

(b) The resolution is conditioned upon the board's adopting, within a period of time specified in the resolution, amendments to the agreement specified in the resolution. The amendments specified shall reflect the addition of the municipality or of the territory to the district and shall include, but need not be limited to, changes in board representation or the percentage of funds necessary for the establishment and operation of the district library to be supplied by each participating municipality after the municipality becomes a party to the agreement.

(c) The board amends the agreement within the time and in the manner specified in the resolution of the legislative body of the municipality. Notwithstanding anything to the contrary in the procedure for amending the agreement set forth in the agreement pursuant to section 4, the amendment shall be made by majority vote of the members of the board elected or appointed and serving.

(2) If there is a districtwide library tax, the board shall condition acceptance of the municipality or portion of the territory of the municipality into the district on the authorization of that tax by a majority of the electors of the municipality or portion of the territory of the municipality voting on the proposal.

(3) Notwithstanding section 13 or a districtwide tax or taxes authorized by section 13, an existing district library agreement may change the number of mills authorized in the existing district library agreement if 1 or more municipalities or parts of municipalities join the existing district library district through a preexisting written agreement with the district library board. The change of the number of mills to be levied in the district library district shall be contingent on the approval by a majority of the voters of the existing district library district voting on the question and on the approval of a majority of the voters of each municipality or part of a municipality seeking to join the existing library district voting on the question. Defeat of the proposal submitted to the electors of the existing district library district shall not have any effect on the validity of the continued levy by the existing district library and district library board of previously authorized millage.

Repeal of MCL 397.195a.

Enacting section 1. Section 25a of the district library establishment act, 1989 PA 24, MCL 397.195a, is repealed.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 280]

(SB 258)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 120a (MCL 750.120a), as amended by 2000 PA 450.

The People of the State of Michigan enact:

750.120a Willfully attempting to influence juror by intimidation or other improper means; retaliating against person for having performed duties as juror; penalties.

Sec. 120a. (1) A person who willfully attempts to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) A person who willfully attempts to influence the decision of a juror in any case by intimidation, other than as part of the proceedings in open court in the trial of the case, is guilty of a crime as follows:

(a) Except as provided in subdivisions (b) and (c), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(b) If the intimidation is committed in a criminal case for which the maximum term of imprisonment for the violation is more than 10 years, or the violation is punishable by imprisonment for life or any term of years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both.

(c) If the intimidation involved committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$25,000.00, or both.

(3) Subsections (1) and (2) do not prohibit any deliberating juror from attempting to influence other members of the same jury by any proper means.

(4) A person who retaliates, attempts to retaliate, or threatens to retaliate against another person for having performed his or her duties as a juror is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both. As used in this subsection, "retaliate" means any of the following:

(a) Committing or attempting to commit a crime against any person.

(b) Threatening to kill or injure any person or threatening to cause property damage.

(5) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law including any violation of law arising out of the same transaction as the violation of this section.

(6) The court may order a term of imprisonment imposed for violating subsection (2) or (4) to be served consecutively to a term of imprisonment imposed for any other violation of law including any violation of law arising out of the same transaction as the violation of this section.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 281]

(SB 881)

AN ACT to amend 1973 PA 139, entitled "An act to provide forms of county government; to provide for county managers and county executives and to prescribe their

powers and duties; to abolish certain departments, boards, commissions, and authorities; to provide for transfer of certain powers and functions; to prescribe powers of a board of county commissioners and elected officials; to provide organization of administrative functions; to transfer property; to retain ordinances and laws not inconsistent with this act; to provide methods for abolition of a unified form of county government; and to prescribe penalties and provide remedies,” by amending section 9 (MCL 45.559), as amended by 1980 PA 100, and by adding section 9a.

The People of the State of Michigan enact:

45.559 County executive; nomination, election, and term; vacancy; salary.

Sec. 9. (1) A county executive who is a qualified elector in the county shall be elected on a partisan basis for a term of 4 years concurrent with the term of the county prosecuting attorney, county clerk, county register of deeds, county treasurer, county sheriff, elected county auditors, and county drain commissioner. If a county executive is elected at an election different than the election for county officers, his or her first term shall extend only until the January following the election for county officers.

(2) The first county executive may be nominated in the same or next primary or general election held after the election in which alternate B is approved. The county executive shall then be elected in the next regular primary or general election occurring not less than 30 days nor more than 90 days after the date of the election in which alternate B is approved or in which he or she was nominated. If a primary or general election is not scheduled during that period, the board of county commissioners shall call a special election to elect a county executive. The county executive shall be nominated and elected pursuant to the laws applicable to the nomination and election of other county officials.

(3) If the first election of a county executive is a special election for that purpose only, and only 1 candidate for each political party qualifies to have his or her name appear on the primary ballot, a primary election shall not be held, and the candidate qualifying shall be certified as the nominee of the political party for which he or she filed.

(4) Except as provided under section 9a, if the office of elected county executive becomes vacant due to resignation or death, the vacancy shall be filled by appointment of the board of county commissioners until the next general election. A new county executive shall be elected at the next general election after the resignation or death of a county executive and in the manner provided in this section for the election of county executives. The newly elected county executive shall serve a term equal to the balance of the term for which the county executive who resigned or died was elected.

(5) The salary of the county executive for the initial term shall be established by the board of county commissioners at least 6 months before the effective date of the optional unified form of county government, containing alternate B. The salary shall be established by the board consistent with the procedures established for other elected officials. The county executive's salary shall be commensurate with the duties and responsibilities of the office. The salary of a county executive shall not be reduced during his or her term of office except as part of a general salary reduction.

45.559a Death or resignation of elected county executive; successor.

Sec. 9a. (1) For counties with a population of more than 1,000,000, if a vacancy occurs in the office of the elected county executive due to death or resignation of the elected county executive, the chief deputy shall take the constitutional oath of office and serve as

the county executive until the county board of commissioners appoints a successor to the elected county executive or until a special election is held as provided by law.

(2) If the county board of commissioners elects to appoint a successor, the appointment shall be made no later than 30 days from the date of the death or resignation. A county executive appointed by the county board of commissioners shall serve until the next general election. If the county board of commissioners does not make an appointment within the required 30 days under this subsection, a special election shall be held at the earliest possible date allowed by law.

(3) If the chief deputy is unable to serve as the county executive due to death or resignation of the chief deputy, the next highest ranking deputy shall take the constitutional oath of office and serve as the county executive until the county board of commissioners appoints a successor as provided under subsection (1) or until a special election is held as provided by law.

(4) A new county executive shall be elected at the next general election after the death or resignation of a county executive as provided in section 9 for the election of county executives. The newly elected county executive shall serve a term equal to the balance of the term for which the county executive who died or resigned was elected.

(5) Within 10 days after being sworn in, the county executive shall appoint a chief deputy. The county executive may also appoint additional deputies whom he or she considers necessary to perform the functions and duties of the office of elected county executive.

(6) The county executive shall file a statement with the county clerk identifying the individual appointed as chief deputy and all other individuals appointed as a deputy or assistant deputy. The statement shall also identify the ranking order of the deputies.

(7) If the county executive is absent or unable to perform the duties of his or her office, the chief deputy shall perform the duties of the county executive until such time that the elected county executive can resume the duties of his or her office.

(8) The county executive may revoke his or her appointments at any time.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 282]

(SB 771)

AN ACT to amend 1990 PA 72, entitled "An act to provide for review, management, planning, and control of the financial operation of units of local government, including school districts; to provide criteria to be used in determining the financial condition of a local government; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state boards, agencies, and officials, and officials and employees of units of local government; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency financial manager; to require the development of financial plans to regulate expenditures and investments by a local government in a state of financial emergency; to set forth the conditions for termination of a local government

financial emergency; and to repeal certain acts and parts of acts,” by amending section 21 (MCL 141.1221), as amended by 2002 PA 408.

The People of the State of Michigan enact:

141.1221 Additional actions by emergency financial manager.

Sec. 21. (1) An emergency financial manager may take 1 or more of the following additional actions with respect to a unit of local government in which a financial emergency has been determined to exist:

(a) Analyze factors and circumstances contributing to the financial condition of the unit of local government and recommend steps to be taken to correct the condition.

(b) Amend, revise, approve, or disapprove the budget of the unit of local government, and limit the total amount appropriated or expended during the balance of the financial emergency.

(c) Require and approve or disapprove, or amend or revise a plan for paying all outstanding obligations of the unit of local government.

(d) Require and prescribe the form of special reports to be made by the finance officer of the unit of local government to its governing body, the creditors of the unit of local government, the emergency financial manager, or the public.

(e) Examine all records and books of account, and require under the procedures of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55, or both, the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the unit of local government.

(f) Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in a permanent position by any appointing authority.

(g) Review payrolls or other claims against the unit of local government before payment.

(h) Exercise all of the authority of the unit of local government to renegotiate existing labor contracts and act as an agent of the unit of local government in collective bargaining with employees or representatives and approve any contract or agreement.

(i) Notwithstanding the provisions of any charter to the contrary, consolidate departments of the unit of local government or transfer functions from 1 department to another and to appoint, supervise, and, at his or her discretion, remove heads of departments other than elected officials, the clerk of the unit of local government, and any ombudsman position in the unit of local government.

(j) Employ or contract for, at the expense of the unit of local government and with the approval of the local emergency financial assistance loan board, auditors and other technical personnel considered necessary to implement this article.

(k) Require compliance with the orders of the emergency financial manager by court action if necessary.

(l) Except as restricted by charter or otherwise, sell or otherwise use the assets of the unit of local government to meet past or current obligations, provided the use of assets for this purpose does not endanger the public health, safety, or welfare of residents of the unit of local government.

(m) Apply for a loan from the state on behalf of the unit of local government, subject to the conditions of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to

141.942, in a sufficient amount to pay the expenses of the emergency financial manager and for other lawful purposes.

(n) Approve or disapprove of the issuance of obligations of the unit of local government on behalf of the municipality, subject to the conditions of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, and the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(o) Enter into agreements with other units of local government for the provision of services.

(p) Exercise the authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions affecting the financial condition of the unit of local government as provided in the following acts:

(i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(ii) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20.

(iii) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(iv) 1851 PA 156, MCL 46.1 to 46.32.

(v) 1966 PA 293, MCL 45.501 to 45.521.

(vi) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.

(vii) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28.

(q) Reduce, suspend, or eliminate the salary, or other compensation of the chief administrative officer and members of the governing body of the unit of local government during the financial emergency. This subdivision does not authorize an emergency financial manager to impair vested retirement benefits. If an emergency financial manager has reduced, suspended, or eliminated the salary or other compensation of the chief administrative officer and members of the governing body of a unit of local government before the effective date of the amendatory act that added this subdivision, the reduction, suspension, or elimination is valid to the same extent had it occurred after the effective date of the amendatory act that added this subdivision.

(2) If a financial emergency exists under the local government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to 141.1291, the emergency financial manager shall make a determination as to whether possible criminal conduct contributed to the financial emergency. If the manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation. The determination required under this subsection shall be made by 1 of the following dates, whichever is later:

(a) Within 90 days after the effective date of the amendatory act that added this subsection.

(b) Within 180 days after the date the emergency financial manager is appointed.

(3) Not later than 90 days after the completion of the emergency financial manager's term, the governing body of the unit of local government shall review any ordinance implemented by the emergency financial manager during his or her term, except any ordinance enacted to assure the payment of principal and interest on bonds.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 283]**(SB 718)**

AN ACT to amend 1996 PA 381, entitled “An act to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans relating to the designation and treatment of brownfield redevelopment zones; to promote the revitalization of environmentally distressed areas; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing,” by amending section 15 (MCL 125.2665), as amended by 2002 PA 727.

The People of the State of Michigan enact:

125.2665 Prohibited conduct; work plan or remedial action plan; documents to be submitted for approval; factors to be considered in plan review; written request pertaining to baseline environmental assessment activities or due care activities; additional response activities; reimbursement of costs to review work plan or remedial action plan; report; distribution of remaining funds.

Sec. 15. (1) An authority shall not do any of the following:

(a) For eligible activities not described in section 13(15), use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the eligible property are eligible activities under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan or remedial action plan approved by the department after July 24, 1996 and before January 1, 2008.

(b) For eligible activities not described in section 13(15), use funds from a local site remediation revolving fund that are derived from taxes levied for school operating purposes unless the eligible activities to be conducted are eligible activities under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan or remedial action plan that has been approved by the department after July 24, 1996.

