of active members of the national guard and the defense force by virtue of their commissions, appointments, or enlistments.

(c) "Active state duty" means the actual weekend, annual training, or special call up duty in the state military forces and includes travel to and from the duty site or station.

(d) "Active state service" means military service in support of civil authorities ordered by the governor or as provided by the Michigan military act.

(e) "Apprehension" means the taking of a person into custody.

(f) "Commanding officer" includes only a commissioned officer.

(g) "Confinement" means the physical restraint of a person.

(h) "Controlled substance" means opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, marihuana, any compound or derivative of any such substance, and any other substance that is listed in schedules I through V of section 202 of the controlled substances act, 21 USC 812, including any subsequent amendments thereto.

(i) "Correctional custody" means the physical restraint of a person during duty or nonduty while on active state duty and includes extra duty, fatigue duty, or hard labor.

(j) "Enlisted member" means a person in an enlisted grade.

(k) "Federal service" means military duty in the armed forces of the United States, including, without limitation, the army national guard of the United States and the air national guard of the United States, while subject to the uniform code of military justice, 10 USC, 801 to 946.

(*l*) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or rule.

(m) "Judge advocate" means an officer who is designated as a judge advocate by the state judge advocate general.

(n) "Military" includes each armed force of the United States and each component of the state military establishment.

(o) "Military court" means a court-martial, a court of inquiry, or the military appeals tribunal.

(p) "Military judge" means a judge advocate designated as a military judge by the state judge advocate general or an official of a general or special court-martial appointed pursuant to section 26.

(q) "Minor offense" means an offense under a punitive section of this act that a commanding officer considers minor.

(r) "Officer" means a commissioned or warrant officer.

(s) "Staff judge advocate" means the commissioned officer responsible for supervising the administration of military justice within a command.

(t) "State judge advocate general" means the commissioned officer responsible for supervising the administration of the military justice in the state military forces.

(u) "State military forces" means the national guard of the state, as defined in 32 USC 101(3), and any other military force organized under the laws of the state.

(v) "Summary court officer" means an official appointed pursuant to section 16(c) who is authorized to serve warrants.

(w) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(x) "Unit" means a regularly organized body of the military that is not larger than a company or squadron.

32.1003 Applicability; convening and holding courts-martial and courts of inquiry out of state; offenses committed out of state; trial and punishment.

Sec. 3. (1) This code applies to all members of the state military forces when not in federal service, and to all other persons lawfully called, ordered, drafted, transferred or inducted into, or ordered to duty in or with the state military forces, from the date they are required by the terms of the call, order, or other directive. Persons subject to this code shall include all persons serving in the state military forces pursuant to title 32 of the United States Code and all persons of the state military forces in active service.

(2) This code applies to a person subject to this code while serving out of state and while going to and returning from the service out of state to the same extent as a person serving within the state.

(3) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while serving out of state with the same jurisdiction and powers as if held within the state. Offenses committed out of state may be tried and punished either out of state or within the state.

32.1004 Relieving person from trial by court-martial; limitation; trial by court-martial of person charged with fraudulently obtaining discharge; effect of conviction.

Sec. 4. (1) Subject to the limitation of actions under section 43, a person who is subject to this code and charged with an offense under this code is not relieved from a trial by court-martial because his or her military service is terminated.

(2) Each person discharged from the state military forces who is later charged with having fraudulently obtained his or her discharge, except as provided in section 43, is subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in the custody of the military for that trial. Upon conviction of fraudulently obtaining a discharge, the person is subject to trial by court-martial for an offense under this code committed before the fraudulent discharge.

32.1007 Persons authorized to apprehend persons subject to code; fees or charges.

Sec. 7. (1) A person authorized under the rules issued pursuant to this code to apprehend a person subject to this code, a marshal of a court-martial appointed pursuant to this code, or a law enforcement officer of this state or a political subdivision of this state may apprehend a person subject to this code upon reasonable belief that an offense under this code has been committed and that the person apprehended committed the offense.

(2) Each commissioned officer, warrant officer, and noncommissioned officer is authorized to quell quarrels, frays, or disorders among persons subject to this code and to apprehend persons subject to this code who take part in a quarrel, fray, or disorder.

(3) Except as otherwise specifically provided in this code, a civil law enforcement officer or marshal of a court-martial shall not demand or require payment of a fee or charge of any nature for apprehending or placing in confinement a person subject to this code.

32.1008 Apprehension of person charged with violation by civil law enforcement officer.

Sec. 8. A civil law enforcement officer of this state may apprehend a person charged with the violation of section 85 and deliver the person into the custody of the state military forces.

32.1009 "Arrest" defined; arrest by military superior; probable cause; authority to secure custody of alleged offender not limited.

Sec. 9. (1) As used in this section, "arrest" means the restraint of a person by an order not imposed as a punishment for an offense, directing the person to remain within certain specified limits.

(2) An officer or enlisted member of the state military forces accused of an offense in violation of this code may be placed in arrest by his or her military superior.

(3) A person shall not be ordered into arrest or confinement except upon probable cause.

(4) This section does not limit the authority of a person authorized to apprehend an offender of this code to secure the custody of an alleged offender until the proper authority is notified.

