does not attend a university, college, junior or community college, or other institution of higher education, add the amount of a refund received by the taxpayer as a result of that termination or the amount of the deduction taken under subdivision (*l*) for payment made under that contract, whichever is less.

(n) Deduct from the taxable income of a purchaser the amount included as income to the purchaser under the internal revenue code after the advance tuition payment contract entered into under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1444, is terminated because the qualified beneficiary attends an institution of postsecondary education other than either a state institution of higher education or an institution of postsecondary education located outside this state with which a state institution of higher education has reciprocity.

(o) Add, to the extent deducted in determining adjusted gross income, the net operating loss deduction under section 172 of the internal revenue code.

(p) Deduct a net operating loss deduction for the taxable year as determined under section 172 of the internal revenue code subject to the modifications under section 172(b)(2) of the internal revenue code and subject to the allocation and apportionment provisions of chapter 3 of this act for the taxable year in which the loss was incurred.

(q) For a tax year beginning after 1986, deduct, to the extent included in adjusted gross income, benefits from a discriminatory self-insurance medical expense reimbursement plan.

(r) After September 30, 1994 and before the 1997 tax year, a taxpayer who is a senior citizen may deduct, to the extent included in adjusted gross income, interest and dividends received in the tax year not to exceed $1,000.00 for a single return or $2,000.00 for a joint return. However, for tax years before the 1997 tax year, the deduction under this subdivision shall not be taken if the taxpayer takes a deduction for retirement benefits under subdivision (e) or a deduction under subdivision (f)(*i*), (*ii*), (*iv*), or (*v*). For tax years after the 1996 tax year, a taxpayer who is a senior citizen may deduct to the extent included in adjusted gross income, interest, dividends, and capital gains received in the tax year not to exceed $3,500.00 for a single return and $7,000.00 for a joint return for the 1997 tax year, and $7,500.00 for a single return and $15,000.00 for a joint return for tax years after the 1997 tax year. For tax years after the 1996 tax year, the maximum amounts allowed under this subdivision shall be reduced by the amount of a deduction claimed for retirement benefits under subdivision (e) or a deduction claimed under subdivision (f)(*i*), (*ii*), (*iv*), or (*v*). For the 1995 tax year, for the 1996 tax year, and for each tax year after the 1998 tax year, the maximum amounts allowed under this subdivision shall be adjusted by the percentage increase in the United States consumer price index for the immediately preceding calendar year. The department shall annualize the amounts provided in this subdivision as necessary for tax years that end after September 30, 1994. As used in this subdivision, "senior citizen" means that term as defined in section 514.

(s) Deduct, to the extent included in adjusted gross income, all of the following:

(*i*) The amount of a refund received in the tax year based on taxes paid under this act.

(*ii*) The amount of a refund received in the tax year based on taxes paid under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

(*iii*) The amount of a credit received in the tax year based on a claim filed under sections 520 and 522 to the extent that the taxes used to calculate the credit were not used to reduce adjusted gross income for a prior year.

(t) Add the amount paid by the state on behalf of the taxpayer in the tax year to repay the outstanding principal on a loan taken on which the taxpayer defaulted that was to fund an advance tuition payment contract entered into under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1444, if the cost of the advance tuition payment contract was deducted under subdivision (*l*) and was financed with a Michigan education trust secured loan.

(u) For the 1998 tax year and each tax year after the 1998 tax year, deduct the amount calculated under section 30d.

(v) For tax years that begin on and after January 1, 1994, deduct, to the extent included in adjusted gross income, any amount, and any interest earned on that amount, received in the tax year by a taxpayer who is a Holocaust victim as a result of a settlement of claims against any entity or individual for any recovered asset pursuant to the German act regulating unresolved property claims, also known as Gesetz zur Regelung offener Vermogensfragen, as a result of the settlement of the action entitled In re: Holocaust victims assets, CV-96-4849, CV-96-6161, and CV-97-0461 (E.D. NY), or as a result of any similar action if the income and interest are not commingled in any way with and are kept separate from all other funds and assets of the taxpayer. As used in this subdivision:

(*i*) "Holocaust victim" means a person, or the heir or beneficiary of that person, who was persecuted by Nazi Germany or any Axis regime during any period from 1933 to 1945.

(*ii*) "Recovered asset" means any asset of any type and any interest earned on that asset including, but not limited to, bank deposits, insurance proceeds, or artwork owned by a Holocaust victim during the period from 1920 to 1945, withheld from that Holocaust victim from and after 1945, and not recovered, returned, or otherwise compensated to the Holocaust victim until after 1993.

(w) For tax years that begin after December 31, 1999, deduct, to the extent not deducted in determining adjusted gross income, both of the following:

(*i*) The total of all contributions made on and after October 1, 2000 by the taxpayer in the tax year less qualified withdrawals made in the tax year to education savings accounts pursuant to the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486, not to exceed $5,000.00 for a single return or $10,000.00 for a joint return per tax year.

(*ii*) The amount under section 30f.

(x) For tax years that begin after December 31, 1999, add, to the extent not included in adjusted gross income, the amount of money withdrawn by the taxpayer in the tax year from education savings accounts, not to exceed the total amount deducted under subdivision (w) in the tax year and all previous tax years, if the withdrawal was not a qualified withdrawal as provided in the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486. This subdivision does not apply to withdrawals that are less than the sum of all contributions made to an education savings account in all previous tax years for which no deduction was claimed under subdivision (w), less any contributions for which no deduction was claimed under subdivision (w) that were withdrawn in all previous tax years.

(y) For tax years that begin after December 31, 1999, deduct, to the extent included in adjusted gross income, the amount of a distribution from individual retirement accounts that qualify under section 408 of the internal revenue code if the distribution is used to pay qualified higher education expenses as that term is defined in the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486.

(z) For tax years that begin after December 31, 2000, deduct, to the extent included in adjusted gross income, an amount equal to the qualified charitable distribution made in the tax year by a taxpayer to a charitable organization. The amount allowed under this subdivision shall be equal to the amount deductible by the taxpayer under section 170(c) of the internal revenue code with respect to the qualified charitable distribution in the tax year in which the taxpayer makes the distribution to the qualified charitable organization, reduced by both the amount of the deduction for retirement or pension benefits claimed by the taxpayer under subdivision (f)(*i*), (*ii*), (*iv*), or (*v*) and by 2 times the total amount of credits claimed under sections 260 and 261 for the tax year. As used in this subdivision, "qualified charitable distribution" means a distribution of assets to a qualified charitable organization by a taxpayer not more than 60 days after the date on which the taxpayer received the assets as a distribution from a retirement or pension plan described in subsection (8)(a). A distribution is to a qualified charitable organization if the distribution is made in any of the following circumstances:

(*i*) To an organization described in section 501(c)(3) of the internal revenue code except an organization that is controlled by a political party, an elected official or a candidate for an elective office.

(*ii*) To a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664(d) of the internal revenue code; to a pooled income fund as defined in section 642(c)(5) of the internal revenue code; or for the issuance of a charitable gift annuity as defined in section 501(m)(5) of the internal revenue code. A trust, fund, or

annuity described in this subparagraph is a qualified charitable organization only if no person holds any interest in the trust, fund, or annuity other than 1 or more of the following:

(A) The taxpayer who received the distribution from the retirement or pension plan.

(B) The spouse of an individual described in sub-subparagraph (A).

(C) An organization described in section 501(c)(3) of the internal revenue code.

(aa) A taxpayer who is a resident tribal member may deduct, to the extent included in adjusted gross income, all nonbusiness income earned or received in the tax year and during the period in which an agreement entered into between the taxpayer's tribe and this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, is in full force and effect. As used in this subdivision:

(*i*) "Business income" means business income as defined in section 4 and apportioned under chapter 3.

(*ii*) "Nonbusiness income" means nonbusiness income as defined in section 14 and, to the extent not included in business income, all of the following:

(A) All income derived from wages whether the wages are earned within the agreement area or outside of the agreement area.

(B) All interest and passive dividends.

(C) All rents and royalties derived from real property located within the agreement area.

(D) All rents and royalties derived from tangible personal property, to the extent the personal property is utilized within the agreement area.

(E) Capital gains from the sale or exchange of real property located within the agreement area.

(F) Capital gains from the sale or exchange of tangible personal property located within the agreement area at the time of sale.

(G) Capital gains from the sale or exchange of intangible personal property.

(H) All pension income and benefits including, but not limited to, distributions from a 401(k) plan, individual retirement accounts under section 408 of the internal revenue code, or a defined contribution plan, or payments from a defined benefit plan.

(I) All per capita payments by the tribe to resident tribal members, without regard to the source of payment.

(J) All gaming winnings.

(*iii*) "Resident tribal member" means an individual who meets all of the following criteria:

(A) Is an enrolled member of a federally recognized tribe.

(B) The individual's tribe has an agreement with this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in full force and effect.

(C) The individual's principal place of residence is located within the agreement area as designated in the agreement under sub-subparagraph (B).

(2) The following personal exemptions multiplied by the number of personal or dependency exemptions allowable on the taxpayer's federal income tax return pursuant to the internal revenue code shall be subtracted in the calculation that determines taxable income:

(a) For a tax year beginning during 1987..... $ 1,600.00.

(b) For a tax year beginning during 1988	$	1,800.00.
(c) For a tax year beginning during 1989	$	2,000.00.
(d) For a tax year beginning after 1989 and before 1995	$	2,100.00.
(e) For a tax year beginning during 1995 or 1996	$	2,400.00.
(f) Except as otherwise provided in subsection (7), for a tax year beginning after 1996	$	2,500.00.

(3) A single additional exemption determined as follows shall be subtracted in the calculation that determines taxable income in each of the following circumstances:

(a) For tax years beginning after 1989 and before 2000, $900.00 in each of the following circumstances:

(*i*) The taxpayer is a paraplegic, a quadriplegic, a hemiplegic, a person who is blind as defined in section 504, or a person who is totally and permanently disabled as defined in section 522.

(*ii*) The taxpayer is a deaf person as defined in section 2 of the deaf persons' interpreters act, 1982 PA 204, MCL 393.502.

(*iii*) The taxpayer is 65 years of age or older.

(*iv*) The return includes unemployment compensation that amounts to 50% or more of adjusted gross income.

(b) For tax years beginning after 1999, $1,800.00 for each taxpayer and every dependent of the taxpayer who is 65 years of age or older. When a dependent of a taxpayer files an annual return under this act, the taxpayer or dependent of the taxpayer, but not both, may claim the additional exemption allowed under this subdivision. As used in this subdivision and subdivision (c), "dependent" means that term as defined in section 30e.

