

2. _____ (Name of person) agrees to settle and compromise these claims for the consideration of receiving a retirement allowance supplemented under section 512 of the judges retirement act of 1992, 1992 PA 234, MCL 38.2512.

3. _____ (Name of person) waives any right or interest in any past, present, or future claim or claims, either asserted by the plaintiffs in the case of Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI), or that arise from the facts forming the basis of that case.

4. _____ (Name of person) will submit a notarized copy of this waiver agreement to the retirement system no later than 5 p.m. eastern standard time on January 30, 2004 and agrees to not take any action to question the legal effect of, amend, or rescind this waiver agreement.

5. _____ (Name of person) expressly agrees and understands that nothing in this agreement limits the rights of the state or its agencies, employees, and agents to any privilege, immunity, or defense that would otherwise have been available if the claims or potential claims had been actually litigated in any forum.

6. _____ (Name of person) agrees that, if this waiver agreement is challenged, invalidated, or otherwise found to be unenforceable, any retirement supplement under section 512 shall cease for any person for which the waiver is challenged, invalidated, or otherwise determined to be unenforceable.

7. _____ (Name of person) agrees not to fund, offer advice regarding, or otherwise participate in the case known as Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI), or any successor case raising similar claims, and further agrees to oppose class certification and agrees to opt out of any such class in any such cases and to inform the presiding judge of that opposition and desire to opt out.”.

(8) Nothing contained in this section shall create or be construed to create any of the following:

(a) Any obligation or liability of the state or the retirement system to any person who does not timely file or enter a form and waiver agreement under this section.

(b) Any admission of liability to any person in any litigation or future litigation.

(c) Any waiver of any privilege, immunity, or defense that is or would have been available to this state or its agencies, employees, or agents in any litigation or future litigation with any person.

(9) A person who meets the requirements of subsection (1) but did not file a fully executed waiver agreement with the retirement system by April 1, 2003 shall have until January 30, 2004 to execute and file the waiver agreement. A person who filed a fully executed waiver agreement with the retirement system by April 1, 2003 is not eligible to execute and file a waiver agreement under this subsection.

This act is ordered to take immediate effect.

Approved October 31, 2003.

Filed with Secretary of State October 31, 2003.

[No. 191]

(SB 725)

AN ACT to amend 1947 PA 359, entitled “An act to authorize the incorporation of charter townships; to provide a municipal charter therefor; to prescribe the powers and

functions thereof; and to prescribe penalties and provide remedies,” by amending section 27 (MCL 42.27), as amended by 1988 PA 82.

The People of the State of Michigan enact:

42.27 Adoption of budget by township board; resolution; appropriation; tax levy; limitation; separate appropriation for fire and police departments; tax collection; interim budget.

Sec. 27. (1) Except as otherwise provided by this subsection, prior to the commencement of the fiscal year, the township board shall, by resolution, adopt the budget for the next fiscal year, make an appropriation of the money needed for township purposes, and provide for a levy of taxes upon real and personal property. If a township operates on a calendar year budget cycle, a public hearing on the proposed budget shall be held not later than December 15 and adopted not later than December 31, in the year preceding the calendar year covered by the budget.

(2) The levy allowed under subsection (1) shall not exceed 1/10 of 1% of the assessed valuation of all real and personal property subject to taxation within the limits of a village located within the township and 1/2 of 1% of the assessed valuation of all real and personal property subject to taxation in the balance of the township. The electors of a charter township may increase the tax levy limitation not to exceed a total of 1% of the assessed valuation of all real and personal property in the township for a period not to exceed 20 years at 1 time.

(3) If a township has 1 or more villages that maintain either or both a fire department or a police department, the expense of a township fire department or police department shall be appropriated separately from the other expenses of the township and a tax levy for these expenses shall not be spread upon the township assessment roll against the property, either real or personal, located in these villages.

(4) The adoption of the resolution under this section is the final authority for the township supervisor to spread any approved levies upon the tax roll for the current year and to include the amount of each levy in his or her warrant to the township treasurer. The township treasurer shall collect and return the warrant as provided under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(5) Within 60 days after the incorporation of a township as a charter township under this act, the township board shall, by resolution, adopt an interim budget until the commencement of the next fiscal year and make an appropriation from the funds and assets of the township available for these purposes.

This act is ordered to take immediate effect.

Approved October 31, 2003.

Filed with Secretary of State October 31, 2003.

[No. 192]

(HB 4360)

AN ACT to amend 1978 PA 33, entitled “An act to prohibit the dissemination, exhibiting, or displaying of certain sexually explicit matter to minors; to prohibit certain misrepresentations facilitating the dissemination of sexually explicit matter to minors; to

provide penalties; to provide for declaratory judgments and injunctive relief in certain instances; to impose certain duties upon prosecuting attorneys and the circuit court; to preempt local units of government from proscribing certain conduct; and to repeal certain acts and parts of acts,” by amending sections 1, 3, 5, 6, and 7 (MCL 722.671, 722.673, 722.675, 722.676, and 722.677), sections 3, 5, 6, and 7 as amended by 1999 PA 33; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

722.671 Definitions generally.

Sec. 1. As used in this act:

- (a) “Display” means to put or set out to view or to make visible.
- (b) “Disseminate” means to sell, lend, give, exhibit, show, or allow to examine or to offer or agree to do the same.
- (c) “Exhibit” means to do 1 or more of the following:
 - (i) Present a performance.
 - (ii) Sell, give, or offer to agree to sell or give a ticket to a performance.
 - (iii) Admit a minor to premises where a performance is being presented or is about to be presented.
- (d) “Minor” means a person less than 18 years of age.
- (e) “Restricted area” means any of the following:
 - (i) An area where sexually explicit matter is displayed only in a manner that prevents public view of the lower 2/3 of the matter’s cover or exterior.
 - (ii) A building, or a distinct and enclosed area or room within a building, if access by minors is prohibited, notice of the prohibition is prominently displayed, and access is monitored to prevent minors from entering.
 - (iii) An area with at least 75% of its perimeter surrounded by walls or solid, nontransparent dividers that are sufficiently high to prevent a minor in a nonrestricted area from viewing sexually explicit matter within the perimeter if the point of access provides prominent notice that access to minors is prohibited.

722.673 Definitions; S.

Sec. 3. As used in this act:

- (a) “Sexually explicit matter” means sexually explicit visual material, sexually explicit verbal material, or sexually explicit performance.
- (b) “Sexually explicit performance” means a motion picture, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.
- (c) “Sexually explicit verbal material” means a book, pamphlet, magazine, printed matter reproduced in any manner, or sound recording that contains an explicit and detailed verbal description or narrative account of sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.
- (d) “Sexually explicit visual material” means a picture, photograph, drawing, sculpture, motion picture film, or similar visual representation that depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse, or a book, magazine, or pamphlet that contains such a visual representation. An undeveloped photograph, mold, or

similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

722.675 Disseminating sexually explicit matter to minor; felony; penalty.

Sec. 5. (1) A person is guilty of disseminating sexually explicit matter to a minor if that person does either of the following:

(a) Knowingly disseminates to a minor sexually explicit visual or verbal material that is harmful to minors.

(b) Knowingly exhibits to a minor a sexually explicit performance that is harmful to minors.

(2) A person knowingly disseminates sexually explicit matter to a minor if the person knows both the nature of the matter and the status of the minor to whom the matter is disseminated.

(3) A person knows the nature of matter if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

(4) A person knows the status of a minor if the person either is aware that the person to whom the dissemination is made is under 18 years of age or recklessly disregards a substantial risk that the person to whom the dissemination is made is under 18 years of age.

(5) Disseminating sexually explicit matter to a minor is a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both. In imposing the fine, the court shall consider the scope of the defendant's commercial activity in disseminating sexually explicit matter to minors.

722.676 Persons excepted from MCL 722.675.

Sec. 6. Section 5 does not apply to the dissemination of sexually explicit matter to a minor by any of the following:

(a) A parent or guardian who disseminates sexually explicit matter to his or her child or ward.

(b) A teacher or administrator at a public or private elementary or secondary school that complies with the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and who disseminates sexually explicit matter to a student as part of a school program permitted by law.

(c) A licensed physician or licensed psychologist who disseminates sexually explicit matter in the treatment of a patient.

(d) A librarian employed by a library of a public or private elementary or secondary school that complies with the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, or employed by a public library, who disseminates sexually explicit matter in the course of that person's employment.

(e) Any public or private college or university or any other person who disseminates sexually explicit matter for a legitimate medical, scientific, governmental, or judicial purpose.

(f) A person who disseminates sexually explicit matter that is a public document, publication, record, or other material issued by a state, local, or federal official, department,

board, commission, agency, or other governmental entity, or an accurate republication of such a public document, publication, record, or other material.

722.677 Displaying sexually explicit matter to minor; misdemeanor; penalty.

Sec. 7. (1) A person is guilty of displaying sexually explicit matter to a minor if that person possesses managerial responsibility for a business enterprise selling sexually explicit visual material that visually depicts sexual intercourse or sadomasochistic abuse and is harmful to minors, and that person does either of the following:

(a) Knowingly permits a minor who is not accompanied by a parent or guardian to view that matter.

(b) Displays that matter knowing its nature, unless the person does so in a restricted area.

(2) A person knowingly permits a minor to view visual matter that depicts sexual intercourse or sadomasochistic abuse and is harmful to minors if the person knows both the nature of the matter and the status of the minor permitted to examine the matter.

(3) A person knows the nature of the matter if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

(4) A person knows the status of a minor if the person either is aware that the person who is permitted to view the matter is under 18 years of age or recklessly disregards a substantial risk that the person who is permitted to view the matter is under 18 years of age.

(5) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$5,000.00, or both.

Repeal of MCL 722.671a.

Enacting section 1. Section 1a of 1978 PA 33, MCL 722.671a, is repealed.

Effective date.

Enacting section 2. This amendatory act takes effect January 1, 2004.

This act is ordered to take immediate effect.

Approved November 5, 2003.

Filed with Secretary of State November 5, 2003.

[No. 193]

(HB 4386)

AN ACT to make appropriations for certain capital outlay programs and state departments and agencies for the fiscal year ending September 30, 2004; to implement the appropriations within the budgetary process; to make appropriations for planning and construction at state agencies; to make appropriations for state building authority rent and insurance; to make a grant for state building authority rent; to provide for the acquisition of land and buildings; to provide for the elimination of fire hazards; to provide for special maintenance, remodeling and addition, alteration, renovation, demolition, and other projects; to provide for elimination of occupational safety and health hazards; to

provide for the award and implementation of contracts; to provide for the purchase of furnishings and equipment relative to occupancy of a project; to provide for the development of public recreation facilities; to provide for certain advances from the general fund; to prescribe powers and duties of certain state officers and agencies; to require certain reports, plans, and agreements; to provide for leases; to provide for transfers; to prescribe standards and conditions relating to the appropriations; to provide for the expenditure of appropriations; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

PART 1

LINE-ITEM APPROPRIATIONS

Appropriations; capital outlay.

Sec. 101. SUMMARY

Subject to the conditions set forth in this act, the amounts listed in this part are appropriated for certain capital outlay projects at the various state agencies for the fiscal year ending September 30, 2004, from the funds indicated in this part. The following is a summary of the appropriations in this part:

TOTAL CAPITAL OUTLAY

GROSS APPROPRIATION.....	\$	571,063,900
Total interdepartmental grants and intradepartmental transfers		2,000,000
ADJUSTED GROSS APPROPRIATION.....	\$	569,063,900
Total federal revenues.....		202,652,000
Total local funds.....		42,789,600
Total private.....		0
Total state restricted.....		42,320,000
State general fund/general purpose.....	\$	281,302,300

Department of agriculture.

Sec. 102. DEPARTMENT OF AGRICULTURE

Farmland and open space development acquisition.....	\$	7,500,000
GROSS APPROPRIATION.....	\$	7,500,000
Appropriated from:		
Federal revenues:		
DAG, multiple grants.....		2,500,000
Special revenue funds:		
Agriculture preservation fund.....		5,000,000
State general fund/general purpose.....	\$	0

Department of management and budget.