32.1013 Bail.

Sec. 13. (1) Except as provided in section 15 of article I of the state constitution of 1963, a person charged with a violation under this code is entitled to bail.

(2) Before trial, a person is entitled to bail in an amount determined by the military judge.

(3) The amount of bail shall not be excessive, and the military judge shall consider all of the following:

(a) The nature of the offense charged.

(b) The past conduct of the accused.

(c) The financial ability of the accused.

32.1014 Trial by court-martial limited to certain violations; delivery of person subject to code to civil authority for trial; conviction in civil tribunal; return to military custody for completion of sentence of court-martial.

Sec. 14. (1) It is the intent of the legislature that trial by court-martial be limited to the violations defined in article 10.

(2) A person subject to this code who is on active state duty and who is accused of a criminal offense against civil authority shall be delivered, upon request, to the civil authority for trial.

(3) If delivery is made to a civil authority of a person undergoing sentence of a court-martial and the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, the offender, after having answered to the civil authorities for the offense and upon the request of competent military authority, shall be returned to military custody for the completion of his or her sentence.

32.1015 Disciplinary punishment for minor offense; combination; serving correctional custody; imposition of punishment upon enlisted member by officer in charge; suspension, remission, or mitigation of punishment; appeal; disciplinary punishment not bar to trial by court-martial; records of proceedings; right to demand trial by court-martial; applicability of forfeiture to pay and allowances.

Sec. 15. (1) Under regulations issued pursuant to this act, a commanding officer, in addition to or instead of an admonition or reprimand, may impose disciplinary punishment for a minor offense on an officer under his or her command without the intervention of a court-martial with 1 of the following:

(a) Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive active state duty days.

(b) If imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command:

(*i*) Arrest in quarters for not more than 15 consecutive active state duty days.

(*ii*) Forfeiture of not more than 1/2 of 1 month's pay per month for 2 months.

(*iii*) Restrictions to certain specified limits with or without suspension from duty, for not more than 15 consecutive duty days.

(c) Upon other military personnel under his or her command, 1 or more of the following:

(*i*) Correctional custody for not more than 7 consecutive duty days.

(*ii*) Forfeiture of not more than 7 duty days' pay.

(*iii*) Reduction to the next inferior pay grade, if the grade from which the person is demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the officer who imposes the reduction.

(*iv*) Extra duties, including fatigue or other duties for not more than 15 consecutive duty days and not more than 2 hours per day.

(*v*) Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty days.

(d) If imposed by an officer of the grade of major or above upon other military personnel under his or her command:

(*i*) Correctional custody for not more than 15 consecutive duty days.

(*ii*) Forfeiture of not more than 15 duty days' pay.

(*iii*) Reduction to the lowest or an intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or the officer imposing the reduction is a brigade, wing, base, or post commander, except that an enlisted member in a pay grade above E4 may not be reduced more than 2 pay grades.

(*iv*) Extra duties, including fatigue or other duties, for not more than 15 consecutive duty days.

(*v*) Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty days.

(2) Two or more disciplinary punishments of arrest in quarters, correctional custody, extra duties, and restriction shall not be combined to run consecutively in the maximum amount imposed for each. If any of those punishments are combined to run consecutively, the commanding officer shall apportion the punishment.

(3) If practicable, correctional custody shall not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(4) An officer in charge may impose upon an enlisted member assigned to the unit of which the officer is in charge a punishment authorized under subsection (1)(c) as the adjutant general concerned may specifically prescribe by rule.

(5) The officer who imposes the punishment authorized in subsection (4), or the officer's successor in command, may suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (4), whether or not executed. In addition, the officer may remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer also may mitigate reduction in grade to forfeiture or detention of pay.

(6) When mitigating arrest in quarters to restriction, correctional custody to extra duties or restriction, or both, or extra duties to restrictions, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture.

(7) A person punished under this section who considers the punishment received as unjust or disproportionate to the offense, through the proper channel, may appeal to the next superior authority. The appeal shall be made not later than 45 days after the punishment is adjudged. The appeal shall be promptly forwarded and decided, and the person punished shall not be required to undergo the punishment adjudged before a decision on the appeal is rendered. The officer who imposes the punishment, the officer's successor in command, or superior authority is authorized to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected. The authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice before acting upon the appeal.

(8) The imposition and enforcement of disciplinary punishment under this section for an act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not properly punishable under this section. The fact that disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(9) The adjutant general, by regulation, may prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

(10) Before being informed of the disciplinary action to be taken under this section, the person to be punished has the right to demand trial by court-martial for the offense.

(11) If a punishment of forfeiture of pay and allowance is imposed as provided in this section, the forfeiture may apply to pay or allowances becoming due on or after the date of the punishment but shall not apply to pay and allowances accrued before the date.

32.1016 Kinds of courts-martial.

Sec. 16. The 3 kinds of courts-martial in the state military forces are:

(a) General courts-martial, consisting of a military judge and not less than 5 members; or only a military judge, if before the court is assembled the accused, knowing the identity

of the military judge and after consultation with defense counsel, requests in writing a court composed only of the military judge and the military judge approves.

(b) Special courts-martial consisting of a military judge and not less than 3 members; or only a military judge, if the accused under the same conditions as those prescribed in subdivision (a), requests a court composed only of the military judge.