(c) Use funds from a local site remediation revolving fund created pursuant to section 8 that are derived from taxes levied for school operating purposes for the eligible activities described in section 13(15) unless the eligible activities to be conducted are consistent with a work plan approved by the Michigan economic growth authority.

(d) Use taxes captured from eligible property to pay for eligible activities conducted before approval of the brownfield plan except for costs described in section 13(16).

(e) Use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party liable under section 20126 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20126, except that a municipality that established the authority, for taxes levied after 2004, may use taxes levied for school operating purposes captured from eligible property for response activities associated with a landfill.

(f) Use taxes captured from eligible property to pay for administrative and operating activities of the authority or the municipality on behalf of the authority except for costs described in section 13(16) and for the reasonable costs for preparing a work plan or

remedial action plan for the eligible property, including the actual cost of the review of the work plan or remedial action plan under this section.

(2) To seek department approval of a work plan under subsection (1)(a) or (b) or remedial action plan, the authority shall submit all of the following for each eligible property:

(a) A copy of the brownfield plan.

(b) Current ownership information for each eligible property and a summary of available information on proposed future ownership, including the amount of any delinquent taxes, interest, and penalties that may be due.

(c) A summary of available information on the historical and current use of each eligible property, including a brief summary of site conditions and what is known about environmental contamination as that term is defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(d) Existing and proposed future zoning for each eligible property.

(e) A brief summary of the proposed redevelopment and future use for each eligible property.

(f) A separate work plan or remedial action plan, or part of a work plan or remedial action plan, for each eligible activity to be undertaken.

(3) Upon receipt of a request for approval of a work plan or remedial action plan under subsection (2) that pertains to baseline environmental assessment activities or due care activities, or both, or a portion of a work plan or remedial action plan that pertains to only baseline environmental assessment activities or due care activities, or both, the department shall provide 1 of the following written responses to the requesting authority within 60 days:

(a) An unconditional approval.

(b) A conditional approval that delineates specific necessary modifications to the work plan or remedial action plan, including, but not limited to, individual activities to be added or deleted from the work plan or remedial action plan and revision of costs.

(c) If the work plan or remedial action plan lacks sufficient information for the department to respond under subdivision (a) or (b), a letter stating with specificity the necessary additions or changes to the work plan or remedial action plan to be submitted before a plan will be considered by the department.

(4) In its review of a work plan or remedial action plan, the department shall consider all of the following:

(a) Whether the individual activities included in the work plan or remedial action plan are sufficient to complete the eligible activity.

(b) Whether each individual activity included in the work plan or remedial action plan is required to complete the eligible activity.

(c) Whether the cost for each individual activity is reasonable.

(5) If the department fails to provide a written response under subsection (3) within 60 days after receipt of a request for approval of a work plan or remedial action plan that pertains to baseline environmental assessment activities or due care activities, or both, the authority may proceed with the baseline environmental assessment activities or due care activities, or both, as outlined in the work plan or remedial action plan as submitted for approval. Except as provided in subsection (6), baseline environmental assessment activities or due care activities, or both, conducted pursuant to a work plan or remedial action plan that was submitted to the department for approval but for which the department failed to provide a written response under subsection (3) shall be considered approved for the purposes of subsection (1).

(6) The department may issue a written response to a work plan or remedial action plan that pertains to baseline environmental assessment activities or due care activities, or both, more than 60 days but less than 6 months after receipt of a request for approval. If the department issues a written response under this subsection, the authority is not required to conduct individual activities that are in addition to the individual activities included in the work plan or remedial action plan as it was submitted for approval and failure to conduct these additional activities shall not affect the authority's ability to capture taxes under subsection (1) for the eligible activities described in the work plan or remedial action plan initially submitted under subsection (5). In addition, at the option of the authority, these additional individual activities shall be considered part of the work plan or remedial action plan of the authority and approved for purposes of subsection (1). However, any response by the department under this subsection that identifies additional individual activities that must be carried out to satisfy the baseline environmental assessment or due care requirements, or both, of part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, must be satisfactorily completed for the baseline environmental assessment or due care activities, or both, to be considered acceptable for the purposes of compliance with part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

(7) If the department issues a written response under subsection (6) to a work plan or remedial action plan that pertains to baseline environmental assessment activities or due care activities, or both, and if the department's written response modifies an individual activity proposed by the work plan or remedial action plan of the authority in a manner that reduces or eliminates a proposed response activity, the authority must complete those individual activities included in the baseline environmental assessment or due care activities, or both, in accordance with the department's response in order for that portion of the work plan or remedial action plan to be considered approved for purposes of subsection (1), unless 1 or more of the following conditions apply:

(a) Obligations for the individual activity have been issued by the authority, or by a municipality on behalf of the authority, to fund the individual activity prior to issuance of the department's response.

(b) The individual activity has commenced or payment for the work has been irrevocably obligated prior to issuance of the department's response.

(8) It shall be in the sole discretion of an authority to propose to undertake additional response activities at an eligible property under a brownfield plan. The department shall not require a work plan or remedial action plan for either baseline environmental assessment activities or due care activities, or both, to include additional response activities.

(9) The department may reject the portion of a work plan or remedial action plan that includes additional response activities and may consider the level of risk reduction that will be accomplished by the additional response activities in determining whether to approve or reject the work plan or remedial action plan or a portion of a plan.

(10) The department's approval or rejection of a work plan under subsection (1)(a) or (b) or remedial action plan for additional response activities is final.

(11) The authority shall reimburse the department for the actual cost incurred by the department or a contractor of the department to review a work plan under subsection (1)(a) or (b) or remedial action plan under this section. Funds paid to the department under this subsection shall be deposited in the cost recovery subaccount of the cleanup and redevelopment fund created under section 20108 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20108.

(12) The department shall submit a report each year on or before March 1 to each member of the legislature that contains all of the following:

(a) A compilation and summary of all the information submitted under subsection (2).

(b) The amount of revenue this state would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.

(c) The amount of revenue each local governmental unit would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.

(13) To seek Michigan economic growth authority approval of a work plan under subsection (1)(c) or section 13(15), the authority shall submit all of the following for each eligible property:

(a) A copy of the brownfield plan.

(b) Current ownership information for each eligible property and a summary of available information on proposed future ownership, including the amount of any delinquent taxes, interest, and penalties that may be due.

(c) A summary of available information on the historical and current use of each eligible property.

(d) Existing and proposed future zoning for each eligible property.

(e) A brief summary of the proposed redevelopment and future use for each eligible property.

(f) A separate work plan, or part of a work plan, for each eligible activity described in section 13(15) to be undertaken.

(g) A copy of the development agreement required under section 13(15), which shall include, but is not limited to, a detailed summary of any and all ownership interests, monetary considerations, fees, revenue and cost sharing, charges, or other financial arrangements or other consideration between the parties.

(14) Upon receipt of a request for approval of a work plan, the Michigan economic growth authority shall provide 1 of the following written responses to the requesting authority within 65 days:

(a) An unconditional approval that includes an enumeration of eligible activities and a maximum allowable capture amount.

(b) A conditional approval that delineates specific necessary modifications to the work plan, including, but not limited to, individual activities to be added or deleted from the work plan and revision of costs.

(c) A denial and a letter stating with specificity the reason for the denial. If a work plan is denied under this subsection, the work plan may be subsequently resubmitted.

(15) In its review of a work plan under subsection (1)(c) or section 13(15), the Michigan economic growth authority shall consider the following criteria to the extent reasonably applicable to the type of activities proposed as part of that work plan when approving or denying a work plan:

(a) Whether the individual activities included in the work plan are sufficient to complete the eligible activity.

(b) Whether each individual activity included in the work plan is required to complete the eligible activity.

(c) Whether the cost for each individual activity is reasonable.

(d) The overall benefit to the public.

- (e) The extent of reuse of vacant buildings and redevelopment of blighted property.
- (f) Creation of jobs.
- (g) Whether the eligible property is in an area of high unemployment.
- (h) The level and extent of contamination alleviated by or in connection with the eligible activities.
 - (i) The level of private sector contribution.
 - (j) The cost gap that exists between the site and a similar greenfield site as determined by the Michigan economic growth authority.
 - (k) If the developer or projected occupant of the new development is moving from another location in this state, whether the move will create a brownfield.
 - (l) Whether the financial statements of the developer, landowner, or corporate entity indicate that the developer, landowner, or corporate entity is financially sound and that the project of the developer, landowner, or corporate entity that is included in the work plan is economically sound.
 - (m) Other state and local incentives available to the developer, landowner, or corporate entity for the project of the developer, landowner, or corporate entity that is included in the work plan.
 - (n) Any other criteria that the Michigan economic growth authority considers appropriate for the determination of eligibility or for approval of the work plan.
- (16) If the Michigan economic growth authority fails to provide a written response under subsection (14) within 65 days after receipt of a request for approval of a work plan, the eligible activities shall be considered approved and the authority may proceed with the eligible activities described in section 13(15) as outlined in the work plan as submitted for approval.
- (17) The Michigan economic growth authority's approval of a work plan under section 13(15) is final.
- (18) The authority shall reimburse the Michigan economic growth authority for the actual cost incurred by the Michigan economic growth authority or a contractor of the Michigan economic growth authority to review a work plan under this section.
- (19) The Michigan economic growth authority shall submit a report each year on or before March 1 to each member of the legislature that contains all of the following:
 - (a) A compilation and summary of all the information submitted under subsection (13).
 - (b) The amount of revenue this state would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.
 - (c) The amount of revenue each local governmental unit would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.
- (20) All taxes levied for school operating purposes that are not used for eligible activities consistent with a work plan approved by the department or the Michigan economic growth authority and that are not deposited in a local site remediation revolving fund shall be distributed proportionately between the local school district and the school aid fund.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 284]**(SB 845)**

AN ACT to amend 1954 PA 116, entitled “An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act,” by amending section 686 (MCL 168.686), as amended by 1999 PA 216.

The People of the State of Michigan enact:

168.686 State convention; canvass of returns; certification of nominees; presidential and vice-presidential candidates.

Sec. 686. Within 24 hours after the conclusion of the state convention before a general election, the state central committee of each political party shall canvass the proceedings of the convention and determine the nominees of the convention. Not more than 1 business day after the state convention, the chairperson and secretary of the state central committee shall forward to the secretary of state, a typewritten or printed list of the names and residence, including the street address if known, of all candidates nominated at the state convention. In each presidential election year, the state central committee of each political party shall, not more than 1 business day after the state convention or the national convention of that party, whichever is later, forward to the secretary of state the typewritten or printed names of the candidates of that party for the offices of president of the United States and vice-president of the United States certified to by the chairperson and secretary of the committees. A party is not required to certify nominations made at an official primary election. The secretary of state shall forward a copy of a list received under this section to the board of election commissioners of each county, in care of the county clerk at the county seat.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 285]**(HB 5221)**

AN ACT to amend 1993 PA 327, entitled “An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to

provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; and to repeal acts and parts of acts,” (MCL 205.421 to 205.436) by amending the title, as amended by 1997 PA 187, and by adding section 6d.

The People of the State of Michigan enact:

TITLE

An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to levy an assessment; to provide for the administration, collection, defense, and disposition of the assessment; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; and to repeal acts and parts of acts.

205.426d Sale of cigarettes by nonparticipating manufacturer; information to be provided to department; payment of equity assessment; prepayment; stamp; prohibited conduct; publication of list of compliant nonparticipating manufacturers; seizure or confiscation; violation; service of process; brand previously sold; audit or review; definitions.

Sec. 6d. (1) Before commencing sales of cigarettes in this state, a nonparticipating manufacturer shall provide to the department the information described in subsection (3) and shall pay the equity assessment as provided in subsections (4) and (5).

(2) A nonparticipating manufacturer selling cigarettes in this state on the effective date of the amendatory act that added this subsection shall provide to the department the information described in subsection (3) and pay the equity assessment as provided in subsections (4) and (5) within 30 days after the effective date of the amendatory act that added this subsection. If a nonparticipating manufacturer is not selling cigarettes in this state on the effective date of the amendatory act that added this subsection, before selling cigarettes in this state, the nonparticipating manufacturer shall pay the equity assessment imposed under subsections (4) and (5) for all cigarettes that are anticipated to be sold in the current calendar year as described in subsection (5).