Sec. 103. DEPARTMENT OF MANAGEMENT AND BUDGET

Lump-sum projects:

Major special maintenance and remodeling:

For state agencies special maintenance projects estimated to cost more than \$100,000 but less than \$1,000,000.....	\$	2,000,000
Special maintenance and remodeling and additions:		
Major special maintenance and remodeling for department of corrections.....		711,700

	For Fiscal Year Ending Sept. 30, 2004
Major special maintenance and remodeling for department of management and budget	\$ 244,100
Major special maintenance and remodeling for family independence agency.....	188,400
Major special maintenance and remodeling for department of community health	171,300
Major special maintenance and remodeling for department of state police	87,800
GROSS APPROPRIATION.....	\$ 3,403,300
Appropriated from:	
Interdepartmental grant revenues:	
IDG, building occupancy charges.....	2,000,000
Special revenue funds:	
State general fund/general purpose	\$ 1,403,300

Department of military and veterans' affairs.

Sec. 104. DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

Lump-sum projects:	
For department of military and veterans' affairs remodeling, additions, and special maintenance projects.....	\$ 6,188,700
Grand Ledge army aviation support facility, for design and construction (total authorized cost \$20,800,000; federal share \$20,460,000; state armory construction fund share \$340,000)	20,800,000
United States property and fiscal office, for design and construction (total authorized cost \$6,700,000; federal share \$6,200,000; state armory construction fund share \$500,000)	6,700,000
Camp Grayling, bachelor officer quarters, for design and construction (total authorized cost \$1,800,000; federal share \$1,800,000)	1,800,000
Camp Grayling, conference center, for design and construction (total authorized cost \$1,800,000; federal share \$1,800,000).....	1,800,000
Shiawassee County, armory replacement, for design and construction (total authorized cost \$5,000,000; federal share \$3,750,000; state armory construction fund share \$1,250,000).....	5,000,000
GROSS APPROPRIATION.....	\$ 42,288,700
Appropriated from:	
Federal revenues:	
DOD, department of the army - national guard bureau.....	39,602,000
Special revenue funds:	
Armory construction fund.....	2,090,000
State general fund/general purpose	\$ 596,700

Department of natural resources.

Sec. 105. DEPARTMENT OF NATURAL RESOURCES

(1) DEPARTMENTAL SUMMARY:

GROSS APPROPRIATION.....	\$ 8,350,000
Total interdepartmental grants and intradepartmental transfers ...	0

	For Fiscal Year Ending Sept. 30, 2004
ADJUSTED GROSS APPROPRIATION.....	\$ 8,350,000
Total federal revenues.....	\$ 550,000
Total local funds:	
Total private	0
Total state restricted	7,800,000
State general fund/general purpose	\$ 0
(2) STATE PARK REMODELING AND ADDITIONS:	
State parks repair and maintenance	1,000,000
Forest roads, bridges, and facilities	800,000
GROSS APPROPRIATION.....	\$ 1,800,000
Appropriated from:	
Special revenue funds:	
State park improvement fund	1,000,000
Forest development fund	800,000
State general fund/general purpose	\$ 0
(3) WILDLIFE:	
State game and wildlife area maintenance	550,000
GROSS APPROPRIATION.....	\$ 550,000
Appropriated from:	
Federal revenues:	
DOI, Pittman - Robertson.....	550,000
Special revenue funds:	
State general fund/general purpose	\$ 0
(4) WATERWAYS BOATING PROGRAM:	
Boating program, state boating access sites:	
Crystal Lake, Benzie County, new site construction (total authorized cost \$550,000; state share \$550,000)	550,000
Trout Lake, Livingston County, new site construction (total authorized cost \$310,000; state share \$310,000)	310,000
Boating program, boating access sites, grants-in-aid:	
Traverse City, Grand Traverse County, boating access site rehabilitation (total project cost \$180,000; state share \$135,000; local share \$45,000).....	135,000
Boating program, state harbors and docks:	
Infrastructure improvements and engineering studies.....	880,000
Land acquisitions	1,500,000
Boating harbor projects, grants-in-aid:	
Infrastructure improvements and engineering studies.....	400,000
South Haven, Van Buren County, marina dock system rehabilitation and upgrade (total authorized cost \$1,250,000; state share \$625,000; local share \$625,000).....	625,000
Harrisville, Alcona County, restroom/shower building improvements (total authorized cost \$1,200,000; state share \$600,000; local share \$600,000)	600,000
Detroit, Wayne County, St. Aubin marina (total authorized cost \$4,000,000; state share \$4,000,000)	1,000,000
GROSS APPROPRIATION.....	\$ 6,000,000

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Appropriated from:

Special revenue funds:

State waterways fund.....	\$	6,000,000
State general fund/general purpose	\$	0

Department of transportation.

Sec. 106. DEPARTMENT OF TRANSPORTATION

Department buildings and facilities:

Salt storage buildings and brine run-off control systems - contract agencies locations.....	\$	1,400,000
Construct, renovate, and/or replace salt storage buildings, various maintenance garage locations		1,100,000
Gaylord, Otsego County, regional office building, for design and construction (total authorized cost \$2,800,000).....		1,800,000
Grayling, Crawford County, transportation service center (project termination)		(1,000,000)
Detroit, Wayne County, transportation service center, for design and construction (total authorized cost \$3,300,000).....		3,300,000
Brighton, Livingston County, transportation service center (project termination)		(800,000)
New Buffalo, Berrien County, welcome center water and sewer upgrades		500,000
L’Anse, Baraga County, demolish old and construct new equipment storage building		815,000
Atlanta, Montmorency County, maintenance garage renovations, phase I (total authorized cost \$2,000,000)		550,000
Reroof MDOT facilities - fence MDOT properties, and install bituminous surface/resurfacing - various locations		265,000
Institutional and agency roads		750,000
British landing dock repairs, Mackinac Island state park		130,000
Miscellaneous projects		920,000
GROSS APPROPRIATION	\$	<u>9,730,000</u>

Appropriated from:

Special revenue funds:

State trunkline fund.....		9,600,000
Comprehensive transportation fund		130,000
State general fund/general purpose	\$	0

Department of transportation.

Sec. 107. DEPARTMENT OF TRANSPORTATION

AERONAUTICS FUND: AIRPORT PROGRAMS

Airport safety and protection plan.....	\$	216,789,600
Federal/state/local airport construction:		
Adrian - Lenawee County airport		
Allegan - Padgham field		
Alma - Gratiot community airport		
Alpena - Alpena County regional airport		
Ann Arbor - municipal airport		

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Atlanta - Atlanta municipal airport
Bad Axe - Huron County memorial airport
Baraga - Baraga County airport
Battle Creek - W.K. Kellogg airport
Bay City - James Clements airport
Bellaire - Antrim County airport
Benton Harbor - southwest Michigan regional airport
Big Rapids - Roben-Hood airport
Cadillac - Wexford County airport
Caro - municipal airport
Caseville - Caseville airport
Charlevoix - municipal airport
Charlotte - Fitch H. Beach airport
Cheboygan - Cheboygan County airport
Clare - Clare municipal airport
Coldwater - Branch County airport
Detroit - Detroit city airport
Detroit - Detroit metropolitan-Wayne County airport
Detroit - Willow Run airport
Dowagiac - Cass County airport
Drummond Island - Drummond Island airport
Escanaba - Delta County airport
Ewart - Ewart municipal airport
Flint - Bishop international airport
Frankfort - Dow memorial airport
Fremont - municipal airport
Gaylord - Otsego County airport
Gladwin - Gladwin Zettle memorial airport
Grand Haven - Grand Haven memorial airpark
Grand Ledge - Abrams municipal airport
Grand Rapids - Gerald R. Ford international airport
Grayling - Grayling army airfield
Greenville - municipal airport
Grosse Ile - municipal airport
Hancock - Houghton County memorial airport
Harbor Springs - Harbor Springs municipal airport
Hart-Shelby - Oceana County airport
Hastings - Hastings city/Barry County airport
Hillsdale - municipal airport
Holland - tulip city airport
Houghton Lake - Roscommon County airport
Howell - Livingston County airport
Ionia - Ionia County airport
Iron County - County airport
Iron Mountain - Ford airport
Ironwood - Gogebic-Iron County airport
Jackson - Jackson County-Reynolds field
Kalamazoo - Kalamazoo/Battle Creek international airport

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Lakeview - Lakeview-Griffith field
Lambertville - suburban airport
Lansing - capital city airport
Lapeer - Dupont-Lapeer airport
Lewiston - Garland airport
Linden - Price airport
Lowell - city airport
Ludington - Mason County airport
Mackinac Island - Mackinac Island airport
Manistee - Manistee County airport
Manistique - Schoolcraft County airport
Marlette - Marlette township airport
Marquette - Sawyer airport
Marshall - Brooks field
Mason - Jewett field
Menominee - Menominee-Marinette twin city airport
Midland - Barstow airport
Mio - Oscoda County airport
Monroe - Custer airport
Mount Pleasant - municipal airport
Munising - Hanley field
Muskegon - Muskegon County airport
Newberry - Luce County airport
New Hudson - Oakland-southwest airport
Niles - Jerry Tyler memorial airport
Ontonagon - Ontonagon County airport
Oscoda - Wurtsmith airport
Owosso - community airport
Paradise - Paradise airport
Pellston - Pellston regional airport
Plymouth - Canton-Plymouth-Mettetal airport
Pointe Aux Pins - Bois Blanc Island airport
Pontiac - Oakland County international airport
Port Huron - St. Clair County international airport
Rogers City - Presque Isle County-Rogers City airport
Romeo - Romeo airport
Saginaw - H.W. Browne airport
Saginaw - MBS international airport
St. Ignace - Mackinac County airport
Saint James - Beaver Island airport
Sandusky - Sandusky city airport
Sault Ste. Marie - Chippewa County international airport
Sault Ste. Marie - Sanderson airport
South Haven - regional airport
Sparta - Sparta airport
Statewide - various sites
Sturgis - Kirsch municipal airport
Three Rivers - Three Rivers municipal-Dr. Haines airport

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Traverse City - cherry capital airport		
Troy - Oakland-Troy airport		
West Branch - West Branch community airport		
White Cloud - White Cloud airport		
GROSS APPROPRIATION.....	\$	216,789,600
Appropriated from:		
Federal revenues:		
DOT, federal aviation administration		160,000,000
Special revenue funds:		
Local aeronautics match.....		42,789,600
Combined comprehensive transportation bond proceeds fund - aeronautics.....		12,000,000
State aeronautics fund.....		2,000,000
State general fund/general purpose	\$	0

State building authority financed construction projects.

Sec. 108. STATE BUILDING AUTHORITY FINANCED CONSTRUCTION PROJECTS

Department of corrections - Kinross correctional facility - new power plant - authorized for planning in 1999 PA 265, for design and construction (total authorized cost \$6,000,000; state building authority share \$5,999,900; state general fund share \$100).....	\$	100
Department of corrections - Riverside correctional facility - power plant automation project - authorized for planning in 1999 PA 265, for design and construction (total authorized cost \$3,000,000; state building authority share \$2,999,900; state general fund share \$100).....		100
GROSS APPROPRIATION.....	\$	200
Appropriated from:		
State general fund/general purpose	\$	200

State building authority rent.

Sec. 109. STATE BUILDING AUTHORITY RENT

State building authority rent - state agencies	\$	71,207,200
State building authority rent - department of corrections		85,105,100
State building authority rent - universities.....		111,547,200
State building authority rent - community colleges.....		15,142,600
GROSS APPROPRIATION.....	\$	283,002,100
Appropriated from:		
Special revenue funds:		
Grand tower facility reimbursement.....		1,905,000
State lottery funds		1,520,000
Roosevelt parking facility reimbursement.....		275,000
State general fund/general purpose	\$	279,302,100

PART 2

PROVISIONS CONCERNING APPROPRIATIONS

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

Sec. 201. (1) Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2003-2004 is \$323,622,300.00 and state spending from state resources paid to units of local government for fiscal year 2003-2004 is \$20,060,000.00. The itemized statement below identifies appropriations from which spending to units of local government will occur:

CAPITAL OUTLAY

Department of agriculture - farmland and open space preservation	\$	4,300,000
Department of natural resources - waterways		1,760,000
State transportation department - state aeronautics program.....		14,000,000
TOTAL	\$	20,060,000

(2) If it appears to the principal executive officer of a department or branch that state spending to local units of government will be less than the amount that was projected to be expended under subsection (1), the principal executive officer shall immediately give notice of the approximate shortfall to the state budget director.