(c) For tax years beginning after 1999, $1,800.00 for each taxpayer and every dependent of the taxpayer who is a deaf person as defined in section 2 of the deaf persons' interpreters act, 1982 PA 204, MCL 393.502; a paraplegic, a quadriplegic, or a hemiplegic; a person who is blind as defined in section 504; or a person who is totally and permanently disabled as defined in section 522. When a dependent of a taxpayer files an annual return under this act, the taxpayer or dependent of the taxpayer, but not both, may claim the additional exemption allowed under this subdivision.

(d) For tax years beginning after 1999, $1,800.00 if the taxpayer's return includes unemployment compensation that amounts to 50% or more of adjusted gross income.

(4) For a tax year beginning after 1987, an individual with respect to whom a deduction under section 151 of the internal revenue code is allowable to another federal taxpayer during the tax year is not considered to have an allowable federal exemption for purposes of subsection (2), but may subtract $500.00 in the calculation that determines taxable income for a tax year beginning in 1988, $1,000.00 for a tax year beginning after 1988 and before 2000, and $1,500.00 for a tax year beginning after 1999.

(5) A nonresident or a part-year resident is allowed that proportion of an exemption or deduction allowed under subsection (2), (3), or (4) that the taxpayer's portion of adjusted gross income from Michigan sources bears to the taxpayer's total adjusted gross income.

(6) For a tax year beginning after 1987, in calculating taxable income, a taxpayer shall not subtract from adjusted gross income the amount of prizes won by the taxpayer under the McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to 432.47.

(7) For each tax year after the 1997 tax year, the personal exemption allowed under subsection (2) shall be adjusted by multiplying the exemption for the tax year beginning in 1997 by a fraction, the numerator of which is the United States consumer price index for the state fiscal year ending in the tax year prior to the tax year for which the adjustment is being made and the denominator of which is the United States consumer price index for the 1995-96 state fiscal year. The resultant product shall be rounded to the nearest $100.00 increment. The personal exemption for the tax year shall be determined by adding $200.00 to that rounded amount. As used in this section, "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics. For each year after the 2000 tax year, the exemptions allowed under subsection (3) shall be adjusted by multiplying the exemption amount under subsection (3) for the tax year beginning in 2000 by a fraction, the numerator of which is the United States consumer price index for the state fiscal year ending the tax year prior to the tax year for which the adjustment is being made and the denominator of which is the United States consumer price index for the 1998-1999 state fiscal year. The resultant product shall be rounded to the nearest $100.00 increment.

(8) As used in subsection (1)(f), "retirement or pension benefits" means distributions from all of the following:

(a) Except as provided in subdivision (d), qualified pension trusts and annuity plans that qualify under section 401(a) of the internal revenue code, including all of the following:

(*i*) Plans for self-employed persons, commonly known as Keogh or HR 10 plans.

(*ii*) Individual retirement accounts that qualify under section 408 of the internal revenue code if the distributions are not made until the participant has reached 59-1/2 years of age, except in the case of death, disability, or distributions described by section 72(t)(2)(A)(*iv*) of the internal revenue code.

(*iii*) Employee annuities or tax-sheltered annuities purchased under section 403(b) of the internal revenue code by organizations exempt under section 501(c)(3) of the internal revenue code, or by public school systems.

(*iv*) Distributions from a 401(k) plan attributable to employee contributions mandated by the plan or attributable to employer contributions.

(b) The following retirement and pension plans not qualified under the internal revenue code:

(*i*) Plans of the United States, state governments other than this state, and political subdivisions, agencies, or instrumentalities of this state.

(*ii*) Plans maintained by a church or a convention or association of churches.

(*iii*) All other unqualified pension plans that prescribe eligibility for retirement and predetermine contributions and benefits if the distributions are made from a pension trust.

(c) Retirement or pension benefits received by a surviving spouse if those benefits qualified for a deduction prior to the decedent's death. Benefits received by a surviving child are not deductible.

(d) Retirement and pension benefits do not include:

(*i*) Amounts received from a plan that allows the employee to set the amount of compensation to be deferred and does not prescribe retirement age or years of service. These plans include, but are not limited to, all of the following:

(A) Deferred compensation plans under section 457 of the internal revenue code.

(B) Distributions from plans under section 401(k) of the internal revenue code other than plans described in subdivision (a)(*iv*).

(C) Distributions from plans under section 403(b) of the internal revenue code other than plans described in subdivision (a)(*iii*).

(*ii*) Premature distributions paid on separation, withdrawal, or discontinuance of a plan prior to the earliest date the recipient could have retired under the provisions of the plan.

(*iii*) Payments received as an incentive to retire early unless the distributions are from a pension trust.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 395]

(SB 1281)

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," (MCL 324.101 to 324.90106) by adding section 74124.

The People of the State of Michigan enact:

324.74124 Create "gem of the parks", "volunteer of the year", and "employee of the year" award program.

Sec. 74124. (1) The department shall create a "gem of the parks" award to recognize key state parks for their contribution to the state parks system, a "volunteer of the year" award to recognize outstanding individuals who donate time or monetary contributions to the state park system, and an "employee of the year" award to recognize individuals who are outstanding employees of the state park system. The department shall develop a program to facilitate the determination and presentation of these awards. The awards shall be made on a yearly basis.

(2) The department shall develop a set of standards to use in determining the recipients of the awards under subsection (1) with consideration given to the following:

(a) The contribution of the state park, the volunteer, or the employee to the preservation of the state's natural resources.

(b) The amount of any monetary donation.

(c) The length of time donated or the years of employment.

(d) The length of a long-term commitment to the preservation of the environment.

(3) The department annually shall submit the names of the award recipients under subsection (1) to the standing committees in the senate and house of representatives responsible for natural resources matters.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 396]

(SB 1206)

AN ACT to amend 1992 PA 147, entitled "An act to provide for the development and rehabilitation of residential housing; to provide for the creation of neighborhood enterprise zones; to provide for obtaining neighborhood enterprise zone certificates for a period of time and to prescribe the contents of the certificates; to provide for the exemption of certain taxes; to provide for the levy and collection of a specific tax on the owner of certain facilities; and to prescribe the powers and duties of certain officers of the state and local governmental units," by amending sections 2, 3, 4, and 12 (MCL 207.772, 207.773, 207.774, and 207.782), sections 2, 3, and 12 as amended by 2001 PA 217 and section 4 as amended by 2004 PA 60.

The People of the State of Michigan enact:

207.772 Definitions.

Sec. 2. As used in this act:

(a) "Commission" means the state tax commission created by 1927 PA 360, MCL 209.101 to 209.107.

(b) "Condominium unit" means that portion of a structure intended for separate ownership, intended for residential use, and established pursuant to the condominium act, 1978 PA 59, MCL 559.101 to 559.276. Condominium units within a qualified historic building may be held under common ownership.

(c) "Developer" means a person who is the owner of a new facility at the time of construction or of a rehabilitated facility at the time of rehabilitation for which a neighborhood enterprise zone certificate is applied for or issued.

(d) "Local governmental unit" means a qualified local governmental unit as that term is defined under section 2 of the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2782.

(e) "New facility" means a new structure or a portion of a new structure that has as its primary purpose residential housing consisting of 1 or 2 units, 1 of which is or will be occupied by an owner as his or her principal residence. New facility includes a model home or a model condominium unit. New facility includes a new individual condominium unit, in a structure with 1 or more condominium units, that has as its primary purpose residential housing and that is or will be occupied by an owner as his or her principal residence. New facility does not include apartments.

(f) "Neighborhood enterprise zone certificate" or "certificate" means a certificate issued pursuant to sections 4, 5, and 6.

(g) "Owner" means the record title holder of, or the vendee of the original land contract pertaining to, a new facility or a rehabilitated facility for which a neighborhood enterprise zone certificate is applied for or issued.

(h) "Qualified historic building" means a property within a neighborhood enterprise zone that has been designated a historic resource as defined under section 266 of the income tax act of 1967, 1967 PA 281, MCL 206.266.

(i) "Rehabilitated facility" means an existing structure or a portion of an existing structure with a current true cash value of $80,000.00 or less per unit that has or will have as its primary purpose residential housing, consisting of 1 to 8 units, the owner of which proposes improvements that if done by a licensed contractor would cost in excess of $5,000.00 per owner-occupied unit or 50% of the true cash value, whichever is less, or $7,500.00 per nonowner-occupied unit or 50% of the true cash value, whichever is less, or the owner proposes improvements that would be done by the owner and not a licensed contractor and the cost of the materials would be in excess of $3,000.00 per owner-occupied unit or $4,500.00 per nonowner-occupied unit and will bring the structure into conformance with minimum local building code standards for occupancy or improve the livability of the units while meeting minimum local building code standards. Rehabilitated facility also includes an individual condominium unit, in a structure with 1 or more condominium units that has as its primary purpose residential housing, the owner of which proposes the above described improvements. Rehabilitated facility also includes existing or proposed condominium units in a qualified historic building with 1 or more existing or proposed condominium units. Rehabilitated facility does not include a facility rehabilitated with the proceeds of an insurance policy for property or casualty loss. A qualified historic building may contain multiple rehabilitated facilities.

207.773 Neighborhood enterprise zone; designation by resolution; notice; finding of consistency; statement; housing inspection ordinance; public hearing; determining true cash value; limitations on total acreage; passage, amendment, or repeal of resolution.

Sec. 3. (1) The governing body of a local governmental unit by resolution may designate 1 or more neighborhood enterprise zones within that local governmental unit. A neighborhood enterprise zone shall contain not less than 10 platted parcels of land. All the land within a neighborhood enterprise zone shall also be compact and contiguous. Contiguity is not broken by a road, right-of-way, or property purchased or taken under condemnation if the purchased or condemned property was a single parcel prior to the sale or condemnation.

(2) The total acreage of the neighborhood enterprise zones designated under this act shall not exceed 15% of the total acreage contained within the boundaries of the local governmental unit.

(3) Not less than 60 days before the passage of a resolution designating a neighborhood enterprise zone or the repeal or amendment of a resolution under subsection (5), the clerk of the local governmental unit shall give written notice to the assessor and to the governing body of each taxing unit that levies ad valorem property taxes in the proposed neighborhood enterprise zone. Before acting upon the resolution, the governing body of the local governmental unit shall make a finding that a proposed neighborhood enterprise zone is consistent with the master plan of the local governmental unit and the neighborhood preservation and economic development goals of the local governmental unit. The governing body before acting upon the resolution shall also adopt a statement of the local governmental unit's goals, objectives, and policies relative to the maintenance, preservation, improvement, and development of housing for all persons regardless of

income level living within the proposed neighborhood enterprise zone. Additionally, before acting upon the resolution, the governing body of a local governmental unit with a population greater than 20,000 shall pass a housing inspection ordinance. A local governmental unit with a population of 20,000 or less may pass a housing inspection ordinance. Before the sale of a unit in a new or rehabilitated facility for which a neighborhood enterprise zone certificate is in effect, an inspection shall be made of the unit to determine compliance with any local construction or safety codes and that a sale may not be finalized until there is compliance with those local construction or safety codes. The governing body shall hold a public hearing not later than 45 days after the date the notice is sent but before acting upon the resolution.