(c) Summary courts-martial, consisting of 1 commissioned officer of field grade rank or above who is certified for that duty by the state judge advocate general and who is not a member of the accused's unit.

32.1025 Members for courts-martial; selection; eligibility; qualifications.

Sec. 25. (1) Members for all courts-martial shall be selected at random pursuant to regulations issued by the state adjutant general not inconsistent with this section.

(2) A commissioned officer on duty with the state military forces is eligible to serve on all courts-martial for the trial of a person who may lawfully be brought before the court-martial for trial.

(3) A warrant officer on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of a person, other than a commissioned officer, who may lawfully be brought before the court-martial for trial.

(4) An enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before the court-martial for trial, but the enlisted member shall serve as a member of a court only if, before the convening of the court, the accused personally requested in writing that enlisted members serve on the court-martial. After the request, the accused may not be tried by a general or special courts-martial the membership of which does not include enlisted members in a number comprising at least 1/3 of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If the members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why enlisted members could not be obtained.

(5) Unless unavoidable, a person subject to this code shall not be tried by a court-martial which has a member junior to the person in rank or grade. When convening a court-martial, the convening authority shall detail as a member of the court-martial a person who is best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. A person is not eligible to serve as a member of a general or special court-martial if the person is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

32.1026 General or special court-martial; military judge.

Sec. 26. (1) The person convening a general or special court-martial shall request the state judge advocate general to appoint a military judge to the general or special court-martial.

(2) The state judge advocate general may appoint an assistant judge advocate to serve as a military judge who is a commissioned officer, who is licensed to practice law in this state, and who is certified for that duty by the state judge advocate.

(3) The military judge shall not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor shall the military judge vote with the members of the court.

(4) The military judge shall rule finally on all matters of law, rule finally on all motions, and except as otherwise provided, decide all other questions raised at the trial of the accused.

32.1027 General and special court-martial; trial counsel and defense counsel; assistants.

Sec. 27. (1) For each general and special court-martial, the authority convening the court shall request the state judge advocate to detail trial counsel and defense counsel, and those assistants as the convening authority considers appropriate. A person who has acted as investigating officer, military judge, or court member in any case shall not act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. A person who has acted for the prosecution shall not act later in the same case for the defense, nor shall a person who has acted for the defense act later in the same case for the prosecution.

(2) Military trial counsel or military defense counsel for a general or special courts-martial shall be licensed to practice law in this state and certified as competent to perform those duties by the state judge advocate general.

32.1029 General or special court-martial; members not to be absent or excused after arraignment; exceptions; reduction of membership below specified number; procedure.

Sec. 29. (1) A member of a general or special courts-martial shall not be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(2) If a general court-martial is reduced below 5 members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than 5 members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court-martial in the presence of the military judge, the accused, and counsel.

(3) If a special court-martial is reduced below 3 members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than 3 members. When the new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation of that testimony is read to the court-martial in the presence of the accused and counsel.

32.1050a Lack of mental responsibility as affirmative defense.

Sec. 50a. (1) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts and therefore lacked mental responsibility. Mental disease or defect does not otherwise constitute a defense.

(2) The accused has the burden, under subsection (1), of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and shall charge them to find the accused 1 of the following:

(a) Guilty.

(b) Not guilty.

(c) Not guilty only by reason of lack of mental responsibility.

(4) Notwithstanding section 52, the accused shall be found not guilty only by reason of lack of mental responsibility if a majority of the members of the court-martial present at the time the vote is taken determine that the defense of lack of mental responsibility had been established or, in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

32.1080 Attempt to commit offense; punishment; conviction of attempt where offense completed.

Sec. 80. (1) An act, done with the specific intent to commit an offense under this code, amounting to more than mere preparation, even though failing to effect its commission, is an attempt to commit that offense.

(2) A person subject to this code who attempts to commit an offense punishable by this code shall be punished as a court-martial directs, unless otherwise specifically prescribed.

(3) A person subject to this code may be convicted of an attempt to commit an offense even if it appears on the trial from evidence presented at the trial or from a guilty plea that the offense was complete.

32.1084 Effecting enlistment, appointment, or separation of person known to be ineligible; punishment.

Sec. 84. A person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of a person who is known to that person to be ineligible for the enlistment, appointment, or separation because it is prohibited by law, rule, regulation, or order shall be punished as a court-martial directs.

32.1085 Desertion; member of state military forces not prohibited from accepting employment in another state or leaving state in pursuance of vocation, education, or profession; informing commanding officer of absence; waiver; punishment.

Sec. 85. (1) A member of the state military forces is guilty of desertion if the member commits 1 of the following acts:

(a) Without proper authority goes or remains absent from his or her unit, organization, or place of duty with intent to remain away permanently.

(b) Quits his or her unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service.

(c) Without being regularly separated from 1 of the forces of the state military forces, enlists or accepts an appointment in the same or another state military force without fully disclosing the fact that he or she has not been regularly separated.

(2) Notwithstanding subsection (1), a member of the state military forces shall not be, in time of peace or order, prohibited from accepting bona fide employment in another state or leaving the boundaries of this state in pursuance of a vocation, education, or profession if before so doing the member fully informs the member's commanding officer of the absence from the state and the reasons for the absence. However, the commanding officer may waive this requirement.