(3) A nonparticipating manufacturer shall provide to the department on a form prescribed by the department the following information:

(a) The complete name, address, and telephone number of the nonparticipating manufacturer.

(b) The date that the nonparticipating manufacturer intends to begin or began selling cigarettes in this state.

(c) The brand names of the cigarettes the nonparticipating manufacturer will sell or is selling in this state.

(d) A statement of the nonparticipating manufacturer's intention to comply with its escrow obligation under 1999 PA 244, MCL 445.2051 to 445.2052, obligations under section 6c, and the obligations in this section.

(e) The name, address, and telephone number of the resident agent of the nonparticipating manufacturer.

(f) The name, address, telephone number, and signature of an officer of the nonparticipating manufacturer attesting to all of the information described in this subsection.

(4) An equity assessment in the amount of 17.5 mills per cigarette is imposed upon all cigarettes sold by a nonparticipating manufacturer in this state. The purpose of the equity assessment is to fund enforcement and administration of 1999 PA 244, MCL 445.2051 to 445.2052, and this act. The equity assessment is in addition to all other fees, assessments, and taxes levied by law. The equity assessment shall be collected by the department from each nonparticipating manufacturer selling cigarettes in this state. The equity assessment shall be collected and reconciled by April 15 of each year for cigarettes sold in the previous calendar year. The department shall credit a nonparticipating manufacturer with any prepayment made by the nonparticipating manufacturer pursuant to subsection (5) for that calendar year.

(5) Except as provided in subsection (2), a nonparticipating manufacturer selling cigarettes in this state shall prepay the equity assessment imposed in subsection (4) not later than March 1 for all cigarettes that are anticipated to be sold in the current calendar year. The prepayment amount shall be determined by multiplying 17.5 mills times the number of cigarettes that the department reasonably determines that the nonparticipating manufacturer will sell in this state in the current calendar year or \$10,000.00, whichever is more. The department may require a nonparticipating manufacturer to provide any information reasonably necessary to determine the equity assessment prepayment amount. Not later than February 15 of each year, the department shall notify the nonparticipating manufacturer of the amount of the prepayment due for the current year. The department shall increase the equity assessment prepayment amount during the year if the increase is justified by the nonparticipating manufacturer's actual sales of cigarettes.

(6) A stamping agent shall not affix to any package of cigarettes or shipping container of roll-your-own tobacco of a nonparticipating manufacturer the stamp required under this act unless the nonparticipating manufacturer is listed on the department website as provided in subsection (9) or after receiving notice that the nonparticipating manufacturer has not prepaid or paid in full the equity assessment imposed under this section. A stamping agent that violates this subsection is subject to the penalties described in section 5. If a stamping agent intentionally and knowingly violates this subsection, the department may seize or confiscate any cigarettes in the stamping agent's possession that were stamped in violation of this subsection. Seizure, confiscation, forfeiture, and sale of cigarettes shall be accomplished under section 9.

(7) A nonparticipating manufacturer that does not provide the information required under subsection (3) or pay the equity assessment required by this section shall not make a sale of cigarettes in this state to any person for sale, distribution, or consumption in this state.

(8) A person shall not purchase, acquire, possess, or sell cigarettes acquired from or manufactured by a nonparticipating manufacturer that has not provided the information required under subsection (3) or made the payment of the equity assessment required by this section.

(9) The department shall maintain and regularly update a list of nonparticipating manufacturers that have complied with the requirements of this section. The department shall publish the list on its website and provide a copy of the list to a person upon request.

(10) Ninety days after the department posts on its website and provides wholesalers and unclassified acquirers notice that a nonparticipating manufacturer is in violation of subsection (1) or (2), the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by that nonparticipating manufacturer. Seizure, confiscation, forfeiture, and sale of cigarettes under this section shall be accomplished under section 9.

(11) The department may impose on any person a civil fine not to exceed \$1,000.00 for each violation of this section. The civil fine is in addition to all other fines or penalties imposed by this act or 1941 PA 122, MCL 205.1 to 205.31.

(12) A nonparticipating manufacturer shall appoint and continually engage a resident agent for service of process. That service shall constitute legal and valid service of process on the nonparticipating manufacturer.

(13) For purposes of this section, a nonparticipating manufacturer that intends to sell or is selling a brand of cigarettes in or into this state is presumed to be the same manufacturer that previously sold that same brand in or into the state, unless the nonparticipating manufacturer can prove that the 2 manufacturers are not affiliated. A nonparticipating manufacturer shall not be authorized to sell in or into this state a cigarette brand that was previously sold in or into this state by another nonparticipating manufacturer if that other nonparticipating manufacturer did not escrow the entire amount due under 1999 PA 244, MCL 445.2051 to 445.2052, or pay the equity assessment due under this section.

(14) The department shall conduct an audit or review of nonparticipating manufacturers to ensure compliance with this section.

(15) As used in this section:

(a) "Cigarette" means that term as defined in 1999 PA 244, MCL 445.2051 to 445.2052.

(b) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes the first purchaser of cigarettes manufactured outside the United States for resale in the United States.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 286]

(SB 781)

AN ACT to amend 1999 PA 244, entitled "An act to require tobacco product manufacturers to place funds in escrow for medical expenses incurred by the state due to tobacco related illnesses; to establish a formula for determining the amount of the escrow; to establish the conditions for release of funds from escrow; to prescribe powers and duties of the attorney general; and to provide for civil penalties for violation of this act," by amending section 2 (MCL 445.2052).

The People of the State of Michigan enact:

445.2052 Tobacco product manufacturer; duties; placement of funds into escrow account; release; circumstances; certification of compliance; violation; applicability of subsection (2); severability.

Sec. 2. (1) Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the date of enactment of this act shall do 1 of the following:

(a) Become a participating manufacturer and generally perform its financial obligations under the master settlement agreement.

(b) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(i) 1999: \$.0094241 per unit sold after the date of enactment of this act.

(ii) 2000: \$.0104712 per unit sold.

(iii) For each of 2001 and 2002: \$.0136125 per unit sold.

(iv) For each of 2003 through 2006: \$.0167539 per unit sold.

(v) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) shall receive the interest or other appreciation on the funds as earned. The funds themselves shall be released from escrow only under 1 or more of the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement.

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(c) To the extent not released from escrow under subdivision (a) or (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(d) If a court of competent jurisdiction determines that subdivision (b) as amended by the amendatory act that added this subdivision is unconstitutional, subdivision (b) does not apply.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) shall annually certify to the department of treasury that it is in compliance with this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to

place into escrow the funds required under this section shall be subject to all of the following that are applicable:

(a) Shall be required within 15 days to place sufficient funds into escrow to bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

(b) In the case of a knowing violation, shall be required within 15 days to place sufficient funds into escrow to bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of this state in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow.

(c) In the case of a second knowing violation, shall be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

(4) For purposes of subsection (3), each failure to make an annual deposit required under subsection (1)(b) shall constitute a separate violation.

(5) If, following a court determination described in subsection (2)(d), a court of competent jurisdiction determines that subsection (2) without subsection (2)(b) is unconstitutional, then this subsection applies. A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) shall receive the interest or other appreciation on the funds as earned. The funds themselves shall be released from escrow only under 1 or more of the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement.

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of the master settlement agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(c) To the extent not released from escrow under subdivision (a) or (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(6) If this act or any portion of the amendatory act that added this subsection is held by a court of competent jurisdiction to be unconstitutional, the remaining portions of this act shall continue in full force and effect.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 287]**(HB 5265)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 19703 (MCL 324.19703), as added by 2002 PA 397.

The People of the State of Michigan enact:

324.19703 Bonds generally.

Sec. 19703. (1) Subject to subsection (2), the bonds shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued pursuant to this section shall not be counted against the limitation on principal amount provided in the Great Lakes water quality bond authorization act.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part. The state administrative board may authorize and approve an interest rate exchange or swap, hedge, or similar agreement in connection with the issuance of bonds under this part, payable from the same source as the bonds.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

- (a) Sell and deliver and receive payment for the bonds.
- (b) Deliver bonds partly to refund bonds and partly for other authorized purposes.
- (c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.
- (d) Buy issued bonds.

(e) Approve interest rates or methods for determining interest rates, including fixed or variable rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment

dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(g) Determine the details of, execute, deliver, and pay the cost of any interest rate exchange or swap, hedge, or similar agreement.

(h) Pledge all or any portion of the strategic water quality initiatives fund created in section 5204 to secure bonds issued or to be issued by the Michigan municipal bond authority created in section 4 of the shared credit rating act, 1985 PA 227, MCL 141.1054, for the purpose of funding loans under the strategic water quality initiatives loan program under part 52.

(5) The bonds shall not be subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Issuance of the bonds shall be subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(6) The bonds or any series of the bonds shall be sold at public or private sale at such price or may be issued and deposited directly into the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, or the strategic water quality initiatives fund created in section 5204, as determined by or pursuant to a resolution of the state administrative board.

(7) Not more than 20% of the bonds shall be issued in any year. The first bond issuance shall be structured in such a manner that debt payments do not begin before October 1, 2003. In making the determination to issue these bonds, the department shall consider the availability of the workforce to conduct the activities authorized by this part, in order to ensure a competitive bidding process.

This act is ordered to take immediate effect.
Approved January 8, 2004.
Filed with Secretary of State January 8, 2004.

[No. 288]

(HB 4786)

AN ACT to amend 1978 PA 90, entitled “An act to provide for the legal employment and protection of minors; to provide for the issuance and revocation of work permits; to provide for the regulation of hours and conditions of employment of minors; to prescribe powers and duties of the departments of labor and education; to provide for the enforcement of this act; to prescribe penalties; and to repeal certain acts and parts of acts,” by amending section 19 (MCL 409.119).

The People of the State of Michigan enact:

409.119 Exemptions generally; hours of work.

Sec. 19. (1) This act shall not apply to or prohibit a minor from engaging in any of the following activities:

(a) Domestic work or chores in connection with a private residence.

(b) Soliciting, distributing, selling, or offering for sale newspapers, magazines, periodicals, political, or advertising matter.

(c) Shoe shining.

(d) Services performed as a member of a recognized youth oriented organization that is engaged in citizenship training and character building, if the services are not intended to replace employees in occupations for which workers are ordinarily paid.

(e) Employment in a business owned and operated by the parent or guardian of the minor. For the purposes of this subdivision, a business is considered to be owned by the parent or guardian of the minor if the parent or guardian is either the sole owner, partner, or stockholder in the business and a business is considered to be operated by the parent or guardian of the minor if he or she devotes substantially all of his or her working hours to the operation of the business.

(f) Farm work if the employment is not in violation of a standard established by the department of labor and economic growth. Farm work means the work activity designated in sector 11 - agriculture, forestry, fishing, and hunting, of the North American industry classification system - United States, 1997, published by the office of management and budget. Farm work includes any practices performed on a farm as an incident to or in conjunction with farming operations, including preparation for market and delivery to storage, market, or carriers for transport to market.

(g) Employment by a school, academy, or college in which the minor is enrolled if the minor is 14 years old or older.

(h) Nonhazardous construction work or operations performed as an unpaid volunteer, if the construction work or operations are performed under adult supervision for a charitable housing organization. As used in this subdivision:

(i) "Charitable housing organization" means a nonprofit charitable organization the primary purpose of which is the construction or renovation of residential housing for low-income individuals.

(ii) "Family income" and "statewide median gross income" mean those terms as defined in section 11 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1411.

(iii) "Low-income person" means a person with a family income of not more than 60% of the statewide median gross income.

(iv) "Nonhazardous construction work or operations" means construction work or operations that are performed at a construction site of a new or renovated single family home and do not involve the use of power tools, woodworking machinery, or hazardous substances or other activities that would constitute a great risk of serious injury. Activities that would constitute a great risk of serious injury include, but are not limited to, all of the following:

(A) Excavation.

(B) Highway, bridge, or street construction.

(C) Wrecking.

(D) Demolition.

(E) New commercial or new multiple residential construction.

(2) If a minor is required by law to attend school, the work may only be performed outside of school hours, unless the minor is enrolled and employed under a work-related educational program.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 289]**(HB 5172)**

AN ACT to amend 1968 PA 251, entitled “An act to regulate the creation and management of cemeteries; to regulate the sale of cemetery services and merchandise; to provide for a cemetery commissioner, and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to regulate persons selling burial, entombment, or columbarium rights, cemetery services, or cemetery merchandise; and to prescribe penalties,” by amending section 9 (MCL 456.529), as amended by 2002 PA 550.