(4) Upon receipt of a notice under subsection (3), the assessor shall determine and furnish to the governing body of the local governmental unit the amount of the true cash value of the property located within the proposed neighborhood enterprise zone and any other information considered necessary by the governing body.

(5) A resolution designating a neighborhood enterprise zone, other than a zone designated under subsection (2), may be repealed or amended not sooner than 3 years after the date of adoption or of the most recent amendment of the resolution by the governing body of the local governmental unit. The repeal or amendment of the resolution shall take effect 6 months after adoption. However, an action taken under this subsection does not invalidate a certificate that is issued or in effect and a facility for which a certificate is issued or in effect shall continue to be included in the total acreage limitations under this section until the certificate is expired or revoked.

(6) Upon passage, amendment, or repeal of a resolution under this section, the clerk of the local governmental unit shall notify the commission of the action taken.

207.774 Neighborhood enterprise zone certificate; application; filing; manner and form; contents; effective date of certificate.

Sec. 4. (1) The owner or developer or prospective owner or developer of a proposed new facility or an owner or developer or prospective developer proposing to rehabilitate property located in a neighborhood enterprise zone may file an application for a neighborhood enterprise zone certificate with the clerk of the local governmental unit. The application shall be filed in the manner and form prescribed by the commission. Except as provided in subsection (2), the application shall be filed before a building permit is issued for the new construction or rehabilitation of the facility.

(2) An application may be filed after a building permit is issued only if 1 or more of the following apply:

(a) For the rehabilitation of a facility if the area in which the facility is located is designated as a neighborhood enterprise zone by the governing body of the local governmental unit in the calendar year 1992 and if the building permit is issued for the rehabilitation before December 31, 1994 and after the date on which the area in which the facility is located was designated as a neighborhood enterprise zone by the governing body of the local governmental unit.

(b) For the construction of a new facility if the area in which the new facility is located is designated as a neighborhood enterprise zone by the governing body of the local governmental unit in calendar year 1992 or 1993 and if the building permit is issued for that new facility before December 31, 1995 and after January 1, 1993.

(c) For the construction of a new facility if the area in which the new facility is located is designated as a neighborhood enterprise zone by the governing body of the local governmental unit in July 1997 and if the building permit is issued for that new facility on February 3, 1998.

(d) For a new facility or a rehabilitated facility if the area in which the new facility or rehabilitated facility is located was designated as a neighborhood enterprise zone by the governing body of the local governmental unit in July 1996 and if the building permit was issued for that facility on or before July 3, 2001.

(e) For a new facility or a rehabilitated facility if the area in which the new facility or rehabilitated facility is located was designated as a neighborhood enterprise zone by the governing body of the local governmental unit in October 1994 and if the building permit was issued for that facility on or before April 25, 1997.

(f) For the construction of a new facility if the area in which the new facility is located is designated as a neighborhood enterprise zone by the governing body of the local governmental unit in September 2001 and if the building permit is issued for that new facility on March 3, 2003.

(g) For a rehabilitated facility if all or a portion of the rehabilitated facility is a qualified historic building.

(h) For the construction of a new facility if the area in which the new facility is located is designated as a neighborhood enterprise zone by the governing body of the local governmental unit in July 1993 and the new facility was a model home.

(3) The application shall contain or be accompanied by all of the following:

(a) A general description of the new facility or proposed rehabilitated facility.

(b) The dimensions of the parcel on which the new facility or proposed rehabilitated facility is or is to be located.

(c) The general nature and extent of the construction to be undertaken.

(d) A time schedule for undertaking and completing the rehabilitation of property or the construction of the new facility.

(e) Any other information required by the local governmental unit.

(4) Notwithstanding any other provisions of this act, for any certificate issued as a result of the enactment of the amendatory act that added subsection (2)(c), the effective date of the certificate shall be the first day of the tax year following the year the certificate is approved by the commission.

(5) Notwithstanding any other provisions of this act, for any certificate issued as a result of the enactment of the amendatory act that added subsection (2)(d) or the amendatory act that added subsection (2)(e), the effective date of the certificate shall be January 1, 2001.

207.782 Duration of certificate.

Sec. 12. (1) Except as otherwise provided in this section, unless earlier revoked as provided in section 11, a neighborhood enterprise zone certificate shall remain in effect for 6 to 12 years from the effective date of the certificate as determined by the governing body of the local governmental unit. If the new facility or rehabilitated facility is sold or transferred to another owner who otherwise complies with this act and, for a new facility, uses the new facility as a principal residence, the certificate shall remain in effect.

(2) If a rehabilitated facility was sold before December 29, 1994 and a certificate was in effect for that facility at the time of the sale, and the new owner of the rehabilitated facility otherwise complies with this act, the certificate shall be reinstated and remain in effect for the remainder of the original period described in subsection (1), unless earlier revoked under section 11.

(3) Except as provided in subsection (4), a change in ownership of a rehabilitated facility constituting all or a portion of a qualified historic building, occurring after the effective date of a neighborhood enterprise zone certificate for that rehabilitated facility, shall not affect the validity of that neighborhood enterprise zone certificate, and the certificate shall remain in effect for the period specified in this section as long as the rehabilitated facility has as its primary purpose residential housing.

(4) Unless revoked earlier as provided in section 11, a neighborhood enterprise zone certificate in effect for a rehabilitated facility constituting all or a portion of a qualified historic building shall remain in effect for 11 to 17 years from the effective date of the certificate as determined by the governing body of the local governmental unit. However, if a rehabilitated facility constituting all or a portion of a qualified historic building is not transferred or sold to a person who will own and occupy the rehabilitated facility as his or her principal residence within 6 years of the effective date of the neighborhood enterprise zone certificate, the neighborhood enterprise zone certificate is revoked.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 397]

(HB 4766)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding sections 21335 and 21735.

The People of the State of Michigan enact:

333.21335 Requirement of emergency generator system in home for the aged.

Sec. 21335. (1) Except as provided under subsection (2), a home for the aged seeking a license or a renewal of a license under this article shall have, at a minimum, an emergency

generator system that during an interruption of the normal electrical supply is capable of both of the following:

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

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

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

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

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

333.21735 Requirement of emergency generator system in nursing home.

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

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

Effective date.

Enacting section 1. This amendatory act takes effect 6 months after the date this amendatory act is enacted.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 398]

(SB 1396)

AN ACT to amend 1995 PA 24, entitled "An act to promote economic growth and job creation within this state; to create and regulate the Michigan economic growth authority;

to prescribe the powers and duties of the authority and of state and local officials; to assess and collect a fee; to approve certain plans and the use of certain funds; and to provide qualifications for and determine eligibility for tax credits and other incentives for authorized businesses and for qualified taxpayers," by amending sections 3 and 8 (MCL 207.803 and 207.808), as amended by 2004 PA 81.

The People of the State of Michigan enact:

207.803 Definitions.

Sec. 3. As used in this act:

(a) "Affiliated business" means a business that is 100% owned and controlled by an associated business.

(b) "Associated business" means a business which owns at least 50% of and controls, directly or indirectly, an authorized business.

(c) "Authorized business" means 1 of the following:

(*i*) A single eligible business with a unique federal employer identification number which has met the requirements of section 8 and with which the authority has entered into a written agreement for a tax credit under section 9.

(*ii*) A single eligible business with a unique federal employer identification number which has met the requirements of section 8, except as provided in this subparagraph, and with which the authority has entered into a written agreement for a tax credit under section 9. An eligible business is not required to create qualified new jobs or maintain retained jobs if qualified new jobs are created or retained jobs are maintained by an associated or affiliated business.

(*iii*) A single eligible business with a unique federal employer identification number which has met the requirements of section 8, except as provided in this subparagraph, and with which the authority has entered into a written agreement for a tax credit under section 9. An eligible business is not required to create qualified new jobs or maintain retained jobs if qualified new jobs are created or retained jobs are maintained by a subsidiary business which withholds income and social security taxes, or an employee leasing company or professional employer organization that has entered into a contractual service agreement with the authorized business in which the employee leasing company or professional employer organization withholds income and social security taxes on behalf of the authorized business.

(d) "Authority" means the Michigan economic growth authority created under section 4.

(e) "Business" means proprietorship, joint venture, partnership, limited liability partnership, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, limited liability company, or any other organization.

(f) "Distressed business" means a business that meets all of the following as verified by the Michigan economic growth authority:

(*i*) Four years immediately preceding the application to the authority under this act, the business had 150 or more full-time jobs in this state.

(*ii*) Within the immediately preceding 4 years, there has been a reduction of not less than 30% of the number of full-time jobs in this state during any consecutive 3-year period. The highest number of full-time jobs within the consecutive 3-year period shall be used in order to determine the percentage reduction of full-time jobs in this subparagraph.

(*iii*) Is not a seasonal employer as defined in section 27 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.27.

(g) "Eligible business" means a distressed business or business that proposes to maintain retained jobs after December 31, 1999 or to create qualified new jobs in this state after April 18, 1995 in manufacturing, mining, research and development, wholesale and trade, or office operations or a business that is a qualified high-technology business. An eligible business does not include retail establishments, professional sports stadiums, or that portion of an eligible business used exclusively for retail sales. Professional sports stadium does not include a sports stadium in existence on June 6, 2000 that is not used by a professional sports team on the date that an application related to that professional sports stadium is filed under section 8.

(h) "Facility" means a site or sites within this state in which an authorized business or subsidiary businesses maintains retained jobs or creates qualified new jobs. A facility does not include a site that was a vaccine laboratory owned by this state on April 1, 1995.

(i) "Full-time job" means a job performed by an individual who is employed by an authorized business or an employee leasing company or professional employer organization on behalf of the authorized business for consideration for 35 hours or more each week and for which the authorized business or an employee leasing company or professional employer organization on behalf of the authorized business withholds income and social security taxes.

(j) "Local governmental unit" means a county, city, village, or township in this state.

(k) "High-technology activity" means 1 or more of the following:

(*i*) Advanced computing, which is any technology used in the design and development of any of the following:

(A) Computer hardware and software.

(B) Data communications.