(3) An officer of the state military forces who, having tendered his or her resignation and before due notice of the acceptance of the resignation, quits his or her post or proper duties without leave and with intent to remain away permanently is guilty of desertion.

(4) A person found guilty of desertion shall be punished as a court-martial directs.

32.1088 Use of contemptuous words; prohibition; violation.

Sec. 88. (1) A person subject to this act shall not use contemptuous words against the president, vice president, congress, secretary of defense, a secretary of a military department, the director of the Michigan department of military and veterans affairs, or the governor or the legislature of this state while he or she is on duty, or against the governor or the legislature of any other state, territory, commonwealth, or possession while he or she is on duty and present in that state, territory, commonwealth, or possession.

(2) A person who violates this section is guilty of an offense punishable as a court-martial may direct, subject to all recognized common law or constitutional immunities within this state.

32.1092 Violating or failing to obey lawful order, rule, or regulation; dereliction in performance of duties; punishment.

Sec. 92. A person subject to this code shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Violates or fails to obey a lawful general order, rule, or regulation.

(b) Having knowledge of a lawful order issued by a member of the armed forces which it is the person's duty to obey, fails to obey that order.

(c) Is derelict in the performance of duties.

32.1094 Mutiny, sedition, or failure to suppress or report mutiny or sedition; punishment.

Sec. 94. (1) A person subject to this code:

(a) Who, with the intent to usurp or override a lawful military authority, refuses, in concert with another person, to obey an order or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny.

(b) Who, with the intent to cause the overthrow or destruction of a lawful civil authority, creates, in concert with another person, revolt, violence, or other disturbance against that authority is guilty of sedition.

(c) Who fails to do the utmost to prevent and suppress an offense of mutiny or sedition being committed in the person's presence or fails to take all reasonable means to inform a superior officer or commanding officer of an offense of mutiny or sedition which the person knows of or has reason to believe is taking place is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial directs.

32.1099 Prohibited acts committed before or in presence of enemy, in peacetime emergency, or civil disturbance; punishment.

Sec. 99. A person subject to this code who before or in the presence of the enemy or during the performance of duty in a peacetime emergency or civil disturbance operation commits 1 of the following acts shall be punished as a court-martial directs:

(a) Runs away.

(b) Abandons, surrenders, or delivers up a command, unit, place, or military property which it is the person's duty to defend.

(c) Through disobedience, neglect, or intentional misconduct endangers the safety of a command, unit, place, or military property.

(d) Casts away arms or ammunition.

(e) Is guilty of cowardly conduct.

(f) Quits a place of duty to plunder or pillage.

(g) Causes false alarms in a command, unit, or place under the control of the armed forces of the United States, the state military forces, or the military forces of any other state or territory.

(h) Willfully fails to do the person's utmost to encounter, engage, capture, or destroy enemy troops, combatants, vessels, aircraft, or any other thing which it is the person's duty to encounter, engage, capture, or destroy.

(i) Does not afford all practicable relief and assistance to troops, combatants, vessels, or aircraft of the armed forces belonging to the United States, to their allies, or to any other state or to the state military forces if engaged in battle.

(j) Willfully fails to do his or her utmost to suppress civil disturbance while engaged in an emergency response operation.

32.1103 Securing public property taken in performance of duty; giving notice and turning over to proper authority captured or abandoned property; prohibited acts; punishment.

Sec. 103. (1) A person subject to this code shall secure all public property taken in the performance of his or her duty and shall give notice and turn over to the proper authority without delay all captured or abandoned property in the person's possession, custody, or control.

(2) A person subject to this code shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Fails to carry out the duties prescribed in subsection (1).

(b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, from which the person receives or expects a profit, benefit, or advantage to the person or another directly or indirectly connected with the person.

(c) Engages in looting or pillaging.

32.1105 Prohibited acts committed while in hands of captor during declared state of emergency or civil disturbance; punishment.

Sec. 105. (1) A person subject to this code who, while in the hands of a captor in time of declared state emergency, or civil disturbance emergency shall not do any of the following:

(a) To secure favorable treatment by the person's captors, act without proper authority in a manner contrary to law, custom, rule, or regulation to the detriment of others.

(b) While in a position of authority over those persons, maltreat them without justifiable cause.

(2) A person who violates this section shall be punished as a court-martial directs.

32.1107 Signing or making false document or false official statement; punishment.

Sec. 107. A person subject to this code who, with the intent to deceive, signs a false record, return, rule, order, or other official document, knowing the document to be false, or makes any other false official statement knowing the statement to be false shall be punished as a court-martial directs.

32.1108 Loss, damage, destruction, or unauthorized sale or disposal of military property; punishment.

Sec. 108. (1) A person subject to this code shall not, without proper authority, do any of the following:

(a) Sell or otherwise dispose of military property of the United States or this state.

(b) Willfully or negligently damage, destroy, or lose military property of the United States or this state.

(c) Willfully or negligently allow damage, destruction, or loss of military property of the United States or this state.

(2) A person who violates this section shall be punished as a court-martial directs.

32.1109 Wasting, spoiling, or destroying property; punishment.

Sec. 109. (1) A person subject to this code, while on duty or in the course of duty, shall not willfully or recklessly waste, spoil, or destroy any property that is not property of the United States or of this state.