Appropriations subject to MCL 18.1101 to 18.1594.

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

Definitions.

Sec. 203. As used in this act:

- (a) "ADA" means the Americans with disabilities act.
- (b) "Board" means the state administrative board.
- (c) "Community college" does not include a state agency or university.
- (d) "Department" means the department of management and budget.
- (e) "Director" means the director of the department of management and budget.
- (f) "DAG" means the United States department of agriculture.
- (g) "DOD" means the United States department of defense.
- (h) "DOI" means the United States department of interior.
- (i) "DOT" means the United States department of transportation.
- (j) "Fiscal agencies" means the senate fiscal agency and the house fiscal agency.
- (k) "HHS-HCFA" means the United States department of health and human services, health care financing administration.
- (l) "ICF/MR" means intermediate care facilities for the mentally retarded.
- (m) "IDG" means interdepartmental grant.
- (n) "JCOS" means the joint capital outlay subcommittee of the appropriations committees.
- (o) "MDOT" means the Michigan department of transportation.

(p) “MIOSHA” means the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(q) “Self-liquidating project” means a project constructed by a community college or university with money raised through the use of a debt instrument or other fund sources including, but not limited to, gifts, grants, federal funds, or institutional sources, that is expected to generate revenues to amortize the loan. A self-liquidating project may or may not be a self-supporting project. Examples of a self-liquidating project include dormitories, parking facilities, and stadia.

(r) “Self-supporting project” means a project of a community college or university that will house a function or activity from which revenue is generated that will cover all the direct and indirect operating costs of the project without the additional transfer of any other general fund money of the community college or university.

(s) “SEMCOG” means the southeast Michigan council of governments.

(t) “State agency” means an agency of state government. State agency does not include a community college or university.

(u) “State building authority” means the authority created under 1964 PA 183, MCL 830.411 to 830.425.

(v) “University” means a 4-year university supported by the state. University does not include a community college or a state agency.

(w) “Utility system” means a utility supply or distribution system, or a combination utility supply and distribution system.

Purchase of non-Michigan goods or services.

Sec. 204. Funds appropriated in part 1 shall not be used for the purchase of non-Michigan goods or services, or both, if competitively priced and of comparable quality Michigan goods or services, or both, are available.

Reporting requirements; use of Internet.

Sec. 208. Unless otherwise specified, departments and agencies receiving appropriations in part 1 shall use the Internet to fulfill the reporting requirements of this act. This requirement may include transmission of reports via electronic mail to the recipients identified for each reporting requirement or it may include placement of reports on an Internet or Intranet site.

DEPARTMENT OF AGRICULTURE

Farmland and open space development acquisition; use of funds for purchase of development rights and grant awards.

Sec. 251. Of the amounts appropriated in part 1 for farmland and open space development acquisition, the funds shall be used for the purchase of development rights and the awarding of grants by the agriculture preservation fund board under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

DEPARTMENT OF CORRECTIONS

Watchtowers; requirements.

Sec. 301. A maximum security prison that is constructed or completed after October 1, 1986, shall have operating manned watchtowers equipped with the weaponry, lighting, sighting, and communications devices necessary for effective execution of its function. The

watchtowers shall be constructed pursuant to the American correctional association standards for watchtowers.

Construction of new correctional facility; unidentified site; approval required; "site" defined.

Sec. 302. (1) An appropriation and authorization contained in this act or a previous appropriations act for the construction of a new correctional facility, including a correctional camp, for which a specific site was not identified with the appropriation shall not be expended until approved by JCOS.

(2) For the purposes of this section, "site" means a city, village, township, or county in which a correctional facility may be located.

Scott correctional facility or western Wayne correctional facility; expansion.

Sec. 303. From the amounts appropriated in part 1, no money shall be used for the expansion of either the Scott correctional facility or the western Wayne correctional facility.

CAPITAL OUTLAY PROCESSES, PROCEDURES, AND REPORTS

Compliance with MCL 18.1101 to 18.1594.

Sec. 401. Each capital outlay project authorized in this act or any previous capital outlay act shall comply with the procedures required by the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. Capital outlay projects shall not be funded from operating accounts unless approved by the department and the JCOS.

Program statement and planning documents; inclusion of operating cost.

Sec. 402. A statement of a proposed facility's operating cost shall be included with the facility's program statement and planning documents when the plans are presented to JCOS for approval.

Community colleges and universities; project agreements; provisions.

Sec. 403. (1) Before proceeding with final planning and construction for projects at community colleges and universities included in an appropriations bill, the community college or university shall sign an agreement with the department that includes the following provisions:

(a) The university or community college agrees to construct the project within the total authorized cost established by the legislature pursuant to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, and an appropriations act.

(b) The design and program scope of the project shall not deviate from the design and program scope represented in the program statement and preliminary planning documents approved by the department.

(c) Any other items as identified by the department that are necessary to complete the project.

(2) The department retains the authority and responsibility normally associated with the prudent maintenance of the public's financial and policy interests relative to the state-financed construction projects managed by a community college or university.

Project status; reports.

Sec. 404. (1) The department shall provide the JCOS and the fiscal agencies with reports as considered necessary relative to the status of each planning or construction project financed by the state building authority, by this act, or by previous acts.

(2) Before the end of each fiscal year, the department shall report to the JCOS and the fiscal agencies for each capital outlay project other than lump sums all of the following:

- (a) The account number and name of each construction project.
- (b) The balance remaining in each account.
- (c) The date of the last expenditure from the account.
- (d) The anticipated date of occupancy if the project is under construction.
- (e) The appropriations history for the project.
- (f) The professional service contractor.
- (g) The amount of a project financed with federal funds.
- (h) The amount of a project financed through the state building authority.
- (i) The total authorized cost for the project and the state authorized share if different than the total.

(3) Before the end of each fiscal year, the department shall report the following for each project by a state agency, university, or community college that is authorized for planning but is not yet authorized for construction:

- (a) The name of the project and account number.
 - (b) Whether a program statement is approved.
 - (c) Whether schematics are approved by the department.
 - (d) Whether preliminary plans are approved by the department.
 - (e) The name of the professional service contractor.
- (4) As used in this section, "project" includes appropriation line items made for purchase of real estate.

Capital outlay appropriation; notice of expenditure.

Sec. 405. (1) If a capital outlay appropriation is contained in a public act that was not reviewed by the JCOS during the legislative process, the director shall notify the JCOS of an expenditure of that capital outlay appropriation not less than 60 days before the expenditure.

(2) For the purposes of this section, "capital outlay appropriation" means an appropriation that provides for the construction, renovation, or repair of a capital facility or acquisition or development of land and that is normally reviewed by the JCOS.

Availability of federal and other money; matching requirements.

Sec. 406. A state agency, college, or university shall take steps necessary to make available federal and other money indicated in this act, to make available federal or other money that may become available for the purposes for which appropriations are made in this act, and to use any part or all of the appropriations to meet matching requirements that are considered to be in the best interest of this state. However, the

purpose, scope, and total estimated cost of a project shall not be altered to meet the matching requirements.

Comparative cost analysis.

Sec. 407. (1) Before money is released for the construction or lease of a capital outlay project costing over \$1,000,000.00, at the request of the JCOS the department shall submit to the JCOS, with preliminary planning documents, a detailed comparative cost analysis. The cost analysis shall include a comparison of the financial and other benefits of construction, financing, operation, and maintenance of the proposed facility between all of the following:

- (a) The state.
- (b) The private sector.
- (c) A combination of the state and the private sector.
- (d) A lease agreement.

(2) If the department's recommendation for financing is inconsistent with the findings of the comparative cost analysis, the department shall present written documentation to the JCOS outlining the rationale for the recommendation.

(3) For purposes of this section, "capital outlay project" means a construction project or lease requiring JCOS approval including, but not limited to, a general office facility, special use facility, warehouse, institutional facility, or utility system designed for use by a state agency or university. Capital outlay project does not include a special maintenance and remodeling project, grant-in-aid project, prison facility, legislative facility, judicial facility, community college facility, or self-liquidating project constructed by a university.

Five-year capital outlay plans and capital outlay priority requests.

Sec. 408. Pursuant to section 242(2) of the management and budget act, 1984 PA 431, MCL 18.1242, the department shall submit 5-year capital outlay plans and capital outlay priority requests developed by state agencies (and as approved by the department of management and budget), universities, and community colleges to the chairperson and ranking vice-chairperson of the JCOS and the fiscal agencies upon the release of the executive budget recommendation.

USE AND FINANCE STATEMENTS

Nonstate-funded project; use and financing statement; violation; limitations.

Sec. 501. (1) A university or community college shall not let a contract for new construction of a nonstate-funded project estimated to cost more than \$1,000,000.00 unless the project is authorized by the JCOS through approval of a use and financing statement defined by a policy adopted by the JCOS. The request for legislative authorization shall be initially submitted for review to the JCOS and the department. The use and financing statement for a nonstate-funded project shall contain the estimated total construction cost and all associated estimated operating costs including a statement of anticipated project revenues. As used in this section, "new construction" includes land or property acquisition, remodeling and additions, and maintenance projects.

(2) A project that is constructed in violation of this section shall not receive state appropriations for purposes of operating the project, or support for future infrastructure enhancements that are necessitated, in part or in total, by construction of the project.

(3) A state agency, including the department of military affairs, shall not let a contract, including those for a direct federally-funded capital outlay construction or major maintenance or remodeling project if the total project is estimated to cost more than \$1,000,000.00 and is to be constructed on state-owned lands, unless the project is approved by the department and by the JCOS through approval of a use and financing statement defined by a policy adopted by the JCOS. For projects over \$1,000,000.00, the state agency shall submit a use and financing statement as required for community colleges and universities in subsection (1). As used in this subsection, “direct federally-funded” refers to a project for which federal payments are made directly to the construction vendor and not to the state of Michigan.

(4) A public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund shall not let a contract for new construction estimated to cost more than \$1,000,000.00 unless the project is authorized by the JCOS through the approval of a use and financing statement defined by a policy adopted by the JCOS. For purposes of this subsection, the use and financing statement for a project shall contain the estimated total construction cost and all associated estimated operating costs. As used in this subsection, “new construction” means land or property acquisition, remodeling or additions, lease or lease purchase, and maintenance projects for the corporate office of the public body corporate described in this subsection.

LUMP SUMS AND SPECIAL MAINTENANCE

Remodeling and addition, special maintenance, major special maintenance, energy conservation, demolition, ICF/MR, air-conditioning, and fire protection projects; lump-sum appropriations.

Sec. 601. (1) The director shall allocate lump-sum appropriations made in this act for remodeling and addition, special maintenance, major special maintenance, energy conservation, demolition, ICF/MR, air-conditioning, and fire protection projects. The director shall allocate other lump sums in order of program priority and need of the various state agencies or as otherwise based on actual building inspection reports by regulatory agencies.

(2) The state budget director may authorize that funds appropriated for lump-sum special maintenance shall be available for no more than 2 fiscal years following the fiscal year in which the original appropriation was made. Any remaining balance from allocations made in this section shall lapse to the fund from which it was appropriated pursuant to the lapsing of funds as provided in the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

(3) Before the end of each fiscal year, the department shall submit a report to the JCOS and the fiscal agencies indicating the total cost and status of all lump-sum projects

funded under this act and any previous act that have been designated as proposed, designed, bid, under construction, or completed within the current fiscal year.

Demolition projects.

Sec. 602. (1) The department may expend from the lump-sum special maintenance account amounts necessary to demolish any building that is specifically authorized by law to be demolished.

(2) Before the end of each fiscal year, each state agency, community college, and university shall report each year to the department the status of and planned schedule for demolition projects already authorized but not yet started, the estimated cost of the projects, and the anticipated sources of financing of the projects.

Special maintenance, remodeling, additions, other capital outlay purposes; expenditures from operating budget.

Sec. 603. Pursuant to department policy, state agencies may expend not more than \$600,000.00 from their operating budget for special maintenance, remodeling, additions, or other capital outlay purposes, unless specifically authorized by the legislature.