(C) Information technologies.

(*ii*) Advanced materials, which are materials with engineered properties created through the development of specialized process and synthesis technology.

(*iii*) Biotechnology, which is any technology that uses living organisms, cells, macromolecules, microorganisms, or substances from living organisms to make or modify a product, improve plants or animals, or develop microorganisms for useful purposes. Biotechnology does not include human cloning as defined in section 16274 of the public health code, 1978 PA 368, MCL 333.16274, or stem cell research with embryonic tissue.

(*iv*) Electronic device technology, which is any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

(*v*) Engineering or laboratory testing related to the development of a product.

(*vi*) Technology that assists in the assessment or prevention of threats or damage to human health or the environment, including, but not limited to, environmental cleanup technology, pollution prevention technology, or development of alternative energy sources.

(*vii*) Medical device technology, which is any technology that involves medical equipment or products other than a pharmaceutical product that has therapeutic or diagnostic value and is regulated.

(*viii*) Product research and development.

(*ix*) Advanced vehicles technology that is any technology that involves electric vehicles, hybrid vehicles, or alternative fuel vehicles, or components used in the construction of electric vehicles, hybrid vehicles, or alternative fuel vehicles. For purposes of this act:

(A) "Electric vehicle" means a road vehicle that draws propulsion energy only from an on-board source of electrical energy.

(B) "Hybrid vehicle" means a road vehicle that can draw propulsion energy from both a consumable fuel and a rechargeable energy storage system.

(*x*) Tool and die manufacturing.

(*l*) "New capital investment" means 1 or more of the following:

(*i*) New construction. As used in this subparagraph:

(A) "New construction" means property not in existence on the date the authorized business enters into a written agreement with the authority and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to section 27(2)(a) to (o) of the general property tax act, 1893 PA 206, MCL 211.27.

(B) "Replacement construction" means that term as defined in section 34d(1)(b)(*v*) of the general property tax act, 1893 PA 206, MCL 211.34d.

(*ii*) The purchase of new personal property. As used in this subparagraph, "new personal property" means personal property that is not subject to or that is exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, on the date the authorized business enters into a written agreement with the authority.

(m) "Qualified high-technology business" means a business that is either of the following:

(*i*) A business with not less than 25% of the total operating expenses of the business used for research and development in the tax year in which the business files an application under this act as determined under generally accepted accounting principles and verified by the authority.

(*ii*) A business whose primary business activity is high-technology activity.

(n) "Qualified new job" means 1 of the following:

(*i*) A full-time job created by an authorized business at a facility that is in excess of the number of full-time jobs the authorized business maintained in this state prior to the expansion or location, as determined by the authority.

(*ii*) For jobs created after July 1, 2000, a full-time job at a facility created by an eligible business that is in excess of the number of full-time jobs maintained by that eligible business in this state 120 days before the eligible business became an authorized business, as determined by the authority.

(*iii*) For a distressed business, a full-time job at a facility that is in excess of the number of full-time jobs maintained by that eligible business in this state on the date the eligible business became an authorized business.

(o) "Retained jobs" means the number of full-time jobs at a facility of an authorized business maintained in this state on a specific date as that date and number of jobs is determined by the authority.

(p) "Rural business" means an eligible business located in a county with a population of 80,000 or less.

(q) "Subsidiary business" means a business that is directly or indirectly controlled or at least 80% owned by an authorized business.

(r) "Written agreement" means a written agreement made pursuant to section 8.

207.808 Agreement for tax credit; determination; requirements; amount and duration of tax credits; additional requirements; authorization of business; criteria; limitation on new agreements; execution.

Sec. 8. (1) After receipt of an application, the authority may enter into an agreement with an eligible business for a tax credit under section 9 if the authority determines that all of the following are met:

(a) Except as provided in subsection (5), the eligible business creates 1 or more of the following within 12 months of the expansion or location as determined by the authority:

(*i*) A minimum of 75 qualified new jobs at the facility if expanding in this state.

(*ii*) A minimum of 150 qualified new jobs at the facility if locating in this state.

(*iii*) A minimum of 25 qualified new jobs at the facility if the facility is located in a neighborhood enterprise zone as determined under the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786, is located in a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, or is located in a federally designated empowerment zone, rural enterprise community, or enterprise community.

(*iv*) A minimum of 5 qualified new jobs at the facility if the eligible business is a qualified high-technology business.

(*v*) A minimum of 5 qualified new jobs at the facility if the eligible business is a rural business.

(b) Except as provided in subsection (5), the eligible business agrees to maintain 1 or more of the following for each year that a credit is authorized under this act:

(*i*) A minimum of 75 qualified new jobs at the facility if expanding in this state.

(*ii*) A minimum of 150 qualified new jobs at the facility if locating in this state.

(*iii*) A minimum of 25 qualified new jobs at the facility if the facility is located in a neighborhood enterprise zone as determined under the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786, is located in a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, or is located in a federally designated empowerment zone, rural enterprise community, or enterprise community.

(*iv*) If the eligible business is a qualified high-technology business, all of the following apply:

(A) A minimum of 5 qualified new jobs at the facility.

(B) A minimum of 25 qualified new jobs at the facility within 5 years after the date of the expansion or location as determined by the authority and a minimum of 25 qualified new jobs at the facility each year thereafter for which a credit is authorized under this act.

(*v*) If the eligible business is a rural business, all of the following apply:

(A) A minimum of 5 qualified new jobs at the facility.

(B) A minimum of 25 qualified new jobs at the facility within 5 years after the date of the expansion or location as determined by the authority.

(c) Except as provided in subsection (5), in addition to the jobs specified in subdivision (b), the eligible business, if already located within this state, agrees to maintain a number of full-time jobs equal to or greater than the number of full-time jobs it maintained in this state prior to the expansion, as determined by the authority.

(d) Except as otherwise provided in this subdivision, the average wage paid for all retained jobs and qualified new jobs is equal to or greater than 150% of the federal minimum wage. However, if the eligible business is a qualified high-technology business,

then the average wage paid for all qualified new jobs is equal to or greater than 400% of the federal minimum wage.

(e) Except for a qualified high-technology business, the expansion, retention, or location of the eligible business will not occur in this state without the tax credits offered under this act.

(f) Except for an eligible business described in subsection (5)(b)(*ii*), the local governmental unit in which the eligible business will expand, be located, or maintain retained jobs, or a local economic development corporation or similar entity, will make a staff, financial, or economic commitment to the eligible business for the expansion, retention, or location.

(g) The financial statements of the eligible business indicated that it is financially sound or has submitted a chapter 11 plan of reorganization to the bankruptcy court and that its plans for the expansion, retention, or location are economically sound.

(h) Except for an eligible business described in subsection (5)(c), the eligible business has not begun construction of the facility.

(i) The expansion, retention, or location of the eligible business will benefit the people of this state by increasing opportunities for employment and by strengthening the economy of this state.

(j) The tax credits offered under this act are an incentive to expand, retain, or locate the eligible business in Michigan and address the competitive disadvantages with sites outside this state.

(k) A cost/benefit analysis reveals that authorizing the eligible business to receive tax credits under this act will result in an overall positive fiscal impact to the state.

(*l*) If feasible, as determined by the authority, in locating the facility, the authorized business reuses or redevelops property that was previously used for an industrial or commercial purpose.

(m) If the eligible business is a qualified high-technology business described in section 3(m)(*i*), the eligible business agrees that not less than 25% of the total operating expenses of the business will be maintained for research and development for the first 3 years of the written agreement.

(2) If the authority determines that the requirements of subsection (1) or (5) have been met, the authority shall determine the amount and duration of tax credits to be authorized under section 9, and shall enter into a written agreement as provided in this section. The duration of the tax credits shall not exceed 20 years or for an authorized business that is a distressed business, 3 years. In determining the amount and duration of tax credits authorized, the authority shall consider the following factors:

(a) The number of qualified new jobs to be created or retained jobs to be maintained.

(b) The average wage level of the qualified new jobs or retained jobs relative to the average wage paid by private entities in the county in which the facility is located.

(c) The total capital investment or new capital investment the eligible business will make.

(d) The cost differential to the business between expanding, locating, or retaining new jobs in Michigan and a site outside of Michigan.

(e) The potential impact of the expansion, retention, or location on the economy of Michigan.

(f) The cost of the credit under section 9, the staff, financial, or economic assistance provided by the local government unit, or local economic development corporation or similar entity, and the value of assistance otherwise provided by this state.

(3) A written agreement between an eligible business and the authority shall include, but need not be limited to, all of the following:

(a) A description of the business expansion, retention, or location that is the subject of the agreement.

(b) Conditions upon which the authorized business designation is made.

(c) A statement by the eligible business that a violation of the written agreement may result in the revocation of the designation as an authorized business and the loss or reduction of future credits under section 9.

(d) A statement by the eligible business that a misrepresentation in the application may result in the revocation of the designation as an authorized business and the refund of credits received under section 9.

(e) A method for measuring full-time jobs before and after an expansion, retention, or location of an authorized business in this state.

(f) A written certification from the eligible business regarding all of the following:

(*i*) The eligible business will follow a competitive bid process for the construction, rehabilitation, development, or renovation of the facility, and that this process will be open to all Michigan residents and firms. The eligible business may not discriminate against any contractor on the basis of its affiliation or nonaffiliation with any collective bargaining organization.

(*ii*) The eligible business will make a good faith effort to employ, if qualified, Michigan residents at the facility.

(*iii*) The eligible business will make a good faith effort to employ or contract with Michigan residents and firms to construct, rehabilitate, develop, or renovate the facility.

(*iv*) The eligible business is encouraged to make a good faith effort to utilize Michigan-based suppliers and vendors when purchasing goods and services.

(g) A condition that if the eligible business qualified under subsection (5)(b)(*ii*) and met the subsection (1)(g) requirement by filing a chapter 11 plan of reorganization, the plan must be approved by the bankruptcy court within 2 years of the date of the agreement or the agreement is rescinded.

(4) Upon execution of a written agreement as provided in this section, an eligible business is an authorized business.

(5) After receipt of an application, the authority may enter into a written agreement, which shall include a repayment provision of all or a portion of the credits under section 9 for a violation of the written agreement, with an eligible business that meets 1 or more of the following criteria:

(a) Is located in this state on the date of the application, makes new capital investment of $250,000,000.00 in this state, and maintains 500 retained jobs, as determined by the authority.

(b) Meets 1 or more of the following criteria:

(*i*) Relocates production of a product to this state after the date of the application, makes capital investment of $500,000,000.00 in this state, and maintains 500 retained jobs, as determined by the authority.