(2) A person who violates this section shall be punished as a court-martial directs.

32.1112 Person found under influence of intoxicating liquor or controlled substance while in uniform or on state military property; punishment.

Sec. 112. (1) A person subject to this code who is not a sentinel or a lookout as described in section 113 shall not be either of the following:

(a) Under the influence of intoxicating liquor or a controlled substance while in uniform and on military property.

(b) Under the influence of intoxicating liquor or a controlled substance while on duty.

(2) A person who violates this section shall be punished as a court-martial directs.

32.1113 Sentinel or guard found under influence of intoxicating liquor or controlled substance or sleeping upon post; leaving post before being relieved; punishment.

Sec. 113. A sentinel or guard subject to this code who is found under the influence of intoxicating liquor or a controlled substance or sleeping upon his or her post or who leaves a post before being relieved shall be punished as a court-martial directs.

32.1121 Depriving owner of property or money; larceny; punishment.

Sec. 121. (1) A person subject to this code who unlawfully takes, obtains, or withholds from the United States, this state, or any other state, any property, money, or article of any kind with the intent to permanently deprive the owner of the property, money, or article of any kind, is guilty of larceny.

(2) A person who violates this section is punishable as a court-martial directs.

32.1132 Making false claims; prohibited acts; punishment.

Sec. 132. (1) A person subject to this code shall not commit any of the following acts:

(a) Knowing the claim to be false or fraudulent, make a claim against the United States, this state, or an officer of the United States or this state.

(b) Knowing the claim to be false or fraudulent, present to a person in the civil or military service of the United States or this state for approval or payment a claim against the United States, this state, or an officer of the United States or this state.

(c) For the purpose of obtaining the approval, allowance, or payment of a claim against the United States, this state, or any officer of the United States or this state, do any 1 of the following:

(*i*) Make or use a writing or other paper knowing the writing or paper contains a false or fraudulent statement.

(*ii*) Make an oath to a fact, writing, or other paper knowing the oath to be false.

(*iii*) Forge or counterfeit a signature upon a writing or other paper or use a signature knowing the signature to be forged or counterfeited.

(d) Having charge, possession, custody, or control of money or other property of the United States or this state, furnished or intended for the armed forces of the United States or this state, knowingly deliver to a person having authority to receive the money or property, an amount less than that for which the person receives a certificate or receipt.

(e) Being authorized to make or deliver a paper certifying the receipt of property of the United States or this state, furnished or intended for the armed forces of the United States or this state, make or deliver to a person the writing without having full knowledge of the truth of the statements contained in the paper and with intent to defraud the United States or this state.

(f) Make a false or fraudulent use of a credit card, telephone, telephone calling card, or other access device issued by the United States or this state.

(2) A person who violates this section shall be punished as a court-martial directs.

32.1134 Cognizance by court-martial of a disorder or neglect to prejudice of good order and discipline; punishment.

Sec. 134. (1) A person subject to this code shall not through disorder or neglect to the prejudice of good order and discipline or through conduct bring discredit upon the armed forces of the United States or of this state.

(2) A person who violates subsection (1) shall be punished by a general, special, or summary court-martial as determined by the nature and degree of the violation.

This act is ordered to take immediate effect.
Approved October 27, 2005.
Filed with Secretary of State October 27, 2005.

[No. 187]

(HB 5055)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the

classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 20161 (MCL 333.20161), as amended by 2004 PA 469.

The People of the State of Michigan enact:

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

Sec. 20161. (1) The department shall assess fees and other assessments for health facility and agency licenses and certificates of need on an annual basis as provided in this article. Except as otherwise provided in this article, fees and assessments shall be paid in accordance with the following schedule:

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

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

(3) The base fee for a certificate of need is $1,500.00 for each application. For a project requiring a projected capital expenditure of more than $500,000.00 but less than $4,000,000.00, an additional fee of $4,000.00 shall be added to the base fee. For a project requiring a projected capital expenditure of $4,000,000.00 or more, an additional fee of $7,000.00 shall be added to the base fee. The department of community health shall use the fees collected under this subsection only to fund the certificate of need program. Funds remaining in the certificate of need program at the end of the fiscal year shall not lapse to the general fund but shall remain available to fund the certificate of need program in subsequent years.

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

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

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

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

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

(9) The cost of licensure activities shall be supported by license fees.

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

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

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

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

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

(b) Except as otherwise provided under subdivision (c), beginning October 1, 2005, the quality assurance assessment is based on the total number of patient days of care each nursing home and hospital long-term care unit provided to nonmedicare patients within the immediately preceding year and shall be assessed at a uniform rate on October 1, 2005 and subsequently on October 1 of each following year, and is payable on a quarterly basis, the first payment due 90 days after the date the assessment is assessed.