STATE BUILDING AUTHORITY

Expenditures from general fund; amount; conditions; sale of bonds or notes; advances to meet cash flow requirements; repayment.

Sec. 701. (1) Subject to section 242 of the management and budget act, 1984 PA 431, MCL 18.1242, and upon the approval of the state building authority, the department may expend from the general fund of the state during the fiscal year ending September 30, 2004 an amount to meet the cash flow requirements of those state building authority projects solely for lease to a state agency identified in both part 1 and this section, and for which state building authority bonds or notes have not been issued, and for the sole acquisition by the state building authority of equipment and furnishings for lease to a state agency as permitted by 1964 PA 183, MCL 830.411 to 830.425, for which the issuance of bonds or notes is authorized by a legislative concurrent resolution that is effective for a fiscal year ending September 30, 2004. Any general fund advances for which state building authority bonds have not been issued shall bear an interest cost to the state building authority at a rate not to exceed that earned by the state treasurer's common cash fund during the period in which the advances are outstanding and are repaid to the general fund of the state.

(2) Upon sale of bonds or notes for the projects identified in part 1 or for equipment as authorized by legislative concurrent resolution and in this section, the state building authority shall credit the general fund of the state an amount equal to that expended from the general fund plus interest, if any, as defined in this section.

(3) For state building authority projects for which bonds or notes have been issued and upon the request of the state building authority, the state treasurer shall make advances without interest from the general fund as necessary to meet cash flow requirements for the projects, which advances shall be reimbursed by the state building authority when the investments earmarked for the financing of the projects mature.

(4) In the event that a project identified in part 1 is terminated after final design is complete, advances made on behalf of the state building authority for the costs of final

design shall be repaid to the general fund in a manner recommended by the director and approved by the JCOS.

Excess revenue; release to university or community college; crediting general fund; audit; “revenue” defined.

Sec. 702. (1) State building authority funding to finance construction or renovation of a facility that collects revenue in excess of money required for the operation of that facility shall not be released to a university or community college unless the institution agrees to reimburse that excess revenue to the state building authority. The excess revenue shall be credited to the general fund to offset rent obligations associated with the retirement of bonds issued for that facility. The auditor general shall annually identify and present an audit of those facilities that are subject to this section. Costs associated with the administration of the audit shall be charged against money recovered pursuant to this section.

(2) As used in this section, “revenue” includes state appropriations, facility opening money, other state aid, indirect cost reimbursement, and other revenue generated by the activities of the facility.

Rent obligations and insurance premiums and deductibles.

Sec. 703. (1) The state building authority rent appropriations in part 1 may also be expended for the payment of required premiums for insurance on facilities owned by the state building authority or payment of costs that may be incurred as the result of any deductible provisions in such insurance policies.

(2) If the amount appropriated in part 1 for state building authority rent is not sufficient to pay the rent obligations and insurance premiums and deductibles identified in subsection (1) for state building authority projects, there is appropriated from the general fund of the state the amount necessary to pay such obligations.

Construction projects; status report.

Sec. 704. The department shall provide the JCOS and the fiscal agencies a report, not more than 15 days after the reporting date, relative to the status of construction projects associated with state building authority bonds on March 31 and September 30 of each year, or not more than 30 days after a refinancing or restructuring bond issue is sold. The report shall include, but is not limited to, the following:

(a) A list of all completed construction projects for which state building authority bonds have been sold, and which bonds are currently active.

(b) A list of all projects under construction for which sale of state building authority bonds are pending.

(c) A list of all projects authorized for construction or identified in an appropriations act for which approval of schematic/preliminary plans or total authorized cost is pending that have state building authority bonds identified as a source of financing.

COLLEGES AND UNIVERSITIES

Community college buildings; funding; limitation; release of appropriation; conditions; receipt of federal money.

Sec. 801. (1) This section applies only to projects for community colleges.

(2) State support is directed towards the remodeling and additions, special maintenance, or construction of certain community college buildings. The community college shall obtain

or provide for site acquisition and initial main utility installation to operate the facility. Funding shall be comprised of local and state shares, and the state share shall include 50% of any federal money awarded for projects appropriated in this act. Not more than 50% of a capital outlay project, not including a lump-sum special maintenance project or remodeling and addition project, for a community college shall be appropriated from state and federal funds, unless otherwise appropriated by the legislature.

(3) An expenditure under this act is authorized when the release of the appropriation is approved by the board upon the recommendation of the director. The director may recommend to the board the release of any appropriation in part 1 only after the director is assured that the legal entity operating the community college to which the appropriation is made has complied with this act and has matched the amounts appropriated as required by this act. A release of funds in part 1 shall not exceed 50% of the total cost of planning and construction of any project, not including lump-sum remodeling and additions and special maintenance, unless otherwise appropriated by the legislature. Further planning and construction of a project authorized by this act or applicable sections of the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, shall be in accordance with the purpose and scope as defined and delineated in the approved program statements and planning documents. This act is applicable to all projects for which planning appropriations were made in previous acts.

(4) The community college shall take the steps necessary to secure available federal construction and equipment money for projects funded for construction in this act if an application was not previously made. If there is a reasonable expectation that a prior year unfunded application may receive federal money in a subsequent year, the college shall take whatever action necessary to keep the application active. If federal money is received, the state share shall be adjusted accordingly as provided by this act.

Matching revenues; reduction.

Sec. 802. If matching revenues are received in an amount less than the appropriations contained in this act, the state funds of the appropriation shall be reduced in proportion to the amount of matching revenue received.

Availability of project match or board approval; submission of documentation; termination of authorization.

Sec. 804. (1) The director may require that community colleges and universities that have an authorized project listed in part 1 submit documentation regarding the project match and governing board approval of the authorized project not more than 60 days after the beginning of the fiscal year.

(2) If the documentation required by the director under subsection (1) is not submitted, or does not adequately authenticate the availability of the project match or board approval of the authorized project, the authorization may terminate. The authorization terminates 30 days after the director notifies the JCOS of the intent to terminate the project unless the JCOS convenes to extend the authorization.

University of Michigan - Ann Arbor, central campus renovations phase II project; total project cost.

Sec. 805. The total project cost for the University of Michigan - Ann Arbor, central campus renovations phase II project authorized in 1996 PA 480, and adjusted in 1999 PA 137, is increased from \$86,000,000.00 to \$88,000,000.00. The state building authority share

remains \$59,249,900.00; the state general fund/general purpose share remains \$100.00; and the university share is increased from \$26,750,000.00 to \$28,750,000.00.

Glen Oaks community college; applied science/technology center project.

Sec. 806. The project planning authorization provided in 1999 PA 265 to Glen Oaks Community College for its applied science/technology center project is extended through September 30, 2005.

Lake Superior state university arts classroom building project.

Sec. 807. For the Lake Superior State University arts classroom building project authorized for construction by 2000 PA 291, the project's financing is adjusted as follows: the total authorized cost remains \$15,300,000.00; the state building authority share is increased from \$7,999,800.00 to \$11,474,800.00; the state general fund share remains \$200.00; and the university share is reduced from \$7,300,000.00 to \$3,825,000.00.

Washtenaw community college, plumbers and pipefitters building project.

Sec. 808. The total project cost for the Washtenaw Community College, plumbers and pipefitters building project authorized in 2002 PA 530 is increased from \$4,000,000.00 to \$4,741,000.00. The state building authority share remains \$1,999,800.00; the state general fund/general purpose share remains \$200.00; and the college share is increased from \$2,000,000.00 to \$2,741,000.00.

DEPARTMENT OF MANAGEMENT AND BUDGET

Privately owned leased space; report.

Sec. 901. (1) The department shall provide the JCOS and the fiscal agencies a report, not more than 15 days after the reporting date, of privately owned leased space by state agencies, by March 31 and September 30 of each year, consisting of the following:

- (a) Department.
- (b) Agency division and leased number.
- (c) Building location (address and city).
- (d) Type of building.
- (e) County.
- (f) Name and address of lessor.
- (g) Square footage and net square footage rate.
- (h) Monthly and annual cost.
- (i) Date lease started and expires.
- (j) Options and services.

(2) The lease report shall be summarized for office space, group homes, and other space for the Lansing area and statewide, excepting the Lansing area.

Storage and preservation of Michigan's artifacts; central resource.

Sec. 902. The department of history, arts, and libraries shall work cooperatively with the department to pursue plans to store and preserve Michigan's artifacts in a manner so as to secure American association of museums accreditation for the Michigan historical museum and the Michigan State University museum to create a central resource for the proper preservation and restoration of important collections and to secure increased federal revenue.

DEPARTMENT OF NATURAL RESOURCES**Recreational boating facilities.**

Sec. 1001. The appropriation made in this act for the harbors and docks program is for the purpose of participating with the federal government and assisting political entities and subdivisions of this state in the construction and improvement of recreational boating facilities within this state. Subject to the approval of the board, this money shall be allocated by the department of natural resources to the federal government, or to the political entities or local units of government involved in the particular projects. An allocation shall not exceed the state portion as listed with each project description. The department of natural resources shall take the steps necessary to match federal money available for the construction and improvement of recreational boating facilities within this state, and to meet requirements of the federal government.

Project status; reauthorization request.

Sec. 1002. (1) Before the end of each fiscal year, the department of natural resources shall report each year to the JCOS the status of each project that received an appropriation in any capital outlay act, if the project is either not completed or has a balance remaining in its account. The report shall be in the same form and contain the information as required under section 404. The report shall be separated into the following areas, by fund sources:

- (a) Waterways projects.
- (b) Urban recreation projects.
- (c) State park projects.
- (d) Wildlife and fisheries projects.
- (e) Other projects.

(2) A project request for reauthorization by the department of natural resources shall also be identified within the report required by subsection (1). These reauthorization requests shall identify the subsection number of section 248 of the management and budget act, 1984 PA 431, MCL 18.1248, that provides the reason and justification for the requested reauthorization.

(3) A project shall be reauthorized if approved by the JCOS after review by the department.

Transfer from harbor development fund to state waterways fund.

Sec. 1003. The department of natural resources may transfer \$1,000,000.00 from the harbor development fund to the state waterways fund for the purposes appropriated in part 1 of this act.

STATE TRANSPORTATION DEPARTMENT**Publicly used airports and landing fields.**

Sec. 1101. (1) From federal-state-local project appropriations contained in part 1 for the purpose of assisting political entities and subdivisions of this state in the construction and improvement of publicly used airports and landing fields within this state, the state transportation department may permit the award of contracts on behalf of units of local government for the authorized locations not to exceed the indicated amounts, of which the state allocated portion shall not exceed the amount appropriated in part 1.

(2) Political entities and subdivisions shall provide not less than 5% of the cost of any project under this section. State money shall not be allocated until local money is allocated. State money for any 1 project shall not exceed 1/3 of the total appropriation in part 1 from state funds for airport improvement programs.

(3) The Michigan aeronautics commission may take those steps necessary to match federal money available for airport construction and improvement within this state, and to meet the matching requirements of the federal government. Whether acting alone or jointly with another political subdivision or public agency or with this state, a political subdivision or public agency of this state shall not submit to any agency of the federal government a project application for airport planning or development unless it is authorized in this act and the project application is approved by the governing body of each political subdivision or public agency making the application, and by the Michigan aeronautics commission.

(4) From the appropriations contained in part 1 for airport improvement programs, no funds shall be allocated for any runway extensions, taxiway extensions, or apron extensions at the Detroit-Willow Run airport. Further, it is the intent of the legislature that no state funds shall be expended to improve or repair the airport where the purpose of the improvement or repair is to expand the usage of the airport including, but not limited to, anything approximating a tradeport as that term is defined in the former international tradeport development authority act, former 1994 PA 325.

Project status; report; delay.

Sec. 1102. Before the end of each fiscal year, the state transportation department shall report to the JCOS the status of projects funded in part 1 with the estimated dollars allocated for each project. If there has to be a delay in reporting, the state transportation department shall notify JCOS in writing of the date the report will be received.

Airport program; availability of appropriation; lapse of remaining balance.

Sec. 1104. (1) A planning project or construction project appropriated for the airport program shall be made available for no more than 2 fiscal years following the fiscal year in which the original appropriation was made.

(2) Any remaining balance from allocations made in this section shall lapse to the fund from which it was appropriated pursuant to the lapsing of funds as provided in the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Transportation design and construction projects canceled.