(*ii*) Maintains 150 retained jobs at a facility, maintains 1,000 or more full-time jobs in this state, and makes new capital investment in this state.

(*iii*) Is located in this state on the date of the application, maintains at least 100 retained jobs at a single facility, and agrees to make new capital investment at that facility equal

to the greater of $100,000.00 per retained job maintained at that facility or $10,000,000.00 to be completed not later than December 31, 2006.

(c) Is a distressed business.

(6) The authority shall not execute more than 25 new written agreements each year for eligible businesses that are not qualified high-technology businesses, distressed businesses, or rural businesses. If the authority executes less than 25 new written agreements in a year, the authority may carry forward for 1 year only the difference between 25 and the number of new agreements executed in the immediately preceding year.

(7) The authority shall not execute more than 50 new written agreements each year for eligible businesses that are qualified high-technology businesses or rural business. Only 5 of the 50 written agreements for businesses that are qualified high-technology businesses or rural business may be executed each year for qualified rural businesses.

(8) The authority shall not execute more than 20 new written agreements each year for eligible businesses that are distressed businesses. The authority shall not execute more than 5 of the written agreements described in this subsection each year for distressed businesses that had 1,000 or more full-time jobs at a facility 4 years immediately preceding the application to the authority under this act.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 399]

(HB 6231)

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," by amending sections 1279 and 1279d (MCL 380.1279 and 380.1279d), section 1279 as amended by 1997 PA 175 and section 1279d as added by 2002 PA 640.

The People of the State of Michigan enact:

380.1279 State assessments to high school pupils.

Sec. 1279. (1) The board of a school district or public school academy shall administer state assessments to high school pupils in the subject areas of communications skills,

mathematics, science, and social studies. The board shall include on the pupil's high school transcript all of the following:

(a) For each high school graduate who has completed a subject area assessment under this section, the pupil's scaled score on the assessment.

(b) If the pupil's scaled score on a subject area assessment falls within the range required under subsection (2) for a category established under subsection (2), an indication that the pupil has achieved state endorsement for that subject area.

(c) The number of school days the pupil was in attendance at school each school year during high school and the total number of school days in session for each of those school years.

(2) The department shall develop scaled scores for reporting subject area assessment results for each of the subject areas under this section. Subject to approval by the state board, the department shall establish 3 categories for each subject area indicating basic competency, above average, and outstanding, and shall establish the scaled score range required for each category. The department shall design and distribute to school districts, intermediate school districts, public school academies, and nonpublic schools a simple and concise document that describes these categories in each subject area and indicates the scaled score ranges for each category in each subject area. A school district or public school academy may award a high school diploma to a pupil who successfully completes local school district or public school academy requirements established in accordance with state law for high school graduation, regardless of whether the pupil is eligible for any state endorsement.

(3) The assessments administered for the purposes of this section shall be administered to pupils during the last 90 school days of grade 11. The department shall ensure that the assessments are scored and the scores are returned to pupils, their parents or legal guardians, and school districts or public school academies not later than the beginning of the pupil's first semester of grade 12. The department shall arrange for those portions of a pupil's assessment that cannot be scored mechanically to be scored in Michigan by persons who are Michigan teachers, retired Michigan teachers, or Michigan school administrators and who have been trained in scoring the assessments. The returned scores shall indicate the pupil's scaled score for each subject area assessment, the range of scaled scores for each subject area, and the range of scaled scores required for each category established under subsection (2). In reporting the scores to pupils, parents, and schools, the department shall provide specific, meaningful, and timely feedback on the pupil's performance on the assessment.

(4) For each pupil who does not achieve state endorsement in 1 or more subject areas, the board of the school district or public school academy in which the pupil is enrolled shall provide that there be at least 1 meeting attended by at least the pupil and a member of the school district's or public school academy's staff or a local or intermediate school district consultant who is proficient in the measurement and evaluation of pupils. The school district or public school academy may provide the meeting as a group meeting for pupils in similar circumstances. If the pupil is a minor, the school district or public school academy shall invite and encourage the pupil's parent, legal guardian, or person in loco parentis to attend the meeting and shall mail a notice of the meeting to the pupil's parent, legal guardian, or person in loco parentis. The purpose of this meeting and any subsequent meeting under this subsection shall be to determine an educational program for the pupil designed to have the pupil achieve state endorsement in each subject area in which he or she did not achieve state endorsement. In addition, a school district or public school academy may provide for subsequent meetings with the pupil conducted by a high school

counselor or teacher designated by the pupil's high school principal, and shall invite and encourage the pupil's parent, legal guardian, or person in loco parentis to attend the subsequent meetings. The school district or public school academy shall provide special programs for the pupil or develop a program using the educational programs regularly provided by the district unless the board of the school district or public school academy decides otherwise and publishes and explains its decision in a public justification report.

(5) A pupil who wants to repeat an assessment administered under this section may repeat the assessment, without charge to the pupil, in the next school year or after graduation. An individual may repeat an assessment at any time the school district or public school academy administers an applicable assessment instrument or during a retesting period under subsection (7).

(6) The department shall ensure that the length of the assessments used for the purposes of this section and the combined total time necessary to administer all of the assessments, including social studies, are the shortest possible that will still maintain the degree of reliability and validity of the assessment results determined necessary by the department. The department shall ensure that the maximum total combined length of time that schools are required to set aside for administration of all of the assessments used for the purposes of this section, including social studies, does not exceed 8 hours. However, this subsection does not limit the amount of time that individuals may have to complete the assessments.

(7) The department shall establish, schedule, and arrange periodic retesting periods throughout the year for individuals who desire to repeat an assessment under this section. The department shall coordinate the arrangements for administering the repeat assessments and shall ensure that the retesting is made available at least within each intermediate school district and, to the extent possible, within each school district.

(8) A school district or public school academy shall provide accommodations to a pupil with disabilities for the assessments required under this section, as provided under section 504 of title V of the rehabilitation act of 1973, 29 USC 794; subtitle A of title II of the Americans with disabilities act of 1990, 42 USC 12131 to 12134; and the implementing regulations for those statutes.

(9) For the purposes of this section, the department shall develop or select and approve assessment instruments to measure pupil performance in communications skills, mathematics, social studies, and science. The assessment instruments shall be based on the model core academic content standards objectives under section 1278.

(10) All assessment instruments developed or selected and approved by the state under any statute or rule for a purpose related to K to 12 education shall be objective-oriented and consistent with the state board model core academic content standards objectives.

(11) A person who has graduated from high school after 1996 and who has not previously taken an assessment under this section may take an assessment used for the purposes of this section, without charge to the person, at the school district from which he or she graduated from high school at any time that school district administers the assessment or during a retesting period scheduled under subsection (7) and have his or her scaled score on the assessment included on his or her high school transcript. If the person's scaled score on a subject area assessment falls within the range required under subsection (2) for a category established under subsection (2), the school district shall also indicate on the person's high school transcript that the person has achieved state endorsement for that subject area.

(12) A child who is a student in a nonpublic school or home school may take an assessment under this section. To take an assessment, a child who is a student in a home

school shall contact the school district in which the child resides, and that school district shall administer the assessment, or the child may take the assessment at a nonpublic school if allowed by the nonpublic school. Upon request from a nonpublic school, the department shall supply assessments and the nonpublic school may administer the assessment.

(13) The purpose of the assessment under this section is to assess pupil performance in mathematics, science, social studies, and communication arts for the purpose of improving academic achievement and establishing a statewide standard of competency. The assessment under this section provides a common measure of data that will contribute to the improvement of Michigan schools' curriculum and instruction by encouraging alignment with Michigan's curriculum framework standards. These standards are based upon the expectations of what pupils should know and be able to do by the end of grade 11.

(14) The department shall appoint an 11-member assessment administration advisory committee to advise the state board on Michigan education assessment program (MEAP) tests and on the assessments used for state endorsements under this section. This advisory committee shall be composed of representatives of school districts, intermediate school districts, school administrators, teachers, and parents, with the appointments reflecting the geographic and population diversity of school districts in this state. The representatives of school districts and intermediate school districts shall be persons who are expert in testing or test administration. This advisory committee shall evaluate these tests and assessments and make recommendations to the department on issues related to administration, scoring, and reporting and use of results of these tests and assessments, including, but not limited to, length of the tests and assessments; the time of the testing period during the school year; feedback provided to pupils, parents, and schools; accurate and relevant reporting of results to the general public; the selection of a retesting period and procedures and arrangements for repeating tests or assessments; local scoring and other general issues regarding scoring of tests and assessments; categories of scoring on the MEAP tests and categories of state endorsement under this section; and professional development for teachers to assist in preparing pupils to have the necessary skills and knowledge to succeed on the tests and assessments.

(15) As used in this section:

(a) "Communications skills" means reading and writing.

(b) "Social studies" means geography, history, economics, and American government.

380.1279d MEAP test; report of irregularities to school district or public school academy.

Sec. 1279d. If the department of treasury, superintendent of public instruction, or any other state agency has reason to suspect that there are irregularities in a school district's or public school academy's administration of, or preparation of pupils for, a Michigan educational assessment program (MEAP) test, the department of treasury, superintendent of public instruction, or other state agency shall not report the suspected irregularities to any person or entity not involved in the scoring or administration of the test before notifying the school district or public school academy of the suspected irregularities and allowing at least 5 business days for school officials to respond.

This act is ordered to take immediate effect.
Approved October 15, 2004.
Filed with Secretary of State October 15, 2004.

[No. 400]

(HB 5118)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding section 5474c; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

333.5474c Environmental threats of lead poisoning to children; study; report findings; repeal.

Sec. 5474c. (1) The commission shall study the environmental threats of lead poisoning to children's health, review this state's lead poisoning prevention program, evaluate the effectiveness of that program, including, but not limited to, the ability of the program to satisfy federal law requirements that 100% of all young children enrolled in medicaid shall be screened with a blood lead test, and make recommendations for improvements to that program.

(2) The commission shall consider all information received from its public hearings, review information from other sources, and study the experiences of other states. The commission shall develop short- and long-range strategic recommendations for childhood lead poisoning prevention and control in this state. The recommendations shall include, but are not limited to, strategies to:

(a) Enhance public and professional awareness of lead poisoning as a child health emergency.

(b) Significantly increase blood lead testing rates for young children.

(c) Eliminate or manage the sources of lead poisoning, especially focusing on lead-based paint in aged housing.

(d) Assure state interagency as well as public and private cooperation and communication regarding resolution of this complex environmental and public health problem.

(3) The childhood lead poisoning prevention and control commission shall submit a written report of its findings, including the recommendations under subsection (2), to the governor and the legislature by March 31, 2005 and annually thereafter by March 31 of each

year. A representative of the department of community health shall provide testimony summarizing the findings and recommendations of the commission to the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to public health and children.