The People of the State of Michigan enact:

456.529 Commissioner; hearings; oaths; testimony; witnesses; production of books and records; subpoena; violation of act, rule, or order; cease and desist order; assurance of discontinuance; action to enforce compliance; injunction or restraining order; appointment of receiver or conservator; bond not required; denial of application; suspension or revocation of permit or registration; “municipal corporation” defined.

Sec. 9. (1) The commissioner may hold hearings, administer oaths, take testimony under oath, and request in writing the appearance and testimony of witnesses, including the production of books and records. Upon the refusal of a witness to appear, testify, or submit books and records after a written request, the commissioner or a party to a contested case may apply to the circuit court for Ingham county for a subpoena or a subpoena duces tecum. The court shall issue a subpoena when reasonable grounds are shown.

(2) When it appears to the commissioner that a person or registrant has violated this act or a rule promulgated or order issued under this act, the commissioner may do 1 or more of the following:

(a) Issue a cease and desist order.

(b) Accept an assurance of discontinuance.

(c) Bring an action in the circuit court for the county in which the person resides or in the circuit court for the county of Ingham, to enforce compliance with this act or a rule promulgated or order issued under this act.

(3) Upon a proper showing regarding an action brought under subsection (2)(c), a permanent or temporary injunction or a restraining order may be granted and a receiver or conservator may be appointed by the court. A receiver or conservator appointed by the court may take possession of the assets and may sell, assign, transfer, or convey the cemetery, including a cemetery in receivership on the July 26, 2002 date of the amendatory act that amended this subsection, to a municipal corporation or other person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, under conditions prescribed by the court, in order to discharge outstanding contractual obligations. The court may allow the receiver or conservator to file for protection under the bankruptcy code.

(4) In the order of sale of the cemetery, the court shall make provision for notice to creditors and the filing of claims against the receivership or conservatorship. Any remaining funds held by the cemetery in escrow under this act belong to the contract buyers or beneficiaries of the contract buyers and shall not be distributed to the general

creditors of the cemetery. This section does not prohibit the court from allowing the sale of the cemetery to a person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment or municipal corporation.

(5) In addition to an action taken under this section, the commissioner may deny an application or may suspend or revoke a permit or registration after a hearing as set forth in this act.

(6) As used in this section, “municipal corporation” means that term as defined in section 1 of 1927 PA 10, MCL 456.181.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 290]

(HB 4299)

AN ACT to amend 1911 PA 235, entitled “An act to provide for the payment and reimbursement by counties, in certain cases upon application therefor, of expenses incurred in the burial of the bodies of honorably discharged members of the armed forces of the United States, or their spouses, and to repeal certain acts or parts of acts,” by amending section 1 (MCL 35.801).

The People of the State of Michigan enact:

35.801 Veterans’ burial expenses; payment by county; application; definitions.

Sec. 1. (1) Except as otherwise provided under subsection (2), if an honorably discharged member of the armed forces of the United States who served for a period of not less than 90 days of active service, or who is discharged under honorable conditions after serving less than 90 days of active service because of a service-connected disability, during a period of time in which the United States was at war or during the Vietnam conflict, or the spouse or surviving spouse of a member of the armed forces of the United States, dies possessed of an estate, both real and personal, not exceeding the sum of \$25,000.00, over and above all encumbrances and was a resident of the state at the time of death and a resident of the state for a period of 6 months before entering the service or for a period of 3 years immediately before death, the county board of commissioners or the board of county auditors, upon application by the executor or administrator of the estate of the deceased person, or by the person who incurred or advanced expenses in connection with the burial of the honorably discharged member of the armed forces, or the spouse of the honorably discharged member of the armed forces, shall pay to the estate of the deceased person, or to the person who incurred or advanced the burial expense, the sum of \$300.00. If the investigation provided for in section 2 shows that the deceased did not leave a dependent surviving, but did leave an estate sufficient to meet lawful claims, including burial expenses, then the county board of commissioners or the board of county

auditors shall not pay the expenses. The application shall be submitted within 2 years after the date of death of the deceased person.

(2) On the effective date of the amendatory act that added this subsection, the estate limit provided for under subsection (1) shall be \$40,000.00. This subsection does not apply to a county if the county board of commissioners passes a resolution by majority vote that exempts the county from the requirements of this subsection.

(3) If a county makes an election under subsection (2), the county shall file a copy of the resolution with the department of management and budget. The department of management and budget shall report not less than annually to the legislature which counties, if any, have made an election under subsection (2).

(4) As used in this act, “service” includes service in the armed forces of the United States in a place of emergency, as described in section 1 of 1965 PA 190, MCL 35.61, when ordered to do so by the government of the United States.

(5) As used in this section:

(a) “Estate” means the ownership of real or personal property at the time of death, the title to which was held either in the sole name of the decedent or by the entireties, tenancy in common, or joint tenancy with the spouse, child, or parent of the decedent, but does not include real property owned by the decedent as the homestead of the decedent.

(b) “Homestead” means a dwelling or a unit in a multiple unit dwelling and includes a mobile home or trailer coach.

Effective date.

Enacting section 1. This amendatory act takes effect 30 days after the date this amendatory act is enacted.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 291]

(HB 5022)

AN ACT to amend 1951 PA 33, entitled “An act to provide police and fire protection for townships and for certain areas in townships, certain incorporated villages, and cities under 15,000 population; to authorize contracting for fire and police protection; to authorize the purchase of fire and police equipment, and the maintenance and operation of the equipment; to provide for defraying the cost of the equipment; to authorize the creation of special assessment districts and the levying and collecting of special assessments; to authorize the issuance of special assessment bonds in anticipation of the collection of special assessments and the advancement of the amount necessary to pay such bonds, and to provide for reimbursement for such advances by reassessment if necessary; to authorize the collection of fees for certain emergency services in townships and other municipalities; to authorize the creation of administrative boards and to prescribe their powers and duties; to provide for the appointment of traffic officers and to prescribe their powers and duties; and to repeal certain acts and parts of acts,” by amending section 12 (MCL 41.812), as added by 1989 PA 81.

The People of the State of Michigan enact:

41.812 Administrative board; appointment, qualifications, and terms of members; vacancy; expenses; continuation of prior administrative board; annual budget; powers and functions; section supplemental.

Sec. 12. (1) The township board may create a police administrative board, a fire administrative board, or a police and fire administrative board. The board shall consist of 5 members, who shall be appointed by the township board for terms of 6 years each. Of the members first appointed, 2 shall be appointed for terms expiring on June 30 of the even numbered year following the creation of the board, 2 shall be appointed for terms expiring on June 30 of the second year following the expiration of the terms of the first 2 members, and 1 member shall be appointed for a term expiring June 30 of the fourth year following the expiration of the terms of the first 2 members. If a vacancy occurs, the township board shall appoint a person to fill the unexpired term.

(2) A member of the board shall not be a member of the police or fire department of the township.

(3) The members of the board may be compensated a per diem as determined by the township board and are entitled to actual and necessary expenses approved by the township board incurred in the performance of official duties.

(4) A police administrative board, a fire administrative board, or a police and fire administrative board created under former 1951 PA 57 shall be continued under this act.

(5) An administrative board created under this section shall prepare an annual police department budget or fire department budget, or both, to be submitted to the township board. The budget shall be reviewed by the township board and may be amended or altered in any manner. Upon adoption by the township board, the budget shall be the budget of the administrative board for the ensuing fiscal year of the township.

(6) The administrative board created under this section shall have the powers and perform the functions that the township board delegates to the administrative board.

(7) This section is supplemental to the other laws of this state.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 292]

(SB 535)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 80115 (MCL 324.80115), as added by 1995 PA 58.

The People of the State of Michigan enact:

324.80115 Disposition of revenues; marine safety fund; appropriation; fees.

Sec. 80115. (1) The revenue received under this part shall be deposited in the state treasury. The revenue division, department of treasury, shall annually present to the department an accurate total of all the revenues collected, and shall then, except as provided in section 80124b, credit the revenues collected to the following funds:

- (a) 17.5% to the Michigan state waterways fund created in section 78110.
- (b) 33.5% to the Michigan harbor development fund created in section 78110.
- (c) 49% to the marine safety fund created in subsection (2).

(2) The marine safety fund is created as a separate fund in the state treasury. The legislature shall appropriate from the marine safety fund for water safety education programs and for the administration and enforcement of this part, including state aid to counties, and for no other purpose, but not in excess of revenues credited to the marine safety fund. Fees provided for in section 80124 shall not be appropriated for the inspection of vessels that carry passengers for hire and are regulated under part 445.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) Senate Bill No. 536.
- (b) House Bill No. 4914.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

Compiler's note: Senate Bill No. 536, referred to in enacting section 1, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 293, Imd. Eff. Jan. 8, 2004.

House Bill No. 4914, also referred to in enacting section 1, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 294, Imd. Eff. Jan. 8, 2004.

[No. 293]

(SB 536)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 80124a.

The People of the State of Michigan enact:

324.80124a Great Lakes protection specialty watercraft decal.

Sec. 80124a. (1) Subject to subsection (4), the secretary of state shall make available for purchase an annual Great Lakes protection specialty watercraft decal. The Great Lakes

protection specialty watercraft decal shall be designed by the secretary of state and shall depict some aspect of the Great Lakes or of Great Lakes water quality.

(2) The Great Lakes protection specialty watercraft decal shall be sold for \$35.00. Revenues from the sale of Great Lakes specialty watercraft decals shall be expended as provided for in section 80124b.

(3) The secretary of state may establish the appropriate placement of Great Lakes protection specialty watercraft decals on watercraft so as not to create confusion for law enforcement officers with decals required under section 80124.

(4) The secretary of state shall discontinue sales of Great Lakes protection specialty watercraft decals under subsection (1) if the secretary of state is unable to sell at least 2,000 decals in the fiscal year ending September 30, 2005 and at least 500 decals in each fiscal year thereafter.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) Senate Bill No. 535.
- (b) House Bill No. 4914.

This act is ordered to take immediate effect.
Approved January 8, 2004.
Filed with Secretary of State January 8, 2004.

Compiler's note: Senate Bill No. 535, referred to in enacting section 1, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 292, Imd. Eff. Jan. 8, 2004.

House Bill No. 4914, also referred to in enacting section 1, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 294, Imd. Eff. Jan. 8, 2004.

[No. 294]

(HB 4914)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 80124b.

The People of the State of Michigan enact:

324.80124b Great Lakes protection specialty watercraft decal; use of money received from sale; definitions.

Sec. 80124b. (1) Money received by the secretary of state from the sale of each Great Lakes protection specialty watercraft decal under section 80124a shall be used as follows:

- (a) \$10.00 shall be retained by the secretary of state for use in creating and distributing the decal.

(b) \$25.00 shall be forwarded to the state treasurer for deposit into the Michigan Great Lakes protection fund to be used for research on aquatic nuisance species, for public education of the threat of aquatic nuisance species, and for efforts to eradicate aquatic nuisance species from the Great Lakes and other waters of the state.

(2) As used in this section:

(a) “Aquatic nuisance species” means that term as it is defined in section 3101.

(b) “Michigan Great Lakes protection fund” means the Michigan Great Lakes protection fund created in section 32905.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

(a) Senate Bill No. 535.

(b) Senate Bill No. 536.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

Compiler's note: Senate Bill No. 535, referred to in enacting section 1, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 292, Imd. Eff. Jan. 8, 2004.

Senate Bill No. 536, also referred to in enacting section 1, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 293, Imd. Eff. Jan. 8, 2004.

[No. 295]

(HB 5322)

AN ACT to amend 1967 PA 281, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts,” (MCL 206.1 to 206.532) by adding section 270.

The People of the State of Michigan enact:

206.270 Tax credit claimed after December 1, 2009 and before January 1, 2020; definitions.

Sec. 270. (1) For tax years that begin after December 31, 2009 and before January 1, 2020, both of the following apply:

(a) A taxpayer to whom a certificate and remaining credit amount have been transferred under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, may claim that credit against the tax imposed by this act equal to the credit amount transferred.

(b) A claimant may claim a credit as provided in this section.

(2) A credit claimed under this section shall only be claimed in a tax year in which the credit under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, is not allowed against tax liability under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, or against a tax levied and imposed under a successor tax to the single business tax act, 1975 PA 228, MCL 208.1 to 208.145.