(c) Within 30 days after the effective date of the amendatory act that added this subdivision, the department shall submit an application to the federal centers for medicare and medicaid services to request a waiver pursuant to 42 CFR 433.68(e) to implement this subdivision as follows:

(*i*) If the waiver is approved, the quality assurance assessment rate for a nursing home or hospital long-term care unit with less than 40 licensed beds or with the maximum number, or more than the maximum number, of licensed beds necessary to secure federal approval of the application is $2.00 per nonmedicare patient day of care provided within the immediately preceding year or a rate as otherwise altered on the application for the waiver to obtain federal approval. If the waiver is approved, for all other nursing homes and long-term care units the quality assurance assessment rate is to be calculated by dividing the total statewide maximum allowable assessment permitted under subsection (1)(g) less the total amount to be paid by the nursing homes and long-term care units with less than 40 or with the maximum number, or more than the maximum number, of licensed beds necessary to secure federal approval of the application by the total number of nonmedicare patient days of care provided within the immediately preceding year by those nursing homes and long-term care units with more than 39, but less than the maximum number of licensed beds necessary to secure federal approval. The quality assurance assessment, as provided under this subparagraph, shall be assessed in the first quarter after federal approval of the waiver and shall be subsequently assessed on October 1 of each following year, and is payable on a quarterly basis, the first payment due 90 days after the date the assessment is assessed.

(*ii*) If the waiver is approved, continuing care retirement centers are exempt from the quality assurance assessment if the continuing care retirement center requires each center resident to provide an initial life interest payment of $150,000.00, on average, per resident to ensure payment for that resident's residency and services and the continuing care retirement center utilizes all of the initial life interest payment before the resident becomes eligible for medical assistance under the state's medicaid plan. As used in this subparagraph, "continuing care retirement center" means a nursing care facility that provides independent living services, assisted living services, and nursing care and medical treatment services, in a campus-like setting that has shared facilities or common areas, or both.

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

(e) Beginning May 10, 2002, the department of community health shall increase the per diem nursing home medicaid reimbursement rates for the balance of that year. For each subsequent year in which the quality assurance assessment is assessed and collected, the department of community health shall maintain the medicaid nursing home reimbursement payment increase financed by the quality assurance assessment.

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

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

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

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

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

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

(*l*) In fiscal year 2005-2006, $39,900,000.00 of the quality assurance assessment collected pursuant to subsection (1)(g) shall be appropriated to the department of community health to support medicaid expenditures for long-term care services. These funds shall offset an identical amount of general fund/general purpose revenue originally appropriated for that purpose.

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

(a) To maintain the increased medicaid reimbursement rate increases as provided for in subdivision (c).

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

(c) Beginning October 1, 2002, the department of community health shall increase the hospital medicaid reimbursement rates for the balance of that year. For each subsequent year in which the quality assurance assessment is assessed and collected, the department of community health shall maintain the hospital medicaid reimbursement rate increase financed by the quality assurance assessments.

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

(e) If a hospital fails to pay the assessment required by subsection (1)(h), the department of community health may assess the hospital a penalty of 5% of the assessment for each month that the assessment and penalty are not paid up to a maximum of 50% of the assessment. The department of community health may also refer for collection to the

department of treasury past due amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

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

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

(h) The quality assurance assessment collected under subsection (1)(h) shall no longer be assessed or collected after September 30, 2008, or in the event that the quality assurance assessment is not eligible for federal matching funds. Any portion of the quality assurance assessment collected from a hospital that is not eligible for federal matching funds shall be returned to the hospital.

(i) In fiscal year 2005-2006, $42,400,000.00 of the quality assurance assessment collected pursuant to subsection (1)(h) shall be appropriated to the department of community health to support medicaid expenditures for hospital services and therapy. These funds shall offset an identical amount of general fund/general purpose revenue originally appropriated for that purpose.

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

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

MCL 333.20161 as retroactive; effect.

Enacting section 1. Section 20161 of the public health code, 1978 PA 368, MCL 333.20161, as amended by this amendatory act is retroactive and is effective for all quality assurance assessments made after September 30, 2005.

This act is ordered to take immediate effect.
Approved October 27, 2005.
Filed with Secretary of State October 27, 2005.

[No. 188]

(SB 438)

AN ACT to amend 1984 PA 431, entitled "An act to prescribe the powers and duties of the department of management and budget; to define the authority and functions of its director and its organizational entities; to authorize the department to issue directives; to provide for the capital outlay program; to provide for the leasing, planning, constructing, maintaining, altering, renovating, demolishing, conveying of lands and facilities; to provide for centralized administrative services such as purchasing, payroll, record retention, data processing, and publishing and for access to certain services; to provide for a system of

internal accounting and administrative control for certain principal departments; to provide for an internal auditor in certain principal departments; to provide for certain powers and duties of certain state officers and agencies; to codify, revise, consolidate, classify, and add to the powers, duties, and laws relative to budgeting, accounting, and the regulating of appropriations; to provide for the implementation of certain constitutional provisions; to create funds and accounts; to make appropriations; to prescribe remedies and penalties; to rescind certain executive reorganization orders; to prescribe penalties; and to repeal certain acts and parts of acts," by amending section 353c (MCL 18.1353c), as amended by 2002 PA 504.

The People of the State of Michigan enact:

18.1353c Appropriation of amounts to pay certain court settlements and purchase certain mineral rights.

Sec. 353c. (1) For the fiscal year ending September 30, 1995 only, there is appropriated from the fund to the general fund the sum of $59,500,000.00 to be used to pay the court settlement amount for the department of natural resources in the matter of Miller Brothers, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CM).