(4) As used in this section, "commission" means the commission created and appointed by the governor under section 5474a.

(5) This section is repealed effective July 1, 2007.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 753 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 20, 2004.
Filed with Secretary of State October 20, 2004.

Compiler's note: Senate Bill No. 753, referred to in enacting section 1, was filed with the Secretary of State December 21, 2004, and became P.A. 2004, No. 431, Imd. Eff. Dec. 21, 2004.

[No. 401]

(HB 5874)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 16648 (MCL 333.16648), as amended by 1998 PA 496.

The People of the State of Michigan enact:

333.16648 Information relative to care and treatment of dental patient; confidentiality; privilege; disclosure; consent; instances not prohibiting disclosure.

Sec. 16648. (1) Information relative to the care and treatment of a dental patient acquired as a result of providing professional dental services is confidential and privileged.

Except as otherwise permitted or required under the health insurance portability and accountability act of 1996, Public Law 104-191, and regulations promulgated under that act, 45 CFR parts 160 and 164, or as otherwise provided in subsection (2), a dentist or a person employed by the dentist shall not disclose or be required to disclose that information.

(2) This section does not prohibit disclosure of the information described in subsection (1) in the following instances:

(a) Disclosure as part of the defense to a claim in a court or administrative agency challenging the dentist's professional competence.

(b) Disclosure pursuant to 1967 PA 270, MCL 331.531 to 331.533.

(c) Disclosure in relation to a claim for payment of fees.

(d) Disclosure to a third party payer of information relating to fees for services in the course of a good faith examination of the dentist's records to determine the amount and correctness of fees or the type and volume of services furnished pursuant to provisions for payment established by a third party payer, or information required for a third party payer's predeterminations, post treatment reviews, or audits. For purposes of this subdivision, "third party payer" includes, but is not limited to, a nonprofit dental care corporation, nonprofit health care corporation, insurer, benefit fund, health maintenance organization, and dental capitation plan.

(e) Disclosure, pursuant to a court order, to a police agency as part of a criminal investigation.

(f) Disclosure as provided in section 2844a.

(g) Disclosure made pursuant to section 16222 if the licensee reasonably believes it is necessary to disclose the information to comply with section 16222.

(h) Disclosure under section 16281.

This act is ordered to take immediate effect.
Approved October 20, 2004.
Filed with Secretary of State October 20, 2004.

[No. 402]

(SB 1149)

AN ACT to commemorate the anniversary of the founding of the branches of the United States armed forces; and to prescribe the duties of certain state agencies and officials.

The People of the State of Michigan enact:

435.341 Short title.

Sec. 1. This act shall be known and may be cited as the "armed forces commemoration act".

435.342 Commemoration dates.

Sec. 2. In recognition of the men and women who served in the United States armed forces, specifically the United States army, the United States navy, the United States marines, the United States air force, and the United States coast guard, the dates of

founding of each branch shall be commemorated. The commemoration dates shall include all of the following:

(a) The United States army is commemorated on June 14.

(b) The United States coast guard is commemorated on August 14.

(c) The United States air force is commemorated on September 18.

(d) The United States navy is commemorated on October 13.

(e) The United States marine corps is commemorated on November 10.

435.343 Flags.

Sec. 3. The flags of each branch shall be flown over the state capitol building in Lansing annually on the commemoration date for each branch identified in section 2.

This act is ordered to take immediate effect.
Approved November 12, 2004.
Filed with Secretary of State November 15, 2004.

Compiler's note: MCL 435.342(b) should evidently read "August 4".

[No. 403]

(HB 4335)

AN ACT to regulate certain forms of boxing; to create certain commissions and to provide certain powers and duties for certain state agencies and departments; to license and regulate certain persons engaged in boxing, certain persons connected to the business of boxing, and certain persons conducting certain contests and exhibitions; to confer immunity under certain circumstances; to provide for the conducting of certain tests; to assess certain fees; to create certain funds; to promulgate rules; to provide for penalties and remedies; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

338.3601 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan boxing regulatory act".

CHAPTER 1

338.3610 Definitions; A to G.

Sec. 10. As used in this act:

(a) "Amateur" means a person who is not competing and has never competed for a money prize or who is not competing and has not competed with or against a professional for a prize and who is required to be registered by USA boxing.

(b) "Commission" means the Michigan boxing commission.

(c) "Complainant" means a person who has filed a complaint with the department alleging that a person has violated this act or a rule promulgated or an order issued under this act. If a complaint is made by the department, the director shall designate 1 or more employees of the department to act as the complainant.

(d) "Department" means the department of labor and economic growth.

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

(f) "Employee of the department" means an individual employed by the department or a person under contract to the department whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.

(g) "Fund" means the Michigan boxing fund created in section 22.

(h) "Good moral character" means good moral character as determined and defined in 1974 PA 381, MCL 338.41 to 338.47.

338.3611 Definitions; P to S.

Sec. 11. As used in this act:

(a) "Physician" means that term as defined in section 17001 or 17501 of the public health code, 1978 PA 368, MCL 333.17001 and 333.17501.

(b) "Professional" means a person who is competing or has competed in boxing for a money prize.

(c) "Promoter" means any person who produces or stages any professional contest or exhibition of boxing.

(d) "Purse" means the financial guarantee or any other remuneration for which professionals are participating in a contest or exhibition and includes the professional's share of any payment received for radio, television, or motion picture rights.

(e) "Respondent" means a person against whom a complaint has been filed who may be a person who is or is required to be licensed under this act.

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

(g) "School", "college", or "university" does not include an institution formed or operated principally to provide instruction in boxing and other sports.

338.3612 Applicability of act; exceptions.

Sec. 12. This act does not apply to any of the following:

(a) Professional or amateur wrestling.

(b) Amateur martial arts sports or activities.

(c) Contests or exhibitions conducted by or participated in exclusively by an agency of the United States government or by a school, college, or university or an organization composed exclusively of those entities if each participant is an amateur.

(d) Amateur boxing regulated by the amateur sports act of 1978, 36 USC 371.

(e) Boxing elimination contests regulated by section 50.

CHAPTER 2

338.3620 Michigan boxing commission; creation; appointment; qualifications; terms; quorum; promotion or sponsorship of contest or exhibition; meetings; disclosure of records; public meetings.

Sec. 20. (1) The Michigan boxing commission, consisting of 7 voting members, appointed by the governor with the advice and consent of the senate, is created within the department. The director is appointed as a nonvoting ex officio member of the commission. A majority of the members appointed by the governor shall be licensees under this act. Budgeting, procurement, human resources, information technology, and related management functions of the commission shall be performed by the department.

(2) Except as otherwise provided in this subsection, the 7 members appointed by the governor shall serve a term of 4 years. Of the initial members appointed under this act, the terms of 2 of the members shall be 4 years, the term of 2 of the members shall be 2 years, and the term of 3 of the members shall be 1 year. The terms of members appointed by the governor are subject to the pleasure of the governor.

(3) Five members of the commission constitute a quorum for the exercise of the authority conferred upon the commission. A concurrence of at least 4 of the members, or a concurrence of a majority of those members who have not participated in an investigation or administrative hearing regarding a matter before the commission, is necessary to render a decision by the commission.

(4) A member of the commission shall not at any time during his or her service as a member promote or sponsor any contest or exhibition of boxing, or combination of those events, or have any financial interest in the promotion or sponsorship of those contests or exhibitions. The commission shall meet not less than 4 times per year, and upon request and at the discretion of the chair, the department shall schedule additional interim meetings.

(5) Except as otherwise provided in section 33(8), the records of the commission are subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) Meetings of the commission are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

338.3621 Person with financial interest ineligible for appointment.

Sec. 21. A person who has a material financial interest in any club, organization, or corporation, the main object of which is the holding or giving of boxing contests or exhibitions is not eligible for appointment to the commission.

338.3622 Chairperson; seal; rules; Michigan boxing fund; creation; use; carrying forward remaining money; compensation of members; affiliation with other commissions or athletic authorities; duties of commission and department.

Sec. 22. (1) The commission shall elect 1 of its members as the chair of the commission. The commission may purchase and use a seal. The director may promulgate rules for the administration of this act but only after first consulting with the commission. The commission may request the department to promulgate a rule under section 38 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.238. Notwithstanding the time limit provided for in section 38 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.238, the department shall respond in writing to any request for rule promulgating by the commission within 30 calendar days after a request. The response shall include a reason and explanation for acceptance or denial of the request.

(2) The department shall promulgate rules to include all of the following:

(a) Number and qualifications of ring officials required at any exhibition or contest.

(b) Powers, duties, and compensation of ring officials.

(c) Qualifications of licensees.

(d) License fees not otherwise provided under this act.

(e) Any necessary standards designed to accommodate federally imposed mandates that do not directly conflict with this act.

(f) A list of enhancers and prohibited substances, the presence of which in a contestant is grounds for suspension or revocation of the license or other sanctions.

(3) A Michigan boxing fund is created as a revolving fund in the state treasury and administered by the director. The money in the fund is to be used for the costs of administration and enforcement of this act or for any costs associated with the administration of this act. Money remaining in the fund at the end of the fiscal year and interest earned shall be carried forward into the next fiscal year and shall not revert to the general fund. The department shall deposit into the fund all money received from the regulatory and enforcement fee, license fees, event fees, and administrative fines imposed under this act, and from any other source.

(4) Annually, the legislature shall fix the per diem compensation of the members of the commission. Travel or other expenses incurred by a commission member in the performance of an official function shall be payable by the department pursuant to the standardized travel regulations of the department of management and budget.

(5) The commission may affiliate with any other state or national boxing commission or athletic authority.

(6) The commission and department are vested with management, control, and jurisdiction over all boxing contests or exhibitions to be conducted, held, or given within the state of Michigan. Except for any contests or exhibitions exempt from this act, a contest or exhibition shall not be conducted, held, or given within this state except in compliance with this act. Any boxing or sparring contest conforming to the requirements of this act and to the rules of the department is considered to be a boxing contest and not a prize fight.

CHAPTER 3

338.3630 License required; violation as misdemeanor; penalty; injunction; enforcement; remedies.

Sec. 30. (1) A person shall not engage in or attempt to engage in an activity regulated under this act unless the person possesses a license issued by the department or unless the person is exempt from licensure under this act.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than $500.00 or imprisonment for not more than 90 days, or both.

(3) A person who violates subsection (1) a second or any subsequent time is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both.

(4) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action in a court of competent jurisdiction to restrain or prevent a person from violating subsection (1). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees. As used in this subsection, "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) and includes, but is not limited to, the commission, the department, or a member of the general public.