(3) A credit under this section shall be claimed only in a tax year that begins after December 31, 2009 and before January 1, 2020.

(4) The credit allowed for any tax year under subsection (1)(a) shall not exceed the amount allowed on the certificate and transferred and for the specified tax year. The credit allowed for any tax year under subsection (1)(b) shall not exceed the amount allowed on the claimant's certificate for the specified tax year.

(5) If the taxpayer's or claimant's credit allowed under this section for a tax year exceeds the taxpayer's or claimant's tax liability for the tax year, that portion of the credit that exceeds the tax liability for the tax year shall be refunded.

(6) For credits claimed under subsection (1)(a), the certificate transferred to the taxpayer and for credits claimed under subsection (1)(b), the claimant's certificate, shall be attached to the annual return under this act for the first tax year in which a credit under this section or any portion of a credit under this section is claimed.

(7) For credits allowed under subsection (1)(b), for a claimant that has no tax liability under this act for the tax year, the amount of the claim under subsection (1)(b) shall be equal to the remaining credit amount the claimant could have claimed under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, had that section been in effect for the tax year.

(8) The department shall prescribe the form for claiming the credit under subsection (1)(b), which shall be a form separate and distinct from all other forms under this act.

(9) As used in this section:

(a) "Certificate" means the certificate issued under section 23 of the Michigan early stage venture capital investment act of 2003.

(b) "Claimant" means a person to whom a certificate has been issued under section 23 of the Michigan early stage venture investment act of 2003.

(c) "Remaining credit amount" means the amount of credit allowed under a certificate but not claimed under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 834 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

[No. 296]**(SB 834)**

AN ACT to promote investment in certain businesses; to promote economic development in this state; to provide for a Michigan early stage venture investment corporation; to prescribe the powers and duties of a Michigan early stage venture investment corporation; to prescribe the powers and duties of certain public officers and departments; to establish the Michigan early stage venture investment fund and other funds; to provide for tax credits and incentives; to authorize certain investments; to provide for the expiration of the fund; to provide or allow for appropriations; and to provide penalties and remedies.

The People of the State of Michigan enact:

125.2231 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan early stage venture investment act of 2003”.

125.2232 Legislative findings; declaration.

Sec. 2. (1) The legislature finds all of the following:

(a) There exists a need to promote the economic health of this state by assisting in the creation of new jobs, new businesses, and new industries within this state and through the investment in certain businesses that focus on areas including, but not limited to, alternative energy technology, high-technology, and health care.

(b) Investing in businesses that are early stage growth companies and promoting economic growth in the state to assist the state in carrying out its essential governmental functions and as such are essential public purposes.

(c) Investments in certain businesses promote the retention of businesses and jobs that would be likely to leave the state absent the investment, revitalize and diversify the economic base of this state, generate and retain jobs and investment in this state, and help to effectuate legislative and governmental programs to promote economic growth in this state.

(d) Agreements with private corporations such as Michigan early stage venture investment corporations can assist the state by raising capital and investing that capital in venture capital firms with the intent to benefit this state’s early stage growth companies thus facilitating economic growth and development and other government programs and supporting essential public purposes.

(2) It is hereby declared that the purposes of this act are as follows:

(a) To promote a healthy economic climate in this state by fostering job creation, retention, and expansion through the promotion of investment in certain businesses.

(b) To allow the state to enter into agreements with Michigan early stage venture investment corporations to promote a healthy economic climate in this state.

125.2233 Definitions.

Sec. 3. As used in this act:

(a) “Alternative energy technology” means that term as defined in section 2(d) of the Michigan next energy authority act, 2002 PA 593, MCL 207.822.

(b) “Board” means the Michigan early stage venture investment corporation board of directors.

(c) “Conflict of interest” means a situation in which the private interest of a director, employee, or agent of the board may influence the judgment of the director, employee, or agent in the performance of his or her duties or responsibilities under this act. A conflict of interest includes, but is not limited to, the following:

(i) Any conduct that would lead a reasonable person, knowing all of the circumstances, to conclude that the director, employee, or agent of the board has an interest related to an action that the board is taking under this act.

(ii) Acceptance of compensation other than from the board for services rendered as part of the official duties as a director, employee, or agent of the board.

(iii) Participation in any business being transacted with or before the board in which the director, employee, or agent of the board or his or her spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, nephew, niece, first cousin, or second cousin or the spouse of any of the persons described in this subparagraph has a financial interest.

(d) “Equity capital” means capital invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, or any other security or rights that evidence ownership in a private business.

(e) “Fund” or “Michigan early stage venture investment fund” means the fund created in section 19.

(f) “High-technology activity” means that term as defined in section 3(g) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(g) “Investor” means an individual, firm, bank, financial institution, limited partnership, co-partnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other entity that invests in the fund.

(h) “Michigan economic development corporation” means the 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 effective April 5, 1999 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. If it is determined that the Michigan economic development corporation is unable to perform its duties under this act, those duties shall be exercised by the Michigan strategic fund.

(i) “Michigan strategic fund” means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2093.

(j) “Near-equity capital” means capital invested in unsecured, undersecured, or debt securities or subordinated or convertible loans.

(k) “Negotiated return on qualified investment” means the rate of return agreed upon for investments made by investors in the fund.

(l) “Qualified business” means a seed or early stage business that is domiciled in this state, that has its corporate headquarters in this state, or the majority of whose employees work a majority of their time at a site located in this state.

(m) “Qualified investment” means the amount of capital invested by an investor in the fund.

(n) “Seed or early stage business” means a business that is either of the following:

(i) A business that has not fully established commercial operations and may also be engaged in continued research and product development.

(ii) A business engaged in product, service, or technology development and initial manufacturing, marketing, or sales activities.

(o) “Venture capital company” means a corporation, partnership, limited liability company, or other legal entity the primary business activity of which is the investment of equity capital in businesses that focus on areas, including, but not limited to, alternative energy technology, high-technology activity, or health care.

125.2235 Incorporation as nonprofit corporation.

Sec. 5. (1) A Michigan early stage venture investment corporation is a nonprofit corporation incorporated under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, that meets the registration requirements of this act.

(2) A Michigan early stage venture investment corporation shall be incorporated as a nonprofit corporation that has received, on or before September 1, 2004, a favorable determination from the internal revenue service that the corporation is exempt from taxation under section 501(c)(3) or 501(c)(4) of the internal revenue code. The department of treasury may allow up to 3, 30-day extensions of the date under this section for purposes of reviewing and approving an application for registration under section 11.

(3) Except as otherwise provided in this act to the contrary, a Michigan early stage venture investment corporation is subject to the laws of this state that are applicable to nonprofit corporations.

(4) A Michigan early stage venture investment corporation is a charitable and benevolent institution, and its funds, income, and property are exempt from taxation by this state or any political subdivision of this state.

(5) A corporation shall not act as a Michigan early stage venture investment corporation except as authorized under this act.

125.2237 Articles of incorporation; contents.

Sec. 7. The articles of incorporation of a Michigan early stage venture investment corporation shall contain all of the following:

(a) The purposes of the corporation, which shall include, but are not limited to, all of the following:

(i) To operate and act exclusively for charitable purposes with the intent to lessen the financial burdens of the government of this state.

(ii) To receive and administer funds for the charitable purposes under subparagraph (i).

(iii) To raise capital and invest that capital in venture capital firms with the intent of benefiting Michigan’s seed or early stage businesses.

(iv) To promote the economic health of this state by assisting in the creation of new jobs, new businesses, and new industries within this state and through the investment in certain businesses.

(v) To enter into an agreement with this state to promote the economic health of this state.

(b) A provision that the Michigan early stage venture investment corporation shall be governed by a board of directors that complies with the requirements in section 13.

(c) A provision that provides that, upon dissolution of the Michigan early stage venture investment corporation, the property remaining after providing for debts and obligations of the Michigan early stage venture investment corporation shall be distributed

to an organization that qualifies either as a governmental unit under section 170(c) of the internal revenue code or is exempt from tax under section 501(c)(3) or 501(c)(4) of the internal revenue code, as designated by the board. If the board fails to designate an organization as provided in this subdivision, the property remaining shall pass to the state of Michigan. For purposes of this subdivision, property remaining after providing for debts and obligations does not include grants, appropriations, or other restricted funds that must be distributed as required by the source of those funds.

125.2239 Articles of incorporation; review by attorney general.

Sec. 9. (1) Prior to applying for registration as a Michigan early stage venture investment corporation under section 11, a nonprofit corporation shall submit its articles of incorporation and any amendments to those articles of incorporation to the attorney general for review and certification.

(2) The attorney general shall review the information submitted pursuant to subsection (1) and, if that information complies with the requirements of this act, and upon payment of a fee of \$100.00, the attorney general shall issue a certificate of compliance to the Michigan early stage venture investment corporation not later than 60 days after the initial receipt of the information.

125.2241 Filing with state treasurer.

Sec. 11. (1) To apply for registration as a Michigan early stage venture investment corporation, a nonprofit corporation shall file all of the following with the state treasurer:

(a) A copy of the articles of incorporation of the nonprofit corporation and any amendments to those articles of incorporation.

(b) The certificate of compliance issued under section 9. This subdivision does not apply if the attorney general does not issue the certificate within the time provided in section 9(2).

(c) A general plan of the proposed activities of the nonprofit corporation, including, but not limited to, evidence of the establishment by the nonprofit corporation of a restricted fund that shall be known as a Michigan early stage venture investment fund.

(d) A copy of the financial statements of the nonprofit corporation for the first fiscal year of the nonprofit corporation.

(e) A copy of the bylaws of the nonprofit corporation.

(f) Payment of a fee to the state treasurer of \$500.00.

(2) The state treasurer shall examine the documents filed under subsection (1), may conduct any investigation he or she considers necessary, may request additional oral and written information from the nonprofit corporation, and may examine under oath any persons interested in or connected with the nonprofit corporation seeking to be registered as a Michigan early stage venture investment corporation.

(3) The state treasurer shall register a nonprofit corporation as a Michigan early stage venture investment corporation if all of the following conditions are met:

(a) The documents filed under subsection (1) are in proper form.

(b) The articles of incorporation of the nonprofit corporation or any amendments to those articles of incorporation meet the requirements of section 7.

(c) The plan and proposed activities of the nonprofit corporation meet the purposes and requirements of this act.

(d) The internal revenue service has determined that the nonprofit corporation is exempt from taxation under section 501(c)(3) or 501(c)(4) of the internal revenue code.

(4) If the state treasurer registers the nonprofit corporation as a Michigan early stage venture investment corporation under this section, the state treasurer shall return to the nonprofit corporation 1 copy of its articles of incorporation and any amendments to those articles of incorporation, with a notation indicating that the nonprofit corporation is registered as a Michigan early stage venture investment corporation.

125.2243 Board of directors.

Sec. 13. (1) A Michigan early stage venture investment corporation shall be governed by a board of directors consisting of 7 directors. The directors of the board shall be appointed by the governor and, except for the state treasurer or the chief executive officer of the Michigan economic development corporation, with the advice and consent of the senate as follows:

(a) The state treasurer or his or her designee from within the department of treasury.

(b) The chief executive officer of the Michigan economic development corporation or his or her designee from within the Michigan economic development corporation.

(c) One individual appointed from a list of not fewer than 3 names recommended by the speaker of the house of representatives.

(d) One individual appointed from a list of not fewer than 3 names recommended by the majority leader of the senate.

(e) One individual appointed from a list of 1 or more names recommended by a statewide organization exempt from taxation under section 501(c)(3) or 501(c)(4) of the internal revenue code, the members of which represent more than 50% of the venture capital companies in this state and that has a common interest in stimulating an entrepreneurial environment in this state, encouraging investments in new and emerging companies in this state, and promoting venture capital investing.

(f) Two people representing the general public with the requisite knowledge and experience in finance and business investment.

(2) Each director appointed under subsection (1)(c) through (f) shall serve for a term of 3 years, except that of those directors first appointed, the director first appointed under subsection (1)(c) and 1 of the directors first appointed under subsection (1)(f) shall each be appointed for a term of 1 year, the director first appointed under subsection (1)(d) and 1 of the directors first appointed under subsection (1)(f) shall each be appointed for a term of 2 years, and the director first appointed under subsection (1)(e) shall be appointed for a term of 3 years. A vacancy on the board at the end of or during a director's term shall be filled in the same manner as the original appointment for the remainder of the unexpired term or for the new term and until a successor is appointed.