Sec. 1105. (1) The following department of transportation design and construction projects are canceled:

(a) A total of \$800,000.00 appropriated in 2001 PA 45 for a new project office in Brighton.

(b) A total of \$1,000,000.00 appropriated in 2002 PA 518 for a new Grayling transportation service center.

(2) Total project cost authorizations for each of the projects canceled in subsection (1) are reappropriated in part 1.

MISCELLANEOUS

Antenna site management project.

Sec. 1201. (1) Revenue collected from licenses issued under the antenna site management project shall be deposited into the antenna site management revolving fund created for this purpose in the department of management and budget. The department may receive and expend funds from the fund for costs associated with the antenna site management project, including the cost of the third-party site manager. Any excess revenue remaining in the fund at the close of the fiscal year shall be proportionately transferred to the appropriate state restricted funds as designated in statute or by constitution.

(2) An antenna shall not be sited pursuant to this section without prior compliance with the respective local zoning codes and local unit of government processes.

Site preparation economic development fund; creation; disposition of proceeds; expenditures; cash advance; annual report.

Sec. 1202. (1) A site preparation economic development fund is hereby created in the department of management and budget. As used in this section, “economic development sites” means those state-owned sites declared as surplus property pursuant to section 251 of the management and budget act, 1984 PA 431, MCL 18.1251, that would provide economic benefit to the area or to the state. The Michigan economic development corporation board and the state budget director shall determine whether or not a specific state-owned site qualifies for inclusion in the fund created under this subsection.

(2) Proceeds from the sale of any sites designated in subsection (1) shall be deposited into the fund created in subsection (1) and shall be available for site preparation expenditures, unless otherwise provided by law. The economic development sites authorized in subsection (1) are hereby authorized for sale consistent with state law. Expenditures from the fund are hereby authorized for site preparation activities that enhance the marketable sale value of the sites. Site preparation activities include, but are not limited to, demolition, environmental studies and abatement, utility enhancement, and site excavation.

(3) A cash advance in an amount of not more than \$25,000,000.00 is hereby authorized from the general fund to the site preparation economic development fund.

(4) An annual report shall be transmitted to the senate and house of representatives appropriations committees not later than December 31 of each year. This report shall detail both of the following:

(a) The revenue and expenditure activity in the fund for the preceding fiscal year.

(b) The sites identified as economic development sites under subsection (1).

MILITARY AFFAIRS**Design and construction projects.**

Sec. 1301. The appropriations in part 1 for department of military and veterans' affairs design and construction projects are contingent upon the availability of federal and state restricted funds for financing.

REPEALERS**Repeal of sections 152, 1301, 1302, 1303, and 1304 of 2003 PA 173.**

Sec. 1404. Sections 152, 1301, 1302, 1303, and 1304 of 2003 PA 173 are repealed.

This act is ordered to take immediate effect.

Approved November 7, 2003.

Filed with Secretary of State November 10, 2003.

[No. 194]

(HB 4211)

AN ACT to amend 1893 PA 206, entitled "An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts," by amending section 30 (MCL 211.30), as amended by 2000 PA 210.

The People of the State of Michigan enact:

211.30 Board of review; meetings; alternative dates; sessions; request, protest, or application for correction of assessment; hearing; examination of persons under oath; filing by nonresident taxpayer; notice; filing, hearing, and determination of objection; right of appeal; endorsement and signed statement; delivery of assessment roll; ordinance or resolution authorizing filing of protest by letter; notice of option.

Sec. 30. (1) Except as otherwise provided in subsection (2), the board of review shall meet on the second Monday in March.

(2) The governing body of the city or township may authorize, by adoption of an ordinance or resolution, alternative starting dates in March when the board of review shall initially meet, which alternative starting dates shall be the Tuesday or Wednesday following the second Monday of March.

(3) The first meeting of the board of review shall start not earlier than 9 a.m. and not later than 3 p.m. and last for not less than 6 hours. The board of review shall also meet for not less than 6 hours during the remainder of that week. Persons or their agents who have appeared to file a protest before the board of review at a scheduled meeting or at a scheduled appointment shall be afforded an opportunity to be heard by the board of review. The board of review shall schedule a final meeting after the board of review makes a change in the assessed value or tentative taxable value of property or adds property to the assessment roll. The board of review shall hold at least 3 hours of its required sessions for review of assessment rolls during the week of the second Monday in March after 6 p.m.

(4) A board of review shall meet a total of at least 12 hours during the week beginning the second Monday in March to hear protests. At the request of a person whose property is assessed on the assessment roll or of his or her agent, and if sufficient cause is shown, the board of review shall correct the assessed value or tentative taxable value of the property in a manner that will make the valuation of the property relatively just and proper under this act. The board of review may examine under oath the person making the application, or any other person concerning the matter. A member of the board of review may administer the oath. A nonresident taxpayer may file his or her appearance, protest, and papers in support of the protest by letter, and his or her personal appearance is not required. The board of review, on its own motion, may change assessed values or tentative taxable values or add to the roll property omitted from the roll that is liable to assessment if the person who is assessed for the altered valuation or for the omitted property is promptly notified and granted an opportunity to file objections to the change at the meeting or at a subsequent meeting. An objection to a change in assessed value or tentative taxable value or to the addition of property to the tax roll shall be promptly heard and determined. Each person who makes a request, protest, or application to the board of review for the correction of the assessed value or tentative taxable value of the person's property shall be notified in writing, not later than the first Monday in June, of the board of review's action on the request, protest, or application, of the state equalized valuation or tentative taxable value of the property, and of information regarding the right of further appeal to the tax tribunal. Information regarding the right of further appeal to the tax tribunal shall include, but is not limited to, a statement of the right to appeal to the tax tribunal, the address of the tax tribunal, and the final date for filing an appeal with the tax tribunal.

(5) After the board of review completes the review of the assessment roll, a majority of the board of review shall indorse the roll and sign a statement to the effect that the roll is the assessment roll for the year in which it has been prepared and approved by the board of review.

(6) The completed assessment roll shall be delivered by the appropriate assessing officer to the county equalization director not later than the tenth day after the adjournment of the board of review, or the Wednesday following the first Monday in April, whichever date occurs first.

(7) The governing body of the township or city may authorize, by adoption of an ordinance or resolution, a resident taxpayer to file his or her protest before the board of review by letter without a personal appearance by the taxpayer or his or her agent. If that ordinance or resolution is adopted, the township or city shall include a statement

notifying taxpayers of this option in each assessment notice under section 24c and on each notice or publication of the meeting of the board of review.

This act is ordered to take immediate effect.
Approved November 7, 2003.
Filed with Secretary of State November 10, 2003.

[No. 195]

(HB 4895)

AN ACT to amend 2001 PA 142, entitled “An act to consolidate prior acts naming certain Michigan highways; to provide for the naming of certain highways; to prescribe certain duties of the state transportation department; and to repeal acts and parts of acts and certain resolutions,” (MCL 250.1001 to 250.1100) by adding section 67.

The People of the State of Michigan enact:

250.1067 “James M. Pelton Firefighters Memorial Highway.”

Sec. 67. The portion of highway US-127 in Ingham county shall be known as the “James M. Pelton Firefighters Memorial Highway”.

This act is ordered to take immediate effect.
Approved November 7, 2003.
Filed with Secretary of State November 10, 2003.

[No. 196]

(HB 5106)

AN ACT to amend 1980 PA 299, entitled “An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending sections 2501, 2504, and 2505 (MCL 339.2501, 339.2504, and 339.2505), section 2501 as amended by 1994 PA 333, section 2504 as amended by 2002 PA 611, and section 2505 as amended by 1988 PA 463.

The People of the State of Michigan enact:

339.2501 Definitions.

Sec. 2501. As used in this article:

(a) “Property management” means the leasing or renting, or the offering to lease or rent, of real property of others for a fee, commission, compensation, or other valuable consideration pursuant to a property management employment contract.

(b) “Property management account” means an interest-bearing or noninterest-bearing account or instrument used in the operation of property management.

(c) “Property management employment contract” means the written agreement entered into between a real estate broker and client concerning the real estate broker’s employment as a property manager for the client; setting forth the real estate broker’s duties, responsibilities, and activities as a property manager; and setting forth the handling, management, safekeeping, investment, disbursement, and use of property management money, funds, and accounts.

(d) “Real estate broker” means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities who with intent to collect or receive a fee, compensation, or valuable consideration, sells or offers for sale, buys or offers to buy, provides or offers to provide market analyses, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of a building on real estate; who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others, as a whole or partial vocation; who engages in property management as a whole or partial vocation; who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others; or who, as owner or otherwise, engages in the sale of real estate as a principal vocation.

(e) “Real estate salesperson” means a person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, to buy or offer to buy, to provide or offer to provide market analyses, to list or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of a building on real estate, or to lease or offer to lease, rent or offer for rent real estate, who is employed by a real estate broker to engage in property management, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others, as a whole or partial vocation.

(f) “Employ” or “employment” means the relationship between a real estate broker and an associate broker or a real estate salesperson which may include an independent contractor relationship. The existence of an independent contractor relationship between a real estate broker and an individual licensed to the real estate broker shall not relieve the real estate broker of the responsibility to supervise acts of the licensee regulated by this article.

(g) “Independent contractor relationship” means a relationship between a real estate broker and an associate broker or real estate salesperson that satisfies both of the following conditions:

(i) A written agreement exists in which the real estate broker does not consider the associate broker or real estate salesperson as an employee for federal and state income tax purposes.

(ii) Not less than 75% of the annual compensation paid by the real estate broker to the associate broker or real estate salesperson is from commissions from the sale of real estate.

(h) “Professional designation” means a certification from a real estate professional association demonstrating attainment of proven skills or education in a real estate occupational area, and may include the right to use a title or letters after the licensee’s name that represent the designation bestowed by the certifying entity.

339.2504 Real estate broker's license; approved classroom courses; application; condition to taking examination; renewal or reinstatement of license; continuing education requirements; exceptions; approval of person offering or conducting course or courses of study; suspension or revocation of approval; prohibited representations; conduct of pre-licensure course; violation; penalties; real estate clinic, meeting, course, or institute; sponsoring studies, research, and programs.

Sec. 2504. (1) Before receiving a real estate broker's license, an applicant shall submit an application as described in section 2505 and shall have successfully completed not less than 90 clock hours of approved classroom courses in real estate of which not less than 9 clock hours shall be instruction on civil rights law and equal opportunity in housing. The 90 hours shall be in addition to the hours required to obtain a real estate salesperson's license.

(2) Before being permitted to take the real estate salesperson's examination, an applicant shall show proof of successful completion of not less than 40 clock hours of classroom courses in principles of real estate, of which not less than 4 clock hours shall be instruction on civil rights law and equal opportunity in housing.

(3) For purposes of subsections (1) and (2), approved courses may be on the following topics:

- (a) Real estate license law and related regulatory laws.
- (b) Real property law, including property interests and restrictions.
- (c) Federal, state, and local tax laws affecting real property.
- (d) Conveyances, including contracts, deeds, and leases.
- (e) Financing, including mortgages, land contracts, foreclosure, and limits on lending procedures and interest rates.
- (f) Appraisal of real property.
- (g) Design and construction.
- (h) Marketing, exchanging, and counseling.
- (i) The law of agency.
- (j) Sales and office management, including listing and selling techniques.
- (k) Real estate securities and syndications.
- (l) Investments, including property management.