(5) An investigation may be conducted by the department to enforce this section. A person who violates this section is subject to the strictures prescribed in this section and section 43.

(6) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

338.3631 Determination of good moral character; burden of proof; risk of adverse public notice, embarrassment, criticism, or financial loss; denial of application; hearing.

Sec. 31. (1) An application for a license is a request for a determination of the applicant's general suitability, character, integrity, and ability to participate, engage in, or be associated with boxing contests or exhibitions. The burden of proof is on the applicant to establish to the satisfaction of the commission and the department that the applicant is qualified to receive a license.

(2) By filing an application, the applicant accepts the risk of adverse public notice, embarrassment, criticism, financial loss, or other action with respect to his or her application and expressly waives any claim for damages as a result of any adverse public notice, embarrassment, criticism, financial loss, or other action. Any written or oral statement made by any member of the commission or any witness testifying under oath that is relevant to the application and investigation of the applicant is immune from civil liability for libel, slander, or any other tort.

(3) An applicant must demonstrate good moral character. If the applicant for a license is denied a license due to lack of good moral character, the applicant may request an administrative hearing before a hearing officer designated by the commission. The commission, after the conduct of a hearing and upon receipt of the written findings and proposal for decision, may approve or recommend and the department may issue a license to him or her if the commission determines that the applicant's background does not reasonably relate to the activity or occupation for which he or she seeks licensure and that the applicant has the ability at the current time, and is likely, to serve the public in a fair, honest, and open manner.

338.3632 Promoter's license required.

Sec. 32. A boxing contest or exhibition shall not be held or conducted in this state except under a promoter's license issued by the department as provided for in section 33.

338.3633 Promoter's license; application; bond; fees; submission of contract; deposit of money; disclosure of contract.

Sec. 33. (1) An application for a promoter's license must be in writing and correctly show and define the applicant.

(2) Before any license for a boxing contest or exhibition is granted, the applicant for a promoter's license must file a bond with the department in an amount fixed by the department but not less than $20,000.00, executed by the applicant as principal and by a corporation qualified under the laws of this state as surety, payable to the state of Michigan, and conditioned upon the faithful performance by the applicant of the provisions of this act. The department shall annually adjust the amount of the bond based upon the Detroit consumer price index. The bond must be purchased not less than 5 days before the contest or exhibition and may be used to satisfy payment for the professionals, costs to the department for ring officials and physicians, and drug tests.

(3) A promoter must apply for and obtain an annual license from the department in order to present a program of boxing contests or exhibitions. The annual license fee is $250.00. The department shall request, and the applicant shall provide, such information as it determines necessary to ascertain the financial stability of the applicant.

(4) The promoter must pay an event fee of $125.00.

(5) There is imposed a regulatory and enforcement fee upon the promoter to assure the integrity of the sport, the public interest, and the welfare and safety of the professionals

in the amount of 3% of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights, but not to exceed $25,000.00 per contract, for events to which the following apply:

(a) The event is located in a venue with a seating capacity of over 5,000.

(b) The promoter proposes to televise or broadcast the event over any medium for viewing by spectators not present in the venue.

(c) The event is designed to promote professional contests in this state.

(6) At least 10 days before the event, the promoter shall submit the contract subject to the regulatory and enforcement fee to the department, stating the amount of the probable total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights.

(7) The money derived from the regulatory and enforcement fee shall be deposited into the Michigan boxing fund created in section 22 and used for the purposes described in that section.

(8) A promoter shall, within 5 business days before a boxing contest or exhibition, convey to the department an executed copy of the contract relative to the boxing contest or exhibition. The copy of the contract is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that the department may disclose statistical information on the number, types, and amounts of contracts so long as information regarding identifiable individuals or categories is not revealed.

338.3634 Rules; determination of applicant's financial stability; presence of applicant at commission meeting.

Sec. 34. (1) The director, in consultation with the commission, may promulgate rules for the application and approval process for promoters. Until the rules are promulgated, the applicant shall comply with the standards described in subsection (2).

(2) The rules regarding the application process shall include at least the following:

(a) An initial application processing fee sufficient to cover the costs of processing, but not less than $250.00.

(b) A requirement that background information be disclosed by the applicant who is an individual or by the principal officers or members and individuals having at least a 10% ownership interest in the case of any other legal entity, with emphasis on the applicant's business experience. This information must include at least 2 years of federal income tax returns of principal officers or members and individuals having at least a 10% ownership interest in the applicant and any financial information necessary to ascertain the financial stability of those persons. The department shall utilize the information described in this subdivision to ascertain the financial stability of the applicant.

(c) Information from the applicant concerning past and present civil lawsuits, judgments, and filings under the bankruptcy code that are not more than 7 years old.

(d) Any other relevant and material information considered necessary by the director upon consultation with the commission.

(3) The department may consult with the commission on issues related to the determination of an applicant's financial stability and shall refer the application to the commission if clear and convincing grounds for approval of the financial stability aspect of the application do not exist.

(4) As part of the approval process for promoters, the commission may require the applicant or his or her representative to be present at a commission meeting in which the application is considered.

338.3635 Rules; fees.

Sec. 35. (1) The director, in consultation with the commission, shall promulgate rules to provide for license fees for all participants in the activities regulated by this act not otherwise provided for in this act, including, but not limited to, license fees for a physician, physician's assistant, nurse practitioner, referee, judge, matchmaker, timekeeper, professional boxer, contestant, or manager or a second of those persons.

(2) Until those rules are promulgated, the department shall charge those fees contained in section 49 of the state license fee act, 1979 PA 152, MCL 338.2249, for the licenses described in subsection (1).

CHAPTER 4

338.3640 Complaint; filing.

Sec. 40. A complaint which alleges that a person has violated this act or a rule promulgated or an order issued under this act shall be lodged with the department. The department of attorney general, the department, the commission, or any other person may file a complaint.

338.3641 Complaint; investigation; procedures.

Sec. 41. (1) The department, upon receipt of a complaint, immediately shall begin its investigation of the allegations of the complaint and shall open a correspondence file. The department shall make a written acknowledgment of the complaint within 15 days after receipt of the complaint to the person making the complaint. If the complaint is made by the department, the director shall designate 1 or more employees of the department to act as the person making the complaint.

(2) The department shall conduct the investigation required under subsection (1). In furtherance of that investigation, the department may request that the attorney general petition a court of competent jurisdiction to issue a subpoena requiring a person to appear before the department and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to the investigation.

(3) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the status of the investigation. If, for good cause shown, an investigation cannot be completed within 30 days, the director may extend the time in which a report may be filed.

(4) If the report of the investigative unit of the department does not disclose a violation of this act or a rule promulgated or an order issued under this act, the complaint shall be closed by the department. The reasons for closing the complaint shall be forwarded to the respondent and complainant, who then may provide additional information to reopen the complaint.

(5) If the report of the investigative unit made pursuant to subsection (3) discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent which may be any of the following:

(a) A formal complaint.

(b) A cease and desist order.

(c) A notice of summary suspension subject to sections 42 and 48(7).

(6) At any time during its investigation or after the issuance of a formal complaint, the department may bring together the complainant and the respondent for an informal

conference. At the informal conference, the department shall attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a formal settlement or stipulation.

338.3642 Summary suspension.

Sec. 42. (1) After an investigation has been conducted, the department may issue an order summarily suspending a license based on an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit on information and belief, that an imminent threat to the integrity of the sport, the public interest, and the welfare and safety of a professional exists. Thereafter, the proceedings described in this chapter shall be promptly commenced and decided.

(2) A person whose license has been summarily suspended under this section may petition the department to dissolve the order. Upon receiving a petition, the department immediately shall schedule a hearing to decide whether to grant or deny the requested relief.

(3) An administrative law hearings examiner shall grant the requested relief dissolving the summary suspension order, unless sufficient evidence is presented that an imminent threat to the integrity of the sport, the public interest, and the welfare and safety of a professional exists that requires emergency action and continuation of the department's summary suspension order.

(4) The record created at the hearing to dissolve a summary suspension order shall become part of the record on the complaint at a subsequent hearing in a contested case.

(5) A summary suspension of a professional for refusal or failure to submit to a drug test or for the presence of controlled substances, enhancers, prohibited drugs, or other prohibited substances, as described in section 48(7), shall proceed under this section.

338.3643 Cease and desist order.

Sec. 43. (1) After an investigation has been conducted, the director may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist may request a hearing before the department if a written request for a hearing is filed within 30 days after the effective date of the order.

(3) Upon a violation of a cease and desist order issued under this act, the department of attorney general may apply to a court of competent jurisdiction to restrain and enjoin, temporarily or permanently, or both, a person from further violating a cease and desist order.

338.3644 Formal complaint.

Sec. 44. (1) A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license is in addition to and not in place of an informal conference; criminal prosecution; or proceeding to deny, revoke, or suspend a license; or any other action authorized by this act.

(2) After an investigation has been conducted and a formal complaint prepared, the department shall serve the formal complaint upon the respondent and the complainant. At the same time, the department shall serve the respondent with a notice describing the compliance conference and hearing process and offering the respondent a choice of 1 of the following opportunities:

(a) An opportunity to meet with the department to negotiate a settlement of the matter.

(b) If the respondent is a licensee or registrant under this act, an opportunity to demonstrate compliance prior to holding a contested case hearing.

(c) An opportunity to proceed to a contested case hearing.

(3) A respondent upon whom service of a formal complaint has been made pursuant to this section may select, within 15 days after the receipt of notice, 1 of the options described in subsection (2). If a respondent does not select 1 of those options within the time period described in this section, then the department shall proceed to a contested case hearing as described in subsection (2)(c).

(4) An informal conference may be attended by a member of the commission, at the discretion of that commission, and may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the parties and the department. A settlement may include the revocation or suspension of a license; censure; probation; restitution; or a penalty provided for in section 48. The commission may reject a settlement and require a contested case hearing.

(5) An employee of the department may represent the department in any contested case hearing.

(6) This chapter does not prevent a person against whom a complaint has been filed from showing compliance with this act or a rule promulgated or an order promulgated or issued under this act.

(7) If an informal conference is not held or does not result in a settlement of a complaint, the department shall allow the respondent an administrative hearing. A hearing under this section may be attended by a member of the commission.

(8) The department or the department of the attorney general may petition a court of competent jurisdiction to issue a subpoena which shall require the person subpoenaed to appear or testify or produce relevant documentary material for examination at a proceeding.