(3) A majority of all 7 directors constitute a quorum for the transaction of business at a meeting of the board. A majority vote of a quorum of the directors is required for official action of the board.

(4) Each director shall prepare and file with the board annually on or before October 1 a disclosure form in which the director discloses any potential conflict of interest under this act.

(5) A director, employee, or agent of the board shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the board in writing of the details of any incident or circumstances that may present the existence of a conflict of

interest with respect to the performance of the board-related work or duty of the director, employee, or agent of the board.

(6) A director who has a conflict of interest related to any matter before the board shall disclose the conflict of interest before the board takes any action with respect to the matter, which disclosure shall become a part of the record of the board's official proceedings. The director with the conflict of interest shall refrain from doing all of the following with respect to the matter that is the basis of the conflict of interest:

- (a) Voting in the board's proceedings related to the matter.
- (b) Participating in the board's discussion of and deliberation on the matter.
- (c) Being present at the meeting when the discussion, deliberation, and voting on the matter take place.
- (d) Discussing the matter with any other board member.

(7) Failure of a director to comply with subsection (6) constitutes misconduct in office. A director may be removed from the board for misconduct by a vote of a majority of the directors not subject to the vote under this subsection appointed and serving on the board.

(8) With respect to management of the affairs and property of the corporation, each director shall exercise the duties of a fiduciary toward the corporation and shall discharge his or her duties with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under the same or similar circumstances in a like position. In discharging his or her duties, a director, when acting in good faith, may rely upon the opinion of counsel and the advice of the fund manager. A director may be removed from the board for a breach of fiduciary duty by a vote of a majority of the directors not subject to the vote under this subsection appointed and serving on the board.

(9) A director of the board or an officer or employee of the board or Michigan early stage venture investment corporation is not subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the Michigan early stage venture investment corporation, and the board may defend and indemnify a director of the board or an officer or employee of the board or Michigan early stage venture investment corporation against liability arising out of the discharge of his or her official duties. The Michigan early stage venture investment corporation may indemnify and procure insurance indemnifying directors of the board and other officers and employees of the board or Michigan early stage venture investment corporation from personal loss or accountability for liability asserted by a person with regard to actions of the board or the failure to act by the board or Michigan early stage venture investment corporation. The Michigan early stage venture investment corporation may also purchase and maintain insurance on behalf of any person against any liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a director of the board or an officer or employee of the board or Michigan early stage venture investment corporation, whether or not the Michigan early stage venture investment corporation would have the power to indemnify the person against that liability under this subsection. The board or the Michigan early stage venture investment corporation may by a majority vote of the board obligate itself in advance to defend and indemnify persons.

125.2245 Delegation of certain acts; fund manager as fiduciary; evaluation of business and industry for investment purposes.

Sec. 15. (1) Except as otherwise provided in this act, in the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, by law, or in its articles of incorporation, a

Michigan early stage venture investment corporation may do or delegate any act consistent with this act and the purposes of the nonprofit corporation, including, but not limited to, the following:

(a) Enter into contracts and all necessary activities in the regular course of business of the Michigan early stage venture investment corporation.

(b) Charge reasonable fees for the implementation of this act and the ongoing operation of the Michigan early stage venture investment corporation.

(c) Perform acts or enter into financial or other transactions necessary to carry out its powers and duties under this act.

(d) Invest in venture capital funds through equity securities.

(e) Employ a fund manager and other persons it considers necessary to implement this act. The Michigan early stage venture investment corporation shall employ only 1 fund manager at any 1 time.

(2) The fund manager shall exercise the duties of a fiduciary toward the corporation and shall discharge his or her duties with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under the same or similar circumstances in a like position.

(3) The fund manager shall solicit investors pursuant to section 17.

(4) The Michigan early stage venture investment corporation shall require the fund manager to develop procedures to evaluate types of business and industry for investment purposes and to set priorities as to which businesses are most likely to meet the desired outcomes of the investment plan established under section 19 and which businesses conduct activities that are consistent with the purposes of this act and of the fund. This evaluation shall include, but not be limited to, the location of the firm and the direct and indirect impact of the business on the economic development of this state.

125.2247 Agreements with investors.

Sec. 17. (1) To secure investment in the fund, the Michigan early stage venture investment corporation shall enter into agreements with investors.

(2) Each agreement shall contain all of the following:

(a) An established and agreed-upon investment amount and repayment schedule.

(b) A guaranteed negotiated amount or negotiated return on qualified investment by the certified investor over the term of the agreement.

(c) A maximum amount of credit that the investor may claim under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, a successor tax to the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, or under section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270, and the first year in which that credit can be claimed.

(3) The Michigan early stage venture investment corporation shall notify the department of treasury when agreements are entered into under this section and send a copy of each agreement to the department of treasury. The department of treasury shall issue an approval letter to the investor that states that the investor is entitled to a tax credit under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, that is equal to the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the investor and the fund manager.

(4) The fund shall repay any amounts due from proceeds from the funds raised based on the agreements made under this section.

(5) For tax years that begin after December 31, 2008, investors that have certificates issued pursuant to section 23 may claim a credit under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, or section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270, as otherwise provided in this act, equal to the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the taxpayer and the fund manager. The Michigan early stage venture investment corporation shall notify the department of treasury when credit certificates are issued under section 23, and upon notification and approval by the department of treasury under section 23, the amount of credit allowed pursuant to the credit certificate becomes a debt of the fund to the state subject to repayment pursuant to the agreement between the Michigan early stage venture investment corporation and the department of treasury. A debt under this section shall accrue interest at the same rate as the interest paid to the investor.

(6) Repayment of a debt under this section may be restricted to specific funds or assets of the Michigan early stage venture investment corporation.

(7) The Michigan early stage venture investment corporation may purchase securities and may manage, transfer, or dispose of those securities.

(8) The Michigan early stage venture investment corporation and its directors are not broker-dealers, agents, investment advisors, or investment advisor representatives when carrying out their duties and responsibilities under this act.

125.2249 Michigan early stage venture investment fund; investment plan; criteria.

Sec. 19. (1) A Michigan early stage venture investment corporation shall create a Michigan early stage venture investment fund, which shall be a restricted fund.

(2) The fund manager shall establish an investment plan approved by the board for the investment of the money in the fund using the following criteria:

(a) Not more than 15% of the total capital and outstanding commitments of the fund shall be invested in any single venture capital company.

(b) The fund manager with the approval of the board shall undertake to invest the fund in such a way as to promote that at least \$2.00 will be invested in qualified businesses for every \$1.00 of principal for which credits may be claimed under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, a successor tax to the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, or section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270.

(c) That investments facilitate the transfer of technologies from the state's various universities and research institutions.

(d) Any other professional portfolio management criteria that the fund manager and board consider appropriate.

(e) Priorities for investment in venture capital may be based on an evaluation, which shall consider the following criteria:

(i) The retention of those businesses which would be likely to leave this state absent the investment.

(ii) The revitalization and diversification of the economic base of this state.

(iii) Generating and retaining jobs and investment in this state.

(3) Consistent with the plan established under subsection (2), the fund manager shall select venture capital companies from among those venture capital companies that apply for money from the fund considering the following criteria:

(a) The venture capital company's probability of success in generating above-average returns through investing in qualified businesses.

(b) The venture capital company's probability of success in soliciting investments. The level of investment from the fund committed to each venture capital company shall not be more than 25% of the venture capital company's total capital under management.

(c) The venture capital company's probability of success as it relates to the investment plan criteria under subsection (2)(b).

(d) The venture capital company has a significant presence in this state as determined by the Michigan early stage venture investment corporation.

(e) The venture capital company will undertake to invest in qualified businesses, as determined at the point of initial investment, a percentage of invested capital equal to or greater than the percentage of invested capital that the venture capital company received from the fund.

(f) The venture capital company's consideration of minority owned businesses in its investment activities.

125.2251 Annual financial audit.

Sec. 21. The fund manager shall file a report with the Michigan early stage venture investment corporation that includes an annual financial audit conducted by an independent auditor and any other financial information and documentation required by the Michigan early stage venture investment corporation to ensure the proper administration and investment of the fund.

125.2253 Tax credits; certificates.

Sec. 23. (1) The Michigan early stage venture investment corporation shall determine which investors are eligible for tax credits under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, and section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270, and the amount of the tax credit under those sections allowed to each investor.

(2) The Michigan early stage venture investment corporation shall determine which investors are eligible for tax credits under this section and submit proposed certificates that meet the criteria under subsection (3) to the department of treasury for approval. The department of treasury shall approve or deny proposed certificates within 30 days after receipt of the certificates. If the department of treasury denies a proposed certificate, the department of treasury shall notify the Michigan early stage venture investment corporation and the investor of the denial and the reason for the denial. If a proposed certificate is denied under this subsection, the Michigan early stage venture investment corporation is not prohibited from subsequently submitting a proposed certificate on behalf of that same investor. If the department of treasury does not approve or deny the certificates within 30 days, the certificates are considered approved.

(3) The Michigan early stage venture investment corporation shall issue a certificate approved under subsection (2) to each investor that states all of the following:

(a) The taxpayer is an investor.

(b) The taxpayer's federal employer identification number or the number assigned to the taxpayer by the department of treasury for filing purposes under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145.

(c) The amount of the tax credit that the taxpayer may claim against its tax liability under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, or section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270.

(d) The tax years for which the credit under subdivision (c) may be claimed and the maximum annual amount that may be claimed each tax year.

(e) The tax credit is refundable.

(4) The fund manager shall invest, budget, and plan scheduled payments and repayments so that no credits are claimed under section 37e of the single business tax act, 1975 PA 228, MCL 208.37e, in any tax year before tax years that begin after December 31, 2008.

(5) Certificates under this section shall be issued to an investor at the time that the Michigan early stage venture investment corporation determines that, for that investor, capital is not sufficient to meet the guaranteed negotiated amount or the negotiated return on qualified investment of that investor. The total of all certificates issued under this section shall not exceed the maximum amount allowed under section 37e(2) of the single business tax act, 1975 PA 228, MCL 208.37e.

(6) Certificates under this section shall not be issued until December 31, 2008 or 5 years after all the requirements under section 29 have been met, whichever occurs later.

125.2255 Construction of act.

Sec. 25. This act shall be construed liberally to effectuate the legislative intent and its purposes. All powers granted shall be cumulative and not exclusive and shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

125.2257 Annual report.

Sec. 27. The Michigan early stage venture investment corporation shall publish an annual report not more than 3 months after the close of the Michigan early stage venture investment corporation's fiscal year that includes all of the following:

(a) An enumeration of all investment and related activities for the fiscal year.

(b) Documentation and analysis of the implementation and status of the Michigan early stage venture investment corporation's investment plan and the economic impact of the plan on this state, including, but not limited to, the following:

(i) The number of jobs represented by the investments made in qualified businesses in this state.

(ii) Return on investment generated by investment, the types of activities in which investment was made, and the impact of that investment on the economic base of this state.

125.2259 Actions required.

Sec. 29. Not later than 1 year after the effective date of this act or 10 months after the Michigan early stage venture investment corporation receives a determination from the internal revenue service that it is exempt from taxation under section 501(c)(3) or 501(c)(4) of the internal revenue code, whichever occurs later, all of the following shall occur:

(a) The Michigan early stage venture investment corporation shall be established and the board appointed.

(b) A fund manager shall be hired by the Michigan early stage venture investment corporation.

(c) An investment plan shall be established.

(d) Funds shall have been solicited and available for investment consistent with the investment plan.

125.2261 Expiration of fund.

Sec. 31. The fund created in section 19 shall expire on January 1, 2054. Any money in the fund, subject to all outstanding debts and obligation of the Michigan early stage venture investment corporation being defeased and satisfied, shall be distributed as provided in the Michigan early stage venture investment corporation's articles of incorporation or amendments to those articles of incorporation transferred to the general fund of this state on that date.

125.2263 Conditional effective date.

Sec. 33. This act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

(a) Senate Bill No. 835.

(b) House Bill No. 5322.

Legislative declaration.