(4) Except as otherwise provided in this subsection, before being permitted to renew an active real estate broker's or real estate salesperson's license, a licensee shall have successfully completed, within the preceding 12 months, not less than 6 clock hours of continuing education approved by the department involving any topics relevant to the management, operation, and practice of real estate and covering changes in economic conditions, law, rules, court cases, and interpretations, or any combination of those changes, relating to real property which are pertinent to the activities of a real estate broker or real estate salesperson. Beginning November 1, 2003, a licensee shall complete not less than 18 hours of continuing education per 3-year license cycle. A licensee shall complete at least 6 hours of the required 18 hours of continuing education courses during the time period from November 1, 2003 and ending on December 31, 2004. During calendar year 2005, a licensee shall complete at least 6 hours of the required 18 hours of continuing education courses. During calendar year 2006, a licensee shall complete at least 4 hours of the required 18 hours of continuing education courses. During calendar year 2007 and thereafter, a licensee shall complete at least 2 hours per calendar year of the

required 18 hours of continuing education courses. Any education successfully completed by a licensee for further professional designation and approved by the department as continuing education may be counted toward the total continuing education credits required for the 3-year license cycle. Each licensee, in completing the appropriate number of clock hours, will have the option of selecting the education courses in that licensee's area of expertise, as long as the education courses are approved by the department and as long as at least 2 hours of an education course per calendar year involve law, rules, and court cases regarding real estate. Notwithstanding the provisions of this subsection, the department may renew the license of a licensee who has completed not less than 18 hours of continuing education in the subject matter areas required by this subsection during the 3-year license cycle but has not otherwise met the requirements of this section if the licensee provides evidence satisfactory to the department that he or she has good cause for not complying with the requirements in this subsection.

(5) The department may relicense without examination a licensee whose license has lapsed for less than 3 years if the licensee shows proof of completion of not less than 6 clock hours of continuing education for each year the license was lapsed, on topics as described in subsection (4).

(6) The department may relicense a broker whose license has lapsed for 3 or more continuous years if the licensee provides proof of the successful completion of 1 of the following:

(a) Six clock hours of continuing education for each of the years the license was lapsed on topics described in subsection (4).

(b) Ninety clock hours of instruction described in subsections (1) and (3).

(c) Passing the examination required for licensure as a broker as provided for in section 2505(5).

(7) A salesperson whose license has been lapsed for 3 or more continuous years may be relicensed if the licensee provides proof of the successful completion of 1 of the following:

(a) Six clock hours of continuing education for each of the years the license was lapsed on topics described in subsection (4).

(b) Forty clock hours of instruction described in subsections (2) and (3).

(c) Passing the examination required for licensure as a salesperson as provided in section 2505(5).

(8) The department shall not apply the course credits used to meet continuing education requirements provided in subsections (4) through (7) towards the real estate broker's license education requirements provided in subsection (1), and course credits taken under real estate broker's license education requirements shall not be applied towards the continuing education requirements. The department shall apportion the approved course credits eligible for education requirements in subsection (1) and subsections (4) through (7) to meet either requirement upon the licensee's request.

(9) For real estate brokers, associate brokers, and salespersons who receive a license issued in the second or third years of a 3-year license cycle, continuing education shall be in compliance with subsection (4), except for the following:

(a) A real estate broker, associate broker, or salesperson who receives a license issued in the second year of the 3-year license cycle is required to complete 12 hours of continuing education to renew his or her license.

(b) A real estate broker, associate broker, or salesperson who receives a license issued in the third year of the 3-year licensing cycle is required to complete 6 hours of continuing education to renew his or her license.

(10) A person who offers or conducts a course or courses of study represented to meet the educational requirements of this article first shall obtain approval from the department and shall comply with the rules of the department concerning curriculum, instructor qualification, grading system, and other related matters. In addition to other requirements imposed under rule, in order to receive approval a course shall be designed to be taught for not less than 1 clock hour, not including time spent on breaks, meals, or other unrelated activities, provided the course is only approved for less than 2 clock hours if, based upon the subject matter, course outline, instructional materials, methodology, and other considerations consistent with rules of the department, the department determines that the course objectives can be effectively met in the proposed time period. The department may suspend or revoke the approval of a person for a violation of this article or of the rules promulgated under this article. A person offering or conducting a course shall not represent that its students are assured of passing an examination required by the department. A person shall not represent that the issuance of departmental approval is a recommendation or indorsement of the person to which it is issued or of a course of instruction given by it. A pre-licensure course approved under this article shall be conducted by a local public school district, a community college, an institution of higher education authorized to grant degrees, or a proprietary school licensed by the department of career development under 1943 PA 148, MCL 395.101 to 395.103.

(11) A person who in operating a school violates subsection (10) is subject to the penalties set forth in article 6.

(12) The department may conduct, hold, or assist in conducting or holding, a real estate clinic, meeting, course, or institute, which shall be open to a person licensed under this article, and may incur the necessary expenses in connection with the clinic, meeting, course, or institute. The department, in the public interest, may assist educational institutions within this state in sponsoring studies, research, and programs for the purpose of raising the standards of professional practice in real estate and the competence of a licensee.

339.2505 Real estate broker's license; application; contents; execution of application; effect of certain convictions; place of business; branch office license; contents of application for salesperson's license; proof; examinations.

Sec. 2505. (1) An applicant for a real estate broker's license shall file an application setting forth the applicant's present address, both of business and residence; the complete address of each former place where the applicant has resided or been engaged in business, or acted as a real estate salesperson, for a period of 60 days or more, during the 5 years immediately preceding the date of application. An applicant for a real estate broker's license shall state the name of the individual, sole proprietorship, partnership, association, corporation, limited liability company, common law trust, or a combination of those entities and the location of the place for which the license is desired, and set forth the period of time which the applicant has been engaged in the business. The application shall be executed by the person, or by an officer or member of the applicant. An applicant for a real estate broker's license which is a partnership, association, corporation, limited liability company, common law trust, or a combination of those entities shall designate which individuals who are officers or members of the partnership, association, limited liability company, or corporation will be performing acts regulated by this article as principals.

(2) The department shall not issue a real estate broker's license to a new applicant who has been convicted of embezzlement or misappropriation of funds.

(3) A real estate broker shall maintain a place of business in this state. If a real estate broker maintains more than 1 place of business within the state, a branch office license shall be secured by the real estate broker for each branch office maintained. A branch office maintained in excess of 25 miles from the city limits in which the broker maintains a main office shall be under the personal, direct supervision of an associate broker.

(4) An applicant for a salesperson's license shall set forth the period of time during which the individual has been engaged in the business, stating the name of the applicant's last employer and the name and the place of business of the individual, partnership, association, limited liability company, corporation, common law trust, or combination of those entities then employing the applicant or in whose employ the applicant is to enter. The application shall be signed by the real estate broker in whose employ the applicant is to enter.

(5) Before issuing a license, the department may require and procure satisfactory proof of the business experience, competence, and good moral character of an applicant for a real estate broker's or salesperson's license or of an officer or member of an applicant. The department shall require an applicant for a broker's or salesperson's license to pass an examination developed by the department or contracted for with a recognized outside testing agency establishing, in a manner satisfactory to the department, that the applicant has a fair knowledge of the English language, including reading, writing, spelling, and elementary arithmetic; a satisfactory understanding of the fundamentals of real estate practice and of the laws and principles of real estate conveyancing, deeds, mortgages, land contracts, and leases; the obligations of a broker to the public and a principal; and the law defining, regulating, and licensing real estate brokers and salespersons. The department may require written examination or written reexamination of a broker or salesperson, and in that case a passing score satisfactory to the department is required as a condition precedent to relicensure of a broker or salesperson. The department shall require proof that each applicant for a real estate broker's license has the equivalent of 3 years of full-time experience in the business of real estate or in a field that is determined by the department to be relevant and related to the business of real estate.

This act is ordered to take immediate effect.

Approved November 7, 2003.

Filed with Secretary of State November 10, 2003.

[No. 197]

(HB 4070)

AN ACT to require textbook publishers to provide electronic versions of certain instructional materials used in colleges and universities.

The People of the State of Michigan enact:

390.1541 Short title.

Sec. 1. This act shall be known and may be cited as the "college and university electronic textbook act".

390.1542 Definitions.

Sec. 2. As used in this act:

(a) “College or university” means a degree or certificate granting public or private college or university, junior college, or community college located in this state.

(b) “Textbook” includes a text published in electronic media that is used for instructional purposes.

390.1543 Availability of textbook in electronic version.

Sec. 3. Upon request, a publisher of a textbook that is adopted for instructional use at a college or university shall furnish the college or university with an electronic version of the textbook if the textbook is for a literary subject or, for a textbook for a nonliterary subject, if the technology is available to convert the textbook directly to a format compatible with braille translation software. A publisher shall not charge a price for this electronic version that exceeds the price it charges for the print or electronic media version of the textbook.

This act is ordered to take immediate effect.

Approved November 7, 2003.

Filed with Secretary of State November 10, 2003.

[No. 198]**(HB 4311)**

AN ACT to provide insurance to farm produce producers against losses from the failure of grain dealers; to establish a farm produce insurance authority; to prescribe the powers and duties of the authority and its board; to establish a farm produce insurance fund; to provide for assessments on grain dealers; to prescribe certain powers and duties of certain state agencies and officers; to authorize the promulgation of rules; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

285.311 Short title.

Sec. 1. This act shall be known and may be cited as the “farm produce insurance act”.

285.313 Definitions.

Sec. 3. As used in this act:

(a) “Acknowledgment form” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(b) “Administrative expenses” means the costs described in section 9(2).

(c) “Authority” means the farm produce insurance authority created in section 5.

(d) “Board” means the board of directors of the authority described in section 7.

(e) “Claimant” means a producer who makes a claim for reimbursement from the fund under section 15.

(f) “Department” means the department of agriculture.

(g) “Depositor” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(h) “Director” means the director of the department or his or her designee.

(i) “Failure” of a licensee or grain dealer means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(j) “Farm produce” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(k) “Farm produce insurance program” or “program” means the program for reimbursement of claims described in this act.

(l) “Financial institution” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(m) “Financial loss” means the loss to a producer who is not paid in full for farm produce that the producer sold to a grain dealer and delivered under the terms of the sales contract, after deducting any outstanding charges against the farm produce.

(n) “Fund” means the farm produce insurance fund created in section 9.

(o) “Grain dealer” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(p) “Grain dealers act” means the grain dealers act, 1939 PA 141, MCL 285.61 to 285.88.

(q) “Licensee” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(r) “Net proceeds” means the sale price of farm produce, less usual and customary charges and costs of sale of the farm produce.

(s) “Participant” means a producer that has contributed to the fund and never requested a refund from the fund or a producer who has reentered the program under section 13(5).

(t) “Person” means an individual, corporation, limited liability company, partnership, association, cooperative organization, or other legal entity.

(u) “Price later agreement” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(v) “Producer” means a person that owns, rents, leases, or operates a farm on land and who has an interest in and receives all or any part of the proceeds from the sale in Michigan of farm produce produced from the land to a grain dealer licensed under the grain dealers act.

(w) “Producer premium” means the amount of money charged to and collected from a producer under section 11.

(x) “Sale” means transfer of title.

(y) “Storage loss” means a loss to a depositor resulting from the failure of a licensee that has not fully satisfied its storage obligation to the depositor, net of any outstanding charges against the farm produce.

(z) “Valid claim” means a claim arising from a failure of a licensee that occurs after the effective date of this act, is found valid by the department, and is approved by the board, less all credits and offsets associated with farm produce sold by a producer to the licensee.

(aa) “Warehouse receipt” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

285.315 Farm produce insurance authority; creation; powers, duties, and functions.

Sec. 5. The farm produce insurance authority is created as a public body corporate and politic. The authority is within, but not a part of, the department. The authority shall exercise its prescribed statutory powers, duties, and functions independently of the director, the department, and the commission of agriculture. The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the board.

285.317 Board of directors; membership; terms; vacancy; quorum; meetings; notice; waiver of objection; duties; powers; compensation; inspection of books and records.

Sec. 7. (1) A board of directors shall govern and administer the authority. The board shall consist of the following 9 members:

(a) The director, or his or her designee, is a nonvoting member and the chairperson and secretary of the board. This member shall not receive per diem or other compensation or reimbursement for expenses for serving on the board.

(b) One nonvoting member appointed by the governor with the advice and consent of the senate, from recommendations received from the largest Michigan organization representing the interests of licensees in Michigan, as determined by the director.

(c) Three voting members appointed by the governor with the advice and consent of the senate for staggered terms, from recommendations received from the largest Michigan organization representing general farm interests in Michigan, as determined by the director. Only a producer is eligible for appointment under this subdivision. For the first board, the governor shall appoint 1 voting member appointed under this subdivision for a term of 1 year, 1 voting member for a term of 2 years, and 1 voting member for a term of 3 years.