338.3645 Hearing report.

Sec. 45. (1) At the conclusion of a hearing conducted under section 44(7), the administrative law hearings examiner shall submit a determination of findings of fact and conclusions of law to the department and the department of the attorney general and the commission, in a hearing report. The submitted hearing report may recommend the penalties to be assessed as prescribed in section 48.

(2) A copy of a hearing report shall be submitted to the person who made the complaint and to the person against whom the complaint was lodged.

(3) Within 60 days after receipt of an administrative law hearings examiner's hearing report, the commission shall meet and make a determination of the penalties to be assessed under section 48. The commission's determination shall be made on the basis of the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript shall be made available to the commission upon request. If a transcript or a portion of the transcript is requested, the commission's determination of the penalty or penalties to be assessed under section 48 shall be made at a meeting within 60 days after receipt of a transcript or portion of the transcript.

(4) If the commission does not determine the appropriate penalty or penalties to be assessed within the time limits prescribed by subsection (3), the director may determine the appropriate penalty and issue a final order.

(5) A member of the commission who has participated in an investigation or administrative hearing on a complaint filed with the department or who has attended an

informal conference shall not participate in making a final determination in a proceeding on that complaint.

338.3646 Issuance of license or renewal; petition to review.

Sec. 46. (1) A person seeking a license or renewal under this act may petition the department and the commission for a review if that person does not receive a license or renewal.

(2) A petition submitted under subsection (1) shall be in writing and shall set forth the reasons the petitioner feels the licensure or renewal should be issued.

(3) In considering a petition submitted under subsection (1), the department and the commission may administer an alternative form of testing to the petitioner or conduct a personal interview with the petitioner, or both.

(4) The department may issue a license or renewal if, based on a review of the qualifications of the person who submitted a petition under subsection (1), the department and the commission determine that the person could perform the licensed activity with competence.

(5) Notwithstanding any other provision of this act, if a written grievance was lodged before the effective date of this act against a person licensed under an act repealed by this act, the proceedings on that grievance shall be conducted in the manner prescribed in the repealed act.

338.3647 Action against license; rules; seat; final decision-making authority.

Sec. 47. (1) The department shall initiate an action under this chapter against an applicant or take any other allowable action against the license of any contestant, promoter, or other participant who the department determines has done any of the following:

(a) Enters into a contract for a boxing contest or exhibition in bad faith.

(b) Participates in any sham or fake boxing contest or exhibition.

(c) Participates in a boxing contest or exhibition pursuant to a collusive understanding or agreement in which the contestant competes or terminates the boxing contest or exhibition in a manner that is not based upon honest competition or the honest exhibition of the skill of the contestant.

(d) Is determined to have failed to give his or her best efforts, failed to compete honestly, or failed to give an honest exhibition of his or her skills in a boxing contest or exhibition.

(e) Is determined to have performed an act or engaged in conduct that is detrimental to a boxing contest or exhibition including, but not limited to, any foul or unsportsmanlike conduct in connection with a boxing contest or exhibition.

(f) Gambles on the outcome of a boxing contest or exhibition in which he or she is a contestant, promoter, matchmaker, ring official, or second.

(g) Assaults another licensee, commission member, or department employee while not involved in or while outside the normal course of a boxing contest or exhibition.

(2) The department, in consultation with the commission, shall promulgate rules to provide for both of the following:

(a) The timing of drug tests for contestants.

(b) Specific summary suspension procedures for boxing contestants and participants who test positive for drugs or fail to submit to a drug test, under section 48(4). The rules shall include the following:

(*i*) A procedure to allow the department to place the licensee upon the national suspension list.

(*ii*) An expedited appeal process for the summary suspension.

(*iii*) A relicensing procedure following summary suspension.

(3) An employee of the department must be present at all weigh-ins, medical examinations, contests, exhibitions, and matches to ensure that this act and rules are strictly enforced.

(4) Each promoter shall furnish each member of the commission present at a boxing contest or exhibition a seat in the area immediately adjacent to the boxing contest or exhibition. An additional seat shall be provided in the venue.

(5) The commission chair, a commission member assigned by the chair, or a department official designated by the commission chair shall have final authority involving any conflict at a contest, exhibition, or match and shall advise the chief inspector in charge accordingly. In the absence of the chair, an assigned member, or a department official designated by the commission chair, the chief inspector in charge shall be the final decision-making authority.

338.3648 Reinstatement; fine; penalties; postcontest drug tests; grounds for summary suspension.

Sec. 48. (1) Upon receipt of an application for reinstatement and the payment of an administrative fine prescribed by the commission, the commission may reinstate a revoked license or lift a suspension. If disciplinary action is taken against a person under this act that does not relate to a boxing contest or exhibition, the commission may, in lieu of suspending or revoking a license, prescribe an administrative fine not to exceed $10,000.00. If disciplinary action is taken against a person under this act that relates to the preparation for a boxing contest or an exhibition, the occurrence of a boxing contest or an exhibition, or any other action taken in conjunction with a boxing contest or an exhibition, the commission may prescribe an administrative fine in an amount not to exceed 100% of the share of the purse to which the holder of the license is entitled for the contest or exhibition or an administrative fine not to exceed $100,000.00 in the case of any other person. This administrative fine may be imposed in addition to, or in lieu of, any other disciplinary action that is taken against the person by the commission.

(2) If an administrative fine is imposed under this section, the commission may recover the costs of the proceeding, including investigative costs and attorney fees. The department or the attorney general may bring an action in a court of competent jurisdiction to recover any administrative fines, investigative and other allowable costs, and attorney fees. The filing of an action to recover fines and costs does not bar the imposition of other sanctions under this act.

(3) An employee of the department, in consultation with any commission member present, may issue an order to withhold the purse for 3 business days due to a violation of this act or a rule promulgated under this act. During that 72-hour time period, the commission may convene a special meeting to determine if the action of the employee of the department was warranted. If the commission determines that the action was warranted, the department shall offer to hold an administrative hearing as soon as practicable but within at least 7 calendar days.

(4) A professional or participant in a professional boxing contest or exhibition shall submit to a postexhibition test of body fluids to determine the presence of controlled

substances, prohibited substances, or enhancers. The department shall promulgate rules to set requirements regarding preexhibition tests of body fluids to determine the presence of controlled substances, prohibited substances, or enhancers.

(5) The promoter is responsible for the cost of the testing performed under this section.

(6) The director shall withhold 10% of the purse in a contest or exhibition until the postcontest drug tests are available to the department. If the results do not confirm or demonstrate compliance with this act, the money withheld shall be deposited into the fund.

(7) Either of the following is grounds for summary suspension of the individual's license in the manner provided for in section 42:

(a) A test resulting in a finding of the presence of controlled substances, enhancers, or other prohibited substances as determined by rule of the commission.

(b) The refusal or failure of a contestant to submit to the drug testing ordered by an authorized person.

CHAPTER 5

338.3650 Boxing elimination contests.

Sec. 50. (1) Boxing elimination contests in which all of the following apply are exempt from this act:

(a) The contestants compete for prizes only in elimination contests and are not also professional boxers competing in 4 or more rounds of nonelimination boxing.

(b) Each bout is scheduled to consist of 3 or fewer 1-minute rounds, with contests conducted on no more than 2 consecutive calendar days.

(c) Competing contestants are prohibited from boxing for more than 12 minutes on each contest day.

(d) The contestants participating in the elimination contest are insured by the promoter for all medical and hospital expenses to be paid to the contestants to cover injuries sustained in the contest.

(e) A physician is in attendance at ringside and the physician has authority to stop the contest for medical reasons.

(f) All contestants pass a physical examination given by a physician, a licensed physician's assistant, or a certified nurse practitioner before the contest.

(g) A preliminary breath test is administered to each contestant which indicates a blood alcohol content of .02% or less.

(h) The promoter conducts the elimination contest in compliance with the following:

(*i*) A contestant who has lost by a technical knockout is not permitted to compete again for a period of 30 calendar days or until the contestant has submitted to the promoter the results of a physical examination equivalent to that required of professional boxers.

(*ii*) The ringside physician examines a contestant who has been knocked out in an elimination contest or whose fight has been stopped by the referee because he or she received hard blows to the head that made him or her defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may recommend post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI), to be performed on the contestant immediately after the contestant leaves the location of the contest. The promoter shall not permit the contestant to compete until a physician has certified that the contestant is fit to compete. If the physician recommended further neurological

examinations, the promoter shall not permit the contestant to compete until the promoter receives copies of examination reports demonstrating that the contestant is fit to compete.

(*iii*) The promoter requires that a contestant who has sustained a severe injury or knockout in an elimination contest be examined by a physician. The promoter shall not permit the contestant to compete until the physician has certified that the contestant has fully recovered.

(*iv*) The promoter does not permit a contestant to compete in an elimination contest for a period of not less than 60 days if he or she has been knocked out or has received excessive hard blows to the head that required the fight to be stopped.

(*v*) A contestant who has been knocked out twice in a period of 3 months or who has had excessive head blows causing a fight to be stopped is not permitted by a promoter to participate in an elimination contest for a period of not less than 120 days from the second knockout or stoppage.

(*vi*) A contestant who has been knocked out or had excessive hard blows to the head causing a fight to be stopped 3 times consecutively in a period of 12 months is not permitted by a promoter to participate in an elimination contest for a period of 1 year from the third knockout.

(*vii*) Before resuming competition after any of the periods of rest prescribed in subparagraphs (*iv*), (*v*), and (*vi*), a promoter requires the contestant to produce a certification by a physician stating that the contestant is fit to take part in an elimination contest.

(2) As part of the physical examination given before the boxing elimination contest, the physician, licensed physician's assistant, certified nurse practitioner, or other trained person shall administer a preliminary breath test in compliance with standards imposed in rules promulgated by the department of state police regarding equipment calibration and methods of administration. The promoter shall keep a log of preliminary breath test results of contestants on file at its place of business for at least 3 years after the date of administration of the test. These results shall be made available to law enforcement officials upon request.

338.3651 Participant license.

Sec. 51. (1) A physician, licensed physician's assistant, certified nurse practitioner, referee, judge, matchmaker, timekeeper, professional boxer, contestant, or manager, or a second of those persons, shall obtain a participant license from the department before participating either directly or indirectly in a boxing contest or exhibition.

(2) An application for a participant license shall be in writing, shall be verified by the applicant, and shall set forth those facts requested by and conform to the rules promulgated by the department.

(3) The department shall issue a passport with each professional contestant's license.

(4) The commission or a member of the commission has standing to contest the issuance or nonissuance of an exhibition or other license by written or electronic communication to the department.

338.3652 Examination or training program.

Sec. 52. (1) A person seeking a license under this act as a judge or referee may be required to satisfactorily pass an examination or training program acceptable to the department.