Enacting section 1. The state of Michigan has engaged in activities on a regular basis and for a significant amount of time intended to promote the overall economic development of the state. The cost of funding these activities is recognized as a burden on this state that can be lessened through the establishment and registration of Michigan early stage venture investment corporations and Michigan early stage venture capital investment funds. By working cooperatively with this state, Michigan early stage venture investment corporations will benefit the general public, thus assisting this state in carrying out its essential functions, including the promotion of economic development in this state. If this legislation does not become law, the opportunity to help carry that burden will be lost to this state and a greater burden will remain on the government and the general public for future activities to promote economic development in this state.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

Compiler's note: Senate Bill No. 835, referred to in § 125.2263, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 297, Imd. Eff. Jan. 8, 2004.

House Bill No. 5322, also referred to in § 125.2263, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 295, Imd. Eff. Jan. 8, 2004.

[No. 297]

(SB 835)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public

officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation,” (MCL 208.1 to 208.145) by adding section 37e.

The People of the State of Michigan enact:

208.37e Tax credit; determination under Michigan early stage venture capital investment act of 2003.

Sec. 37e. (1) For tax years that begin after December 31, 2008 and before January 1, 2020, a taxpayer that is an investor may claim a credit against the tax imposed by this act equal to the credit amount determined and certified under this section and the Michigan early stage venture capital investment act of 2003.

(2) The total amount of all tax credits certified under this section and the Michigan early stage venture capital investment act of 2003 for all taxpayers for all years shall not exceed \$150,000,000.00.

(3) Investors shall apply to the Michigan early stage venture capital investment corporation for certification of allowable tax credits.

(4) The Michigan early stage venture capital investment corporation shall determine which investors are eligible for tax credits and the amount of the tax credit allowed to each investor as provided in the Michigan early stage venture capital investment act of 2003.

(5) The certificate shall be attached to the taxpayer’s annual return under this act for the first tax year in which a tax credit or any portion of the tax credit allowed is claimed, which shall be the tax year indicated on the certificate.

(6) A credit under this section shall be claimed only in a tax year that begins after December 31, 2008 and before January 1, 2020. The credit allowed for that tax year shall not exceed the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the taxpayer and the Michigan early stage venture capital investment corporation pursuant to section 17 of the Michigan early stage venture capital investment act of 2003.

(7) The total amount of all credits authorized for any 1 calendar year under this section pursuant to the agreements entered into by the taxpayer and the Michigan early stage venture capital investment corporation pursuant to section 17 of the Michigan early stage venture capital investment act of 2003 shall not exceed \$30,000,000.00.

(8) If the taxpayer’s credit allowed under this section for a tax year exceeds the taxpayer’s tax liability for the tax year, that portion of the credit that exceeds the tax liability for the tax year shall be refunded.

(9) The fund manager shall invest and budget in such a manner that no credits are claimed under this section in any tax year before tax years that begin after December 31, 2008.

(10) For tax years that begin after December 31, 2009, if a credit under this section is not allowed against the taxpayer’s tax liability under this act or against any successor tax to the tax imposed by this act, a taxpayer to whom a certificate has been issued under the Michigan early stage venture capital investment act of 2003 may claim a credit as allowed under section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270, or transfer

that certificate and the credit allowed pursuant to that certificate to a person who may claim the tax credit as allowed under section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270. The credit amount under this subsection shall be equal to the remaining credit allowable and may be claimed only for tax years that begin after December 31, 2009 and before January 1, 2020.

(11) As used in this section:

(a) “Board”, “fund manager”, and “investor” mean those terms as defined in the Michigan early stage venture capital investment act of 2003.

(b) “Certificate” means the certificate issued under section 23 of the Michigan early stage venture capital investment act of 2003.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 834 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

Compiler's note: Senate Bill No. 834, referred to in enacting section 1, was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 296, Imd. Eff. Jan. 8, 2004.

[No. 298]

(SB 877)

AN ACT to amend 1954 PA 116, entitled “An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act,” by amending section 641 (MCL 168.641).

The People of the State of Michigan enact:

168.641 Regular election date; special election; report; direction and supervision of election consolidation; short title.

Sec. 641. (1) Except as otherwise provided in this section and sections 642 and 642a, beginning January 1, 2005, an election held under this act shall be held on 1 of the following regular election dates:

(a) The February regular election date, which is the fourth Tuesday in February.

(b) The May regular election date, which is the first Tuesday after the first Monday in May.

(c) The August regular election date, which is the first Tuesday after the first Monday in August.

(d) The November regular election date, which is the first Tuesday after the first Monday in November.

(2) If an elective office is listed by name in section 643, requiring the election for that office to be held at the general election, and if candidates for the office are nominated at a primary election, the primary election shall be held on the August regular election date.

(3) Except as otherwise provided in this subsection and subsection (4), a special election shall be held on a regular election date. A special election called by the governor under section 145, 178, 370, 632, 633, or 634 to fill a vacancy or called by the legislature to submit a proposed constitutional amendment as authorized in section 1 of article XII of the state constitution of 1963 may, but is not required to be, held on a regular election date.

(4) A school district may call a special election to submit a ballot question to borrow money, increase a millage, or establish a bond if an initiative petition is filed with the county clerk. The petition shall be signed by a number of qualified and registered electors of the district equal to not less than 10% of the electors voting in the last gubernatorial election in that district or 3,000 signatures, whichever number is lesser. Section 488 applies to a petition to call a special election for a school district under this section. The petition shall be filed with the county clerk by 4 p.m. of the tenth Tuesday before the proposed date of the special election. The petition signatures shall be obtained within 60 days before the filing of the petition. Any signatures obtained more than 60 days before the filing of the petition are not valid. If the special election called by the school district is not scheduled to be held on a regular election date as provided in subsection (1), the special election shall be held on a Tuesday. A special election called by a school district under this subsection shall not be held within 30 days before or 35 days after a regular election date as provided in subsection (1). A school district may only call 1 special election in each calendar year.

(5) The secretary of state shall make a report to the house and senate committees that consider election issues by December 1, 2006. The secretary of state shall report about the special elections held under this subsection, including, but not limited to, all of the following:

(a) The number of times a special election has been held.

(b) Which school districts have held special elections.

(c) Information about the success rate of the ballot question submitted at the special elections.

(d) Information about voter turnout, including the percentage and number of registered voters who voted in each special election.

(6) The secretary of state shall direct and supervise the consolidation of all elections held under this act.

(7) This section shall be known and may be cited as the “Hammerstrom election consolidation law”.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2005.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) House Bill No. 4820.
- (b) House Bill No. 4822.
- (c) House Bill No. 4823.
- (d) House Bill No. 4824.
- (e) House Bill No. 4825.
- (f) House Bill No. 4826.
- (g) House Bill No. 4827.
- (h) House Bill No. 4828.

Approved January 8, 2004.

Filed with Secretary of State January 8, 2004.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:

House Bill No. 4820 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 299, Eff. Jan. 1, 2005.
House Bill No. 4822 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 300, Eff. Jan. 1, 2005.
House Bill No. 4823 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 301, Eff. Jan. 1, 2005.
House Bill No. 4824 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 302, Eff. Mar. 30, 2004.
House Bill No. 4825 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 303, Eff. Jan. 1, 2005.
House Bill No. 4826 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 304, Eff. Jan. 1, 2005.
House Bill No. 4827 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 305, Eff. Jan. 1, 2005.
House Bill No. 4828 was filed with the Secretary of State January 8, 2004, and became P.A. 2003, No. 306, Eff. Jan. 1, 2005.

[No. 299]

(HB 4820)

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts," by amending sections 4, 5, 6, 11a, 14, 503, 613, 614, 616, 617, 629, 661, 681, 682, 687, 690, 701, 702, 703, 705, 853, 854, 855, 856, 857, 858, 859, 860, 861, 931, 932, 945, 1212, 1216, 1351, 1361, 1451, 1722, and 1724 (MCL 380.4, 380.5, 380.6, 380.11a, 380.14, 380.503, 380.613, 380.614, 380.616, 380.617, 380.629, 380.661, 380.681, 380.682, 380.687, 380.690, 380.701, 380.702, 380.703, 380.705, 380.853, 380.854, 380.855, 380.856, 380.857, 380.858, 380.859, 380.860, 380.861, 380.931, 380.932, 380.945, 380.1212, 380.1216, 380.1351, 380.1361, 380.1451, 380.1722, and

380.1724), section 5 as amended by 2003 PA 179, sections 6, 503, and 690 as amended and section 11a as added by 1995 PA 289, section 14 as amended by 1999 PA 23, sections 614 and 617 as amended by 2002 PA 157, section 629 as amended by 2002 PA 61, sections 681, 682, 705, 1451, and 1724 as amended by 1994 PA 258, section 687 as amended by 2002 PA 62, section 703 as amended by 1981 PA 87, section 853 as amended by 1998 PA 406, sections 854, 857, and 858 as amended by 1992 PA 263, section 859 as amended by 2002 PA 509, section 945 as added by 1984 PA 154, section 1212 as amended by 1993 PA 312, section 1216 as amended by 2002 PA 64, and section 1351 as amended by 2002 PA 67, and by adding section 1206; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

380.4 Definitions; E to I.

Sec. 4. (1) “Educational media center” means a program operated by an intermediate school district and approved by the state board that provides services to local school districts or constituent districts under section 671.

(2) “Handicapped person” shall be defined by rules promulgated by the state board. Handicaps include, but are not limited to, mental, physical, emotional, behavioral, sensory, and speech handicaps.

(3) “Intermediate school board” means the board of an intermediate school district.

(4) “Intermediate school district” means a corporate body established under part 7.

(5) “Intermediate school district election” means an election called by an intermediate school board and held on the date of the regular school elections of constituent districts or on a date determined by the intermediate school board under section 642b of the Michigan election law, MCL 168.642b.

(6) “Intermediate school elector” means a person who is a school elector of a constituent district and who is registered in the city or township in which the person resides.

(7) “Intermediate superintendent” means the superintendent of an intermediate school district.

380.5 Definitions; L to R.

Sec. 5. (1) “Local act school district” or “special act school district” means a district governed by a special or local act or chapter of a local act. “Local school district” and “local school district board” as used in article 3 include a local act school district and a local act school district board.

(2) “Membership” means the number of full-time equivalent pupils in a public school as determined by the number of pupils registered for attendance plus pupils received by transfer and minus pupils lost as defined by rules promulgated by the state board.

(3) “Michigan election law” means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(4) “Nonpublic school” means a private, denominational, or parochial school.

(5) “Objectives” means measurable pupil academic skills and knowledge.

(6) “Public school” means a public elementary or secondary educational entity or agency that is established under this act, has as its primary mission the teaching and learning of academic and vocational-technical skills and knowledge, and is operated by a school district, local act school district, special act school district, intermediate school district, public school academy corporation, strict discipline academy corporation, urban

high school academy corporation, or by the department or state board. Public school also includes a laboratory school or other elementary or secondary school that is controlled and operated by a state public university described in section 4, 5, or 6 of article VIII of the state constitution of 1963.

(7) “Public school academy” means a public school academy established under part 6a and, except as used in part 6a, also includes an urban high school academy established under part 6c and a strict discipline academy established under sections 1311b to 1311l.

(8) “Pupil membership count day” of a school district means that term as defined in section 6 of the state school aid act of 1979, MCL 388.1606.

(9) “Regular school election” or “regular election” means the election held in a school district, local act school district, or intermediate school district to elect a school board member in the regular course of the terms of that office and held on the school district’s regular election date as determined under section 642b of the Michigan election law, MCL 168.642b.

(10) “Reorganized intermediate school district” means an intermediate school district formed by consolidation or annexation of 2 or more intermediate school districts under sections 701 and 702.

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

380.6 Definitions; S, T; “department” defined.

Sec. 6. (1) “School district” or “local school district” means a general powers school district organized under this act, regardless of previous classification, or a school district of the first class.

(2) “School district filing official” means the school district election coordinator as defined in section 4 of the Michigan election law, MCL 168.4, or an authorized agent of the school district election coordinator.

(3) “School elector” means a person qualified as an elector under section 492 of the Michigan election law, MCL 168.492, and resident of the school district, local act school district, or intermediate school district on or before the thirtieth day before the next ensuing regular or special school election.

(4) “School month” means a 4-week period of 5 days each unless otherwise specified in the teacher’s contract.

(5) “Special education building and equipment” means a structure or portion of a structure or personal property accepted, leased, purchased, or otherwise acquired, prepared, or used for special education programs and services.

(6) “Special education personnel” means persons engaged in and having professional responsibility for the training, care, and education of handicapped persons in special education programs and services including, but not limited to, teachers, aides, school social workers, diagnostic personnel, physical therapists, occupational therapists, audiologists, teachers of speech and language, instructional media-curriculum specialists, mobility specialists, teacher consultants, supervisors, and directors.