(2) For the fiscal year ending September 30, 1995 only, there is appropriated from the fund to the general fund the sum of $875,000.00 to be used to pay the court settlement liquidated damages for the department of natural resources in the matter of Miller Brothers, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CM).

(3) For the fiscal year ending September 30, 1995 only, there is appropriated from the fund to the general fund the sum of $30,000,000.00 to be used to pay the court settlement and purchase mineral rights for the department of natural resources in the matter of Carnagel Oil Associates, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CC).

(4) For the fiscal year ending September 30, 1995 only, there is appropriated to the department of natural resources from the general fund $59,500,000.00. This appropriation may only be used to pay the court settlement associated with the matter of Miller Brothers, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CM).

(5) For the fiscal year ending September 30, 1995 only, there is appropriated to the department of natural resources from the general fund $875,000.00. This appropriation may only be used to pay the court settlement liquidated damages associated with the matter of Miller Brothers, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CM).

(6) For the fiscal year ending September 30, 1995 only, there is appropriated to the department of natural resources from the general fund $30,000,000.00. This appropriation may only be used to pay the court settlement and purchase mineral rights associated with the matter of Carnagel Oil Associates, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CC). The payment authorized under this subsection shall be made on or before November 30, 1995.

(7) It is the intent of the legislature that money appropriated from the fund to pay the court settlement and liquidated damages associated with the matter of Miller Brothers, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CM) be repaid to the fund from the Michigan strategic fund created in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2093.

(8) It is the intent of the legislature that money appropriated from the fund to pay the court settlement and purchase mineral rights associated with the matter of Carnagel Oil Associates, et al v State of Michigan, et al (Court of Claims docket no. 88-11848-CC) be repaid to the fund from the Michigan strategic fund created in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2093.

(9) Following November 13, 1995, if the recipient of the $59,500,000.00 appropriation pursuant to subsections (1) and (4) obtains, by lease, purchase, or otherwise, the mineral rights for the real property that was the subject of the court settlement referenced in this section, the state shall seek repayment of that portion of the $59,500,000.00 settlement that was not attributed to the cost of the initial lease or to lawfully accrued interest.

(10) For the fiscal year ending September 30, 2001 only, there is appropriated from the fund to the general fund the sum of $77,000,000.00.

(11) For the fiscal year ending September 30, 2001 only, the state budget director, before the final accounting of state revenues and expenditures is completed, shall calculate the amount of funds that will be necessary to ensure a zero balance in the general fund/general purpose state budget at bookclosing. This calculation shall be made excluding any net general fund/general purpose appropriation lapses that occur when the final accounting of state expenditures is completed. For purposes of this calculation, the closure or reduction of prior year work projects shall not be considered appropriation lapses. The state budget director shall provide a report to the house and senate appropriations committees and the house and senate fiscal agencies of this calculation as soon as it is completed. Based on this calculation, there is appropriated from the fund to the general fund the amount calculated by the state budget director, not to exceed $200,000,000.00.

(12) For the fiscal year ending September 30, 2002 only, there is appropriated from the fund to the general fund the sum of $335,000,000.00.

(13) In addition to subsection (12), for the fiscal year ending September 30, 2002 only, there is appropriated from the fund to the school aid fund the sum of $350,000,000.00.

(14) For the fiscal year ending September 30, 2002 only, the state budget director, before the final accounting of state revenues and expenditures is completed, shall calculate the amount of funds that will be necessary to ensure a zero balance in the general fund state budget at bookclosing. This calculation shall be made excluding $114,500,000.00. The state budget director shall provide a report to the house and senate appropriations committees and the house and senate fiscal agencies of this calculation as soon as it is completed. Based on this calculation, there is appropriated from the fund to the general fund the amount calculated by the state budget director.

(15) For the fiscal year ending September 30, 2003 only, there is appropriated from the fund to the general fund the sum of $207,000,000.00.

(16) For the fiscal year ending September 30, 2005 only, $81,300,000.00 is appropriated from the fund to the general fund.

This act is ordered to take immediate effect.
Approved November 4, 2005.
Filed with Secretary of State November 7, 2005.

[No. 189]

(SB 719)

AN ACT to amend 1972 PA 299, entitled "An act to provide for the assessment, collection and disposition of the costs of regulation of public utilities," by amending section 1 (MCL 460.111), as amended by 1992 PA 36.

The People of the State of Michigan enact:

460.111 Definitions.

Sec. 1. As used in this act:

(a) "Commission" means the public service commission.

(b) "Department" means the department of commerce.

(c) "Public utility" means a steam, heat, electric, power, gas, water, wastewater, telecommunications, telegraph, communications, pipeline, or gas producing company regulated by the commission, whether private, corporate, or cooperative, except a municipally owned utility.

This act is ordered to take immediate effect.
Approved November 4, 2005.
Filed with Secretary of State November 7, 2005.

[No. 190]

(SB 419)

AN ACT to amend 1939 PA 3, entitled "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts," by amending the title and section 6 (MCL 460.6), the title as amended by 2000 PA 141 and section 6 as amended by 1993 PA 355.

The People of the State of Michigan enact:

TITLE

An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative

energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts.