(d) One voting member appointed by the governor with the advice and consent of the senate, from recommendations received from the largest Michigan organization exclusively representing the interests of corn producers in Michigan, as determined by the director. Only a producer is eligible for appointment under this subdivision.

(e) One voting member appointed by the governor with the advice and consent of the senate, from recommendations received from the largest Michigan organization exclusively representing the interests of soybean producers in Michigan, as determined by the director. Only a producer is eligible for appointment under this subdivision.

(f) One voting member appointed by the governor with the consent and advice of the senate, from recommendations received from the largest Michigan organization exclusively representing dry bean producers in Michigan, as determined by the director. Only a producer is eligible for appointment under this subdivision.

(g) One voting member appointed by the governor with the advice and consent of the senate, from recommendations received from the largest Michigan organization representing the interests of agricultural lenders in Michigan, as determined by the director.

(2) Except as provided in subsection (1)(b) and (c) for the first board, each member of the board appointed by the governor shall serve for a 3-year term and may be reappointed for 1 or more additional terms. The governor may remove a member appointed by the governor from the board for good cause.

(3) The governor shall fill a vacancy on the board for an unexpired term for the remainder of the term and in the same manner as an original appointment. A vacancy does not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(4) Four voting members constitute a quorum. The affirmative vote of 4 or more voting members is necessary for an action of the board other than adjournment of a meeting of the board. An adjournment of a meeting of the board requires a vote of a majority of voting members present at the meeting and voting.

(5) The board shall hold an annual meeting and at least 1 additional meeting each calendar year. The secretary of the board shall provide written notice of each meeting to the members of the board at least 5 days before the meeting.

(6) A member of the board may waive any notice required by this section, before or after the date and time stated in the notice, in writing and delivered, mailed, or electronically transmitted to the authority for inclusion in the minutes or filing with the records of the authority.

(7) A board member's attendance at a meeting waives any objection to any of the following:

(a) No notice or a defective notice of a meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(b) Consideration of any particular matter at a meeting that is not within the purpose or purposes described in the notice, unless the member objects to considering the matter when it is presented.

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

(a) Elect from among its members a vice-chairperson and treasurer.

(b) Create forms, and establish policies and procedures to implement this act.

(c) Establish the amount of the producer premium under section 11.

(d) Collect and deposit all producer premiums authorized under this act into the fund.

(e) Take any legal action it considers necessary to compel a failed licensee to repay the fund for any payment made from the fund to a claimant for a valid claim against that licensee.

(f) Take any legal action it considers necessary to compel a claimant to participate in any legal proceeding in relation to the claim or the failure of a licensee.

(g) Within 5 business days of receiving notice of failure of a licensee, publish notice of the failure in a manner described in the grain dealers act.

(h) Request the services of the department or arrange for legal services through the department of attorney general if the board considered it necessary in the execution of its duties.

(i) Procure insurance against any loss in connection with its operations, in amounts and from insurers as determined by the board.

(j) Borrow money from a bank, an insurance company, an investment company, or any other person, and pay or include in the loan any financing charges or interest, consultant, advisory, or legal fees, and other expenses the board determines are appropriate in connection with the loan. Any loan contract must provide for a term of not more than 40 years, allow prepayment without penalty, and plainly state that the loan is not a debt of this state but the sole obligation of the authority, payable solely from the fund or from any appropriation from this state made to the authority for repayment of the loan.

(k) Employ personnel as required in the judgment of the board and fix and pay compensation from money available to the authority from the administrative expenses account described in section 9(2).

(l) Make, execute, and carry out any contract, agreement, or other instrument or document with a governmental department or other person it determines is necessary or convenient to accomplish the purposes of this act.

(m) If requested by the director and approved by the board, make payment from the fund to compensate a claimant for a valid claim.

(9) The board may do any of the following:

(a) Establish policies and procedures in connection with the performance of the functions and duties of the authority.

(b) Adopt a policy establishing a code of ethics for its employees and board members, consistent with 1973 PA 196, MCL 15.341 to 15.348.

(c) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and deposit them in the fund and agree to and comply with any conditions attached to them.

(10) A voting member may receive per diem compensation and mileage reimbursement for attending meetings of the board or while engaged in the performance of his or her duties on behalf of the authority, in amounts established by the board, and may receive reimbursement for other expenses approved by the board. The amounts established by the board shall not exceed the maximum commission of agriculture rates for per diem compensation and mileage reimbursement. A voting member shall not receive any other compensation for serving on the board or for services performed for the authority.

(11) The department shall inspect the books and records of a licensee during normal business hours to verify whether the licensee is complying with the provisions of this act.

285.318 Conduct of business at public meetings; public notice; disclosure of information.

Sec. 8. (1) The board shall conduct its business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall give public notice of a time, date, and place of any meeting in the manner required by that act.

(2) Subject to section 11(6), any information submitted to the board by any person that is not related to the amount of a claim is confidential and is not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that disclosure of that information may be made in any of the following circumstances:

(a) With the written consent of the person that submitted the information.

(b) Pursuant to a court proceeding.

(c) The disclosure is made to the director or an agent or employee of the department.

(d) The disclosure is made to an agent or employee of a state or the federal government authorized by law to see or review the information.

(e) The information is disclosed in the form of an information summary or profile, or as part of a statistical study that includes data on more than 1 person, that does not identify the person to whom any specific information applies.

(f) The information sought relates solely to the amount of 1 or more claims paid from the fund.

285.319 Farm produce insurance fund; establishment; payments; allocation for administrative expenses; payment for legal services and expenses; investment officer; manner of investment; establishment of fiscal year.

Sec. 9. (1) The farm produce insurance fund is established under the direction and control of the board. The fund shall consist of producer premiums, money from any other source, and interest and earnings from any other source. The board shall direct payments from the fund only for the following purposes:

- (a) Payment of valid claims under section 15.
- (b) Payment of producer premium refunds under section 13.
- (c) Payment of administrative expenses under subsection (2).
- (d) Payment of legal fees and legal expenses under subsection (3).

(2) The board shall allocate money from the fund to a separate administrative expenses account to pay administrative expenses. This allocation shall not exceed \$250,000.00 in any fiscal year. Administrative expenses under this subsection include the actual cost of processing refunds of producer premiums, enforcement, record keeping, ordinary management and investment fees connected with the operation of the fund, verification cost under section 11(5), and any other expenses approved by the board. Administrative expenses do not include legal fees and legal expenses described in subsection (3).

(3) For legal services requested by the board, the board shall pay for any legal services and legal expenses required by the authority, board, or fund from money in the fund. Legal services and expenses described in this subsection are not administrative expenses and shall not be paid from the administrative expenses account.

(4) The treasurer of the board shall act as the investment officer of the fund and shall invest or direct a financial institution to invest the money in the fund that is not currently needed to meet the obligations of the fund. The treasurer of the board shall invest or direct the investment of the money only in the manner permitted in section 1 of 1943 PA 20, MCL 129.91. Interest and earnings shall be credited to the fund.

- (5) The fund shall operate on a fiscal year established by the board.

285.321 Producer premium; limitation; payment; deduction from proceeds; notice to producer; forwarding for deposit into fund; manner of notice; retention of books and records; availability for inspection or verification; disclosure; certification of amount of money in fund.

Sec. 11. (1) Except as provided in this section, beginning January 1, 2005, each producer shall pay to the authority a producer premium of not more than 0.2% of the net proceeds from all farm produce sold by the producer to a licensee in this state. If the farm produce is sold to a licensee, the licensee shall deduct the producer premium from the proceeds of sale and pay the premium to the authority on behalf of the producer as provided in subsection (3).

(2) A producer premium imposed under this section is in addition to any other fees or assessments required by law.

(3) Beginning January 1, 2005, when purchasing farm produce from a producer, a licensee or its agent or representative shall deduct the producer premium described in subsection (1) from the proceeds of sale and notify the producer of the amount of the deduction in writing. The licensee shall forward the producer premium to the authority for deposit into the fund on behalf of the producer within 30 days of the close of each quarter of the fiscal year. Until the authority has received \$5,000,000.00 in producer premiums

under this act from licensees, a licensee that forwards producer premiums it has collected to the authority within the time period described in this subsection may retain 0.1% of the producer premiums collected.

(4) Before January 1, 2005, the department by first-class mail shall notify each licensee of the requirements of subsection (3).

(5) A licensee shall clearly indicate in its books and records the individual producer premiums collected by the licensee under subsection (3) and retain those books and records for at least 3 years. A licensee shall make the portion of the books and records of the licensee reflecting the premiums collected available for inspection by the director during regular business hours. The department shall take steps reasonably necessary to verify the accuracy of the portion of the licensee's books and records that reflect the premiums collected. The board shall reimburse the department for the costs related to the verification from the fund as an administrative expense under section 9(2).

(6) The director shall require that a licensee make its books and records available to the department for the inspection or verification described in subsection (5). Financial information submitted to the department or the authority by a licensee for purposes of this subsection and subsection (5) is confidential and is not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that disclosure of financial information may be made in any of the following circumstances:

(a) With the written consent of the licensee.

(b) Pursuant to a court proceeding.

(c) The disclosure is made to the director or an agent or employee of the department.

(d) The disclosure is made to an agent or employee of a state or the federal government authorized by law to see or review the information.

(e) The information is disclosed in the form of an information summary or profile, or as part of a statistical study that includes data on more than 1 grain dealer, that does not identify the grain dealer to whom any specific information applies.

(7) At each annual meeting, the board shall certify the amount of money in the fund at the end of the preceding fiscal year. A producer shall continue to pay and a licensee shall continue to collect producer premiums until the board certifies that the fund contained more than \$5,000,000.00 at the end of the preceding fiscal year. In any fiscal year where the board has certified that the fund contained more than \$5,000,000.00 at the end of the preceding fiscal year, a producer is not required to pay and a licensee is not required to collect producer premiums until 1 of the following occurs:

(a) The board certifies that the fund contained less than \$3,000,000.00 at the end of the preceding fiscal year. In any year where the board has certified that the fund contained less than \$3,000,000.00 at the end of the preceding fiscal year, the obligation of each producer to pay and each licensee to collect producer premiums is reinstated.

(b) The obligation of each producer to pay and each licensee to collect producer premiums is reinstated in any fiscal year in which all of the following are met:

(i) The board certifies that the fund contained at least \$3,000,000.00 at the end of the preceding fiscal year.

(ii) The board is aware of a failure of a licensee.

(iii) As determined by the board, the amount required to satisfy valid claims equals or exceeds the amount of money in the fund.

285.323 Producer premium; refund.

Sec. 13. (1) Subject to subsection (7), a producer that has paid, either directly or collected by a licensee, a producer premium may receive a refund of the producer premium from the fund by submitting a written demand for refund to the board, delivered personally or by first-class mail within 12 months after the producer paid the producer premium, or within a longer period granted by the board if it determines that good cause for an extension exists.

(2) A producer shall submit a demand for refund under subsection (1) on a demand for refund form developed by the board. The board shall make the form available to a licensee, producer, or member of the public upon request.

(3) If a producer is entitled to a refund of a producer premium under this section, the board shall pay the refund within 60 days of its receipt of the demand for refund.

(4) If producer premiums were assessed in the immediately preceding calendar year, the board shall by January 31 send a notice to each producer who requested a refund of a producer premium in any previous calendar year. The notice must inform the producer of the deadline for and method of submitting a demand for refund to the board under subsections (1) and (2) and the method for reentering the program under subsection (5).

(5) A producer that receives a refund of a producer premium under subsection (1) is not entitled to participation in the program or to receive any payment under this act unless it reenters the farm produce insurance program by meeting all of the following conditions:

(a) The producer submits a request for reentry into the farm produce insurance program to the board. The producer shall submit the request in the form required by the board and shall deliver the request to the board by hand or by certified mail, return receipt requested.

(b) The board reviews the producer's request for reentry and approves the request.

(c) The producer pays into the fund all previous producer premiums refunded to the producer, and interest on the refunds as determined by the board.

(6) Beginning 90 days after the reentry, a producer that reenters the farm produce insurance program under subsection (5) is eligible for reimbursement of claims under the program.

(7) A producer is not eligible for a refund of a producer premium under this section if the producer has received reimbursement from the fund for a valid claim within the preceding 36 months.