(7) “Special education programs and services” means educational and training services designed for handicappers and operated by local school districts, local act school districts, intermediate school districts, the Michigan school for the deaf and blind, the department of community health, the family independence agency, or a combination of these, and ancillary professional services for handicappers rendered by agencies approved by the state board. The programs shall include vocational training, but need not include academic programs of college or university level.

(8) “Special school election” or “special election” means a school district election to fill a vacancy on the school board or submit a ballot question to the school electors that is held on a regular election date established under section 641 of the Michigan election law, MCL 168.641.

(9) “State approved nonpublic school” means a nonpublic school that complies with 1921 PA 302, MCL 388.551 to 388.558.

(10) “State board” means the state board of education unless clearly otherwise stated.

(11) “Department” means the department of education created and operating under sections 300 to 305 of the executive organization act of 1965, 1965 PA 380, MCL 16.400 to 16.405.

(12) “State school aid” means allotments from the general appropriating act for the purpose of aiding in the support of the public schools of the state.

(13) “The state school aid act of 1979” means the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

380.11a General powers school district.

Sec. 11a. (1) Beginning on July 1, 1996, each school district formerly organized as a primary school district or as a school district of the fourth class, third class, or second class shall be a general powers school district under this act.

(2) Beginning on July 1, 1996, a school district operating under a special or local act shall operate as a general powers school district under this act except to the extent that the special or local act is inconsistent with this act. Upon repeal of a special or local act that governs a school district, that school district shall become a general powers school district under this act.

(3) A general powers school district has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, except as provided by law, may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to, all of the following:

(a) Educating pupils. In addition to educating pupils in grades K-12, this function may include operation of preschool, lifelong education, adult education, community education, training, enrichment, and recreation programs for other persons.

(b) Providing for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity.

(c) Acquiring, constructing, maintaining, repairing, renovating, disposing of, or conveying school property, facilities, equipment, technology, or furnishings.

(d) Hiring, contracting for, scheduling, supervising, or terminating employees, independent contractors, and others to carry out school district powers. A school district may indemnify its employees.

(e) Receiving, accounting for, investing, or expending school district money; borrowing money and pledging school district funds for repayment; and qualifying for state school aid and other public or private money from local, regional, state, or federal sources.

(4) A general powers school district may enter into agreements or cooperative arrangements with other entities, public or private, or join organizations as part of performing the functions of the school district.

(5) A general powers school district is a body corporate and shall be governed by a school board. An act of a school board is not valid unless approved, at a meeting of the school board, by a majority vote of the members lawfully serving on the board.

(6) The board of a general powers school district shall adopt bylaws. These bylaws may establish or change board procedures, the number of board officers, titles and duties of board officers, and any other matter related to effective and efficient functioning of the board. Regular meetings of the board shall be held at least once each month, at the time and place fixed by the bylaws. Special meetings may be called and held in the manner and for the purposes specified in the bylaws. Board procedures, bylaws, and policies in effect on the effective date of this section shall continue in effect until changed by action of the board.

(7) The board of a school district shall be elected as provided under this act and the Michigan election law. The number of members of the board of a general powers school district shall remain the same as for that school district before July 1, 1996 unless changed by the school electors of the school district at a regular or special school election. A ballot question for changing the number of board members may be placed on the ballot by action of the board or by petition submitted by school electors as provided under chapter XIV of the Michigan election law, MCL 168.301 to 168.315.

(8) Members of the board of a general powers school district shall be elected by the school electors for terms of 4 or 6 years, as provided by the school district's bylaws. At each regular school election, members of the board shall be elected to fill the positions of those whose terms will expire. A term of office begins as provided in section 302 of the Michigan election law, MCL 168.302, and continues until a successor is elected and qualified.

(9) The board of a general powers school district may submit to the school electors of the school district a question that is within the scope of the powers of the school electors and that the board considers proper for the management of the school system or the advancement of education in the school district. Upon the adoption of a question by the board, the board shall submit the question to the school electors by complying with section 312 of the Michigan election law, MCL 168.312.

(10) A special election may be called by the board of a general powers school district as provided under chapter XIV of the Michigan election law, MCL 168.301 to 168.315.

(11) Unless expressly provided in 1995 PA 289, the powers of a school board or school district are not diminished by this section or by 1995 PA 289.

(12) A school district operating a public library, public museum, or community recreational facility as of July 1, 1996 may continue to operate the public library, public museum, or community recreational facility.

380.14 Petitions; violation.

Sec. 14. A petition under, or that is necessary to meet a requirement of, section 11a, 411a, 412a, 503, 614, 617, 690, 701, 853, 860, 931, or 1311e, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, MCL 168.488. A person who violates a provision of the Michigan election law applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law.

380.503 Public school academy; issuance of contract; petition to place question on ballot; submission to state board; resolution; contents of contract; compliance with applicable laws; governmental immunity; exemption from taxation; acquisition of property.

Sec. 503. (1) An authorizing body is not required to issue a contract to any person or entity. Public school academy contracts shall be issued on a competitive basis taking into consideration the resources available for the proposed public school academy, the population to be served by the proposed public school academy, and the educational goals to be achieved by the proposed public school academy.

(2) If a person or entity applies to the board of a school district for a contract to organize and operate 1 or more public school academies within the boundaries of the school district and the board does not issue the contract, the person or entity may petition the board to place the question of issuing the contract on the ballot to be decided by the school electors of the school district. The petition shall contain all of the information required to be in the contract application under section 502 and shall be signed by a number of school electors of the school district equal to at least 15% of the total number of school electors of that school district. The petition shall be filed with the school district filing official. If the board receives a petition meeting the requirements of this subsection, the board shall have the question of issuing the contract placed on the ballot at its next regular school election held at least 60 days after receiving the petition. If a majority of the school electors of the school district voting on the question vote to issue the contract, the board shall issue the contract.

(3) Within 10 days after issuing a contract for a public school academy, the authorizing body shall submit to the superintendent of public instruction a copy of the contract and of the application under section 502.

(4) An authorizing body shall adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of each public school academy subject to its jurisdiction.

(5) A contract issued to organize and administer a public school academy shall contain at least all of the following:

(a) The educational goals the public school academy is to achieve and the methods by which it will be held accountable. To the extent applicable, the pupil performance of a public school academy shall be assessed using at least a Michigan education assessment program (MEAP) test or an assessment instrument developed under section 1279.

(b) A description of the method to be used to monitor the public school academy's compliance with applicable law and its performance in meeting its targeted educational objectives.

(c) A description of the process for amending the contract during the term of the contract.

(d) All of the matters set forth in the application for the contract.

(e) For a public school academy authorized by a school district, an agreement that employees of the public school academy will be covered by the collective bargaining agreements that apply to employees of the school district employed in similar classifications in schools that are not public school academies.

(f) Procedures for revoking the contract and grounds for revoking the contract, including at least the grounds listed in section 507.

(g) A description of and address for the proposed physical plant in which the public school academy will be located.

(h) Requirements and procedures for financial audits. The financial audits shall be conducted at least annually by a certified public accountant in accordance with generally accepted governmental auditing principles.

(6) A public school academy shall comply with all applicable law, including all of the following:

(a) The open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(b) The freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(c) 1947 PA 336, MCL 423.201 to 423.217.

(d) 1965 PA 166, MCL 408.551 to 408.558.

(e) Sections 1134, 1135, 1146, 1153, 1263(3), 1267, and 1274.

(7) A public school academy and its incorporators, board members, officers, employees, and volunteers have governmental immunity as provided in section 7 of 1964 PA 170, MCL 691.1407. An authorizing body and its board members, officers, and employees are immune from civil liability, both personally and professionally, for an act or omission in authorizing a public school academy if the authorizing body or the person acted or reasonably believed he or she acted within the authorizing body's or the person's scope of authority.

(8) A public school academy is exempt from all taxation on its earnings and property. Instruments of conveyance to or from a public school academy are exempt from all taxation including taxes imposed by 1966 PA 134, MCL 207.501 to 207.513. A public school academy may not levy ad valorem property taxes or another tax for any purpose. However, operation of 1 or more public school academies by a school district or intermediate school district does not affect the ability of the school district or intermediate school district to levy ad valorem property taxes or another tax.

(9) A public school academy may acquire by purchase, gift, devise, lease, sublease, installment purchase agreement, land contract, option, or by any other means, hold and own in its own name buildings and other property for school purposes, and interests therein, and other real and personal property, including, but not limited to, interests in property subject to mortgages, security interests, or other liens, necessary or convenient to fulfill its purposes. For the purposes of condemnation, a public school academy may proceed under the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75, excluding sections 6 to 9 of that act, MCL 213.56 to 213.59, or other applicable statutes, but only with the express, written permission of the authorizing body in each instance of condemnation and only after just compensation has been determined and paid.

380.613 Board; annual meeting; election and duties of officers; treasurer's bonds.

Sec. 613. The intermediate school board shall meet annually on or before the fourth Monday of December or, if the intermediate school district's regular election is in May, on or before the fourth Monday of June. The intermediate school board shall organize by electing a president, a vice-president, a secretary, and a treasurer. The president and vice-president shall be members of the intermediate school board, but the secretary and treasurer need not be. The officers shall perform duties provided by law and prescribed by the policies and regulations of the intermediate school board not inconsistent with this part or other laws of the state. The treasurer shall post with the secretary a bond in an amount approved by the intermediate school board, conditioned upon the faithful performance of the treasurer's duties.

380.614 Board; election of members; notice of meeting; acting chairperson and secretary; term; vacancy; nominating petition; signatures; filing petition and affidavit; ballots; filing fee.

Sec. 614. (1) Except as provided in section 615 and subject to section 642 of the Michigan election law, MCL 168.642, the members of the intermediate school board shall be elected biennially on the first Monday in June by a body composed of 1 member of the board of each constituent school district, who shall be designated by the board of which that individual is a member. The secretary shall send a notice by certified mail of the hour and place of meeting to the secretary of the board of each constituent school district at least 10 days before the meeting. The president and secretary of the intermediate school board shall act as chairperson and secretary.

(2) Except as provided in section 703, the term of office of each member elected to the intermediate school board is 6 years and begins on July 1 following election. Not more than 2 members of the intermediate school board shall be from the same school district unless there are fewer districts than there are positions to be filled.

(3) A vacancy shall be filled by the remaining members of the intermediate school board until the next biennial election at which time the vacancy shall be filled for the balance of the unexpired term. Notice of the vacancy shall be filed with the state board within 5 days after the vacancy occurs. If the vacancy is not filled within 30 days after it occurs, the vacancy shall be filled by the state board.

(4) Subject to subsection (6), a candidate for election to the intermediate school board shall be nominated by petitions that are signed by a number of school electors of the combined constituent school districts of the intermediate school district, as follows:

(a) If the population of the intermediate school district is less than 10,000 according to the most recent federal census, a minimum of 6 and a maximum of 20.

(b) If the population of the intermediate school district is 10,000 or more according to the most recent federal census, a minimum of 40 and a maximum of 100.

(5) A school elector may sign as many petitions as there are vacancies to fill. Nominating petitions and an affidavit as provided in section 558 of the Michigan election law, 1954 PA 116, MCL 168.558, shall be filed with the school district filing official not later than 30 days before the date of the biennial election under subsection (1). The school district filing official shall determine the sufficiency of the petitions and the eligibility of the candidates nominated. The school district filing official shall provide ballots for the biennial election, listing on the ballots the names of all candidates properly nominated. The chairperson of the biennial election may accept nominations for a vacancy from the floor only if no nominating petitions have been filed for the vacancy.

(6) Instead of filing nominating petitions, a candidate for election to the intermediate school board may pay a nonrefundable filing fee of \$100.00 to the school district filing official. If this fee is paid by the due date for nominating petitions, the payment has the same effect under this section as the filing of nominating petitions.

380.616 Adoption of MCL 380.615 to 380.617; submission of question to school electors; form; resolutions; election; termination of popular election.

Sec. 616. (1) An intermediate school board may submit to the school electors of the constituent districts comprising the intermediate school district the question of adoption of sections 615 to 617. The question shall be in substantially the following form:

“Shall sections 615 to 617 of the revised school code, providing for the popular election of members of the intermediate school board, be effective within the constituent districts of _____ (name of intermediate school district)?