460.6 Public service commission; power and jurisdiction; "private, investor-owned wastewater utilities" defined.

Sec. 6. (1) The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state except a municipally owned utility, the owner of a renewable resource power production facility as provided in section 6d, and except as otherwise restricted by law. The public service commission is vested with the power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities. The public service commission is further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities, including electric light and power companies, whether private, corporate, or cooperative; water, telegraph, oil, gas, and pipeline companies; motor carriers; private wastewater treatment facilities; and all public transportation and communication agencies other than railroads and railroad companies.

(2) A private, investor-owned wastewater utility may apply to the commission for rate regulation. If an application is filed under this subsection, the commission is vested with the specific grant of jurisdictional authority to regulate the rates, fares, fees, and charges of private, investor-owned wastewater utilities. As used in this subsection, "private, investor-owned wastewater utilities" means a utility that delivers wastewater treatment services through a sewage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

This act is ordered to take immediate effect.
Approved November 4, 2005.
Filed with Secretary of State November 7, 2005.

[No. 191]

(SB 356)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to

provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 4108 (MCL 324.4108).

The People of the State of Michigan enact:

324.4108 Sewerage system; planning, construction and operation; cooperation; compliance; "private, investor-owned wastewater utility" defined.

Sec. 4108. (1) The department shall exercise due care to see that sewerage systems are properly planned, constructed, and operated to prevent unlawful pollution of the streams, lakes, and other water resources of the state. The department shall cooperate with appropriate federal or state agencies in the determination of grants of assistance for the preparation of plans or for the construction of waterworks systems, sewerage systems, or waste treatment projects, or both.

(2) The activities of a private, investor-owned wastewater utility shall comply with all applicable provisions of this act, local zoning and other ordinances, and the construction and operation requirements of the federal water pollution control act and the national environmental policy act of 1969, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(3) As used in this section, "private, investor-owned wastewater utility" means a utility that delivers wastewater treatment services through a sewerage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

This act is ordered to take immediate effect.
Approved November 5, 2005.
Filed with Secretary of State November 7, 2005.

[No. 192]

(HB 4997)

AN ACT to amend 1996 PA 354, entitled "An act to codify the laws relating to savings banks; to provide for incorporation, regulation, supervision, and internal administration of savings banks; to prescribe the rights, powers, and immunities of savings banks; to prescribe the powers and duties of certain state agencies and officials; to provide for remedies; and to prescribe penalties," by repealing section 514 (MCL 487.3514).

The People of the State of Michigan enact:

Repeal of MCL 487.3514.

Enacting section 1. Section 514 of the savings bank act, 1996 PA 354, MCL 487.3514, is repealed.

This act is ordered to take immediate effect.
Approved November 5, 2005.
Filed with Secretary of State November 7, 2005.

[No. 193]

(HB 4998)

AN ACT to amend 1980 PA 307, entitled "An act to revise and codify the laws relating to savings and loan associations; to provide for the incorporation, regulation, supervision, and internal administration of associations; to prescribe the rights, powers, and immunities of associations; to provide for voluntary and involuntary changes in the corporate structure of associations; to prescribe the powers, rights, and duties of certain state agencies in relation to associations; to require certain reports and examinations of associations; to prescribe remedies and penalties for violations of this act; and to repeal certain acts and parts of acts," by repealing section 1135 (MCL 491.1135).

The People of the State of Michigan enact:

Repeal of MCL 491.1135.

Enacting section 1. Section 1135 of the savings and loan act of 1980, 1980 PA 307, MCL 491.1135, is repealed.

This act is ordered to take immediate effect.
Approved November 5, 2005.
Filed with Secretary of State November 7, 2005.

[No. 194]

(HB 4999)

AN ACT to amend 2003 PA 215, entitled "An act to provide for the organization, operation, regulation, and supervision of credit unions; to prescribe the powers and duties of credit unions; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties, civil sanctions, and remedies; and to repeal acts and parts of acts," by repealing section 307 (MCL 490.307).

The People of the State of Michigan enact:

Repeal of MCL 490.307.

Enacting section 1. Section 307 of the credit union act, 2003 PA 215, MCL 490.307, is repealed.

This act is ordered to take immediate effect.
Approved November 5, 2005.
Filed with Secretary of State November 7, 2005.

[No. 195]

(HB 5000)

AN ACT to amend 1999 PA 276, entitled "An act to revise and codify the laws relating to banks, out-of-state banks, and foreign banks; to provide for their regulation and

supervision; to prescribe the powers and duties of banks; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; and to repeal acts and parts of acts," by repealing section 4406 (MCL 487.14406).

The People of the State of Michigan enact:

Repeal of MCL 487.14406.

Enacting section 1. Section 4406 of the banking code of 1999, 1999 PA 276, MCL 487.14406, is repealed.

This act is ordered to take immediate effect.
Approved November 5, 2005.
Filed with Secretary of State November 7, 2005.

[No. 196]

(HB 5253)

AN ACT to amend 1971 PA 140, entitled "An act to provide for the distribution of certain state revenues to cities, villages, townships, and counties; to impose certain duties and confer certain powers on this state, political subdivisions of this state, and the officers of both; to create reserve funds; and to establish a revenue sharing task force and provide for its powers and duties," by amending section 13 (MCL 141.913), as amended by 2004 PA 355.

The People of the State of Michigan enact:

141.