285.325 Claim for reimbursement.

Sec. 15. (1) A producer that meets both of the following may submit a claim for reimbursement from the fund under this section:

(a) The producer is a participant at the time the producer submits the claim.

(b) The producer satisfies 1 of the following conditions:

(i) The producer possesses written evidence of ownership of farm produce that discloses a storage obligation of a licensee that has failed, including, but not limited to, a warehouse receipt, acknowledgment form, or settlement sheet.

(ii) The producer has surrendered warehouse receipts as part of a sale of farm produce to a licensee that failed not more than 21 days after the surrender of the warehouse receipts and the producer surrendering the warehouse receipts was not fully paid for the farm produce.

(iii) The producer possesses written evidence of the delivery and sale of farm produce or transfer of price later farm produce to a failed licensee, including, but not limited to, an acknowledgment form, settlement sheet, price later agreement, or similar farm produce delivery contract, but the grain dealer did not pay the producer in full for the farm produce.

(2) If the department finds a claim made under subsection (1) is valid and the board approves of the valid claim, the board shall within 90 days of the board's approval pay the claimant the amount described in subsection (3) or (4) from the fund as compensation for the claim. The 90-day time period for payment may be extended if the board and claimant agree in a writing that describes the payment terms and schedule.

(3) A claimant that incurs a storage loss due to the failure of a licensee is entitled to payment under subsection (2) in an amount equal to 100% of the storage loss, less any producer premium that would have been due on the sale of the farm produce. The department shall determine the gross amount of the storage loss based upon local market prices on the date of failure. The department may consider any evidence submitted by the failed licensee or any claimants concerning the actual charges associated with stored farm produce.

(4) A claimant that incurs a financial loss due to the failure of a licensee is entitled to payment under subsection (2) in an amount equal to 90% of the financial loss. For farm produce that is sold in a transaction subject to the grain dealers act, the department shall determine the amount of the financial loss based on the value of the farm produce less any outstanding charges against the farm produce. If the farm produce has not been priced, the department shall establish the amount of the financial loss using the local market on the date of failure less any usual and customary charges associated with the sale of farm produce.

(5) A claim under subsection (2) of this section is valid only if it is made within 1 year after notice of the failure of the licensee is published in a newspaper of general circulation in each county in which a facility of the licensee is located.

(6) The board may require a claimant paid under this section for a valid claim to subrogate to the board or authority all the claimant's rights to collect on any bond issued under the grain dealers act or the United States warehouse act, 7 USC 241 to 273, and the claimant's rights to any other compensation arising from the failure of the licensee. If required to subrogate under this subsection, the claimant shall assign the claimant's interest in any judgment concerning the failure to the board or authority.

(7) The board shall deny the payment of a valid claim under this section if the board determines any of the following are met:

(a) The claimant as payee fails to present for payment a negotiable instrument issued as payment for farm produce within 90 days after the date the negotiable instrument is tendered to the claimant as payment for farm produce purchased by the licensee.

(b) The claimant has engaged in marketing practices that have substantially contributed to the claimant's loss. The authority may consider whether the marketing practices are generally accepted marketing practices in this state in making its determination.

(c) The claimant has intentionally committed a fraud or violated this act in connection with the claim.

(8) If the department determines that a failure of a licensee has occurred, the board shall do all of the following:

(a) Determine the valid claims against the licensee and the amount of the valid claims.

(b) Authorize payment of money from the fund when necessary to pay claimants for valid claims as provided in this section.

(c) Deposit into the fund any proceeds of the remaining farm produce assets of a failed licensee to repay the fund for money paid to claimants, subject to any priority lien right a holder of a mortgage, security interest, or other encumbrance may possess under any applicable law. The board shall not deposit into the fund an amount in excess of the sum of the principal amount of valid claims paid to claimants, plus interest for the period from the date a claimant was paid for a valid claim to the date that the remaining farm produce assets were received by the board under this subsection, at a per annum rate equal to the auction rate of 91-day discount treasury bills on the date the claimant was paid.

(d) If the amount in the fund and any amount the board borrows under subsection (9)(b) are insufficient to pay all valid claims, pay the amount available for payment proportionately among the valid claims approved by the board and pay the prorated amount to those claimants.

(9) If the department determines that a failure of a licensee has occurred, the board may do any of the following:

(a) Pursue any subrogation rights obtained from claimants under subsection (6).

(b) If the fund has insufficient money to pay the valid claims, borrow money as authorized under section 7(8)(j) for the payment of valid claims.

285.327 Use of money; severability; audit.

Sec. 17. (1) The board shall use money in the fund only for a purpose described in section 9(1). This section is not severable from the whole of this act, and if any portion of this section is held invalid, it is the manifest intent of the legislature that this act as a whole shall be held invalid and the money remaining in the fund distributed to producers in proportion to the amount of producer premiums each producer has paid to the authority.

(2) All expenditures from the fund shall be audited by a certified public accountant at least annually. Within 30 days after completion of the audit, the certified public accountant shall give copies of the audit to the director and the other members of the board. The board shall publish an activity and financial report annually and make it available to the public on request.

285.329 Action by director or department; defenses.

Sec. 19. (1) This act does not limit the authority of the director or department to take action against a licensee under the grain dealers act for a violation of the grain dealers act or the rules of the department.

(2) It is not a defense to an action by the director or department against a licensee under the grain dealers act for a violation of that act that the grain dealer has fulfilled its obligations under this act.

285.331 Acts as misdemeanor; penalties; enforcement action.

Sec. 21. (1) A person that knowingly or intentionally commits any of the following is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 for each offense:

(a) Refusing or failing to collect producer premiums as required under this act.

(b) Refusing or failing to pay to the authority producer premiums collected under this act.

(c) Making a false statement, representation, or certification, or knowingly failing to make a required statement, representation, or certification, in a record, report, or other document the person files with the director, department, board, or authority, or that the person is required to file with the director, department, board, or authority, under this act.

(d) Resisting, preventing, impeding, or interfering with the director, agents or employees of the department, the board, or agents or employees of the authority or board in the performance of their duties under this act.

(2) In addition to the criminal penalty described in subsection (1), the court in an enforcement action for a violation described in subsection (1)(a) or (b) shall order the grain dealer to pay to the fund any producer premiums collected by the grain dealer that it owes to the fund and may order the grain dealer to pay interest on the amount the grain dealer owes to the fund.

Repeal of MCL 285.211 to 285.219.

Enacting section 1. The Michigan agricultural commodity insurance act, 1988 PA 366, MCL 285.211 to 285.219, is repealed.

This act is ordered to take immediate effect.

Approved November 7, 2003.

Filed with Secretary of State November 10, 2003.

[No. 199]

(HB 4872)

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 section 4 (MCL 207.774), as amended by 2002 PA 608.

The People of the State of Michigan enact:

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.

(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.

This act is ordered to take immediate effect.

Approved November 14, 2003.

Filed with Secretary of State November 14, 2003.

[No. 200]**(HB 5050)**

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” by amending section 4072 (MCL 500.4072), as amended by 2002 PA 635.

The People of the State of Michigan enact:

500.4072 Standard nonforfeiture law for individual deferred annuities.

Sec. 4072. (1) This section shall be known as the standard nonforfeiture law for individual deferred annuities.

(2) This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer,

including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, premium deposit fund, variable annuity, investment annuity, immediate annuity, a deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to a contract delivered outside this state through an agent or other representative of the company issuing the contract.

(3) Except as provided in subsection (2), a contract of annuity shall not be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the commissioner's opinion are at least as favorable to the contract holder, upon cessation of payment of consideration under the contract:

(a) That upon cessation of payment of consideration under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of a value specified in subsections (8), (9), (10), (11), and (13).

(b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company shall pay in place of any paid-up annuity benefit, a cash surrender benefit of an amount specified in subsections (8), (9), (11), and (13). The company may reserve the right to defer the payment of the cash surrender benefit for a period of 6 months after demand for the payment with surrender of the contract if the company makes a written request to the commissioner showing the necessity and equitability to all policyholders of the deferral and the commissioner gives written approval.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits.

(d) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by law of the state in which the contract is delivered, and an explanation of the manner in which the benefits are altered by the existence of additional amounts credited by the company to the contract, indebtedness to the company on the contract, or prior withdrawals from or partial surrenders of the contract.

(4) Notwithstanding the requirements of subsection (3), a deferred annuity contract may provide that if considerations have not been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before this period would be less than \$20.00 monthly, the company may at its option terminate the contract by payment in cash of the then present value of that portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit. This payment shall relieve the company of further obligation under the contract.

(5) The minimum values as specified in subsections (8), (9), (10), (11), and (13) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon the following:

(a) Until January 1, 2005 for contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of 1.5% per annum of percentages of the net considerations, as defined in subdivision (c), paid before

that time, decreased by the sum of subparagraphs (i) and (ii), and increased by any existing additional amounts credited by the company to the contract:

(i) Prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 1.5% per annum.

(ii) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest as provided in subsection (6) of the net considerations, as defined in subdivision (c), paid before that time, decreased by the sum of subparagraphs (i) to (iv):

(i) Prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as provided in subsection (6).

(ii) An annual contract charge of \$50.00, accumulated at rates of interest as provided in subsection (6).

(iii) Any premium tax paid by the company for the contract, accumulated at rates of interest as provided in subsection (6).

(iv) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(c) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to 87.5% of the gross considerations credited to the contract during that contract year.

(6) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of 3% per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) The 5-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest 1/20 of 1%, specified in the contract no longer than 15 months before the contract issue date or redetermination date under subdivision (d).

(b) Reduced by 125 basis points.

(c) Where the resulting interest rate is not less than 1%.

(d) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. As used in this subdivision, "basis" means the date or average over a specified period that produces the value of the 5-year constant maturity treasury rate to be used at each redetermination date.

(7) During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may provide for an increase in the reduction described in subsection (6)(b) of up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date after the issue date, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit and, if the demonstration is unacceptable, may disallow or limit the additional reduction. The commissioner may adopt rules to implement this subsection and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

(8) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. This present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(9) For contracts that provide cash surrender benefits, the cash surrender benefits available before maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid before the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract. The present value shall be calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. However, a cash surrender benefit shall not be less than the minimum nonforfeiture amount at that time. The death benefit under contracts that provide cash surrender benefits shall be at least equal to the cash surrender benefit. Until January 1, 2005, as used in this subsection, “maturity value” means an accumulation up to the maturity date at the rate of interest guaranteed in the contract for accumulating the net considerations to determine the maturity value, but in no event less than 1.5% per annum, of the percentages of the net considerations, as defined in subsection (5), paid before that time, decreased by the sum of prior withdrawals from or partial surrenders of the contract accumulated at the rate of interest guaranteed in the contract for accumulating net considerations to determine the maturity value but in no event less than 1.5% per annum and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by excess interest previously credited by the company to the contract. As used in this subsection, the excess interest is the amount credited over and above the guaranteed interest.

(10) For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time before maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity. The present value shall be calculated for the period before the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any additional amounts credited by the company to the contract. For contracts that do not provide death benefits before the commencement of annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, the present value of a paid-up annuity benefit shall not be less than the minimum nonforfeiture amount at that time.

(11) In determining the benefits calculated under subsections (9) and (10), for annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be considered to be the latest date for which election shall be permitted by the contract, but shall not be later than the anniversary of the contract next following the annuitant’s seventieth birthday, or the tenth anniversary of the contract, whichever is later.

(12) A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

(13) Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under a contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(14) For a contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding subsections (8), (9), (10), (11), and (13), additional benefits payable for total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of the additional benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

(15) Until January 1, 2005, an insurer may elect to proceed under subsection (5)(a) or (b). On and after January 1, 2005, an insurer shall proceed under subsection (5)(b).

This act is ordered to take immediate effect.

Approved November 14, 2003.

Filed with Secretary of State November 14, 2003.

[No. 201]

(HB 5133)

AN ACT to amend 1941 PA 122, entitled "An act to establish the revenue collection duties of the department of treasury; to prescribe its powers and duties as the revenue collection agency of the state; to prescribe certain powers and duties of the state treasurer; to regulate the importation, stamping, and disposition of certain tobacco products; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals of taxes and tax liability; to prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; and to declare the effect of this act," by amending section 24 (MCL 205.24), as amended by 2002 PA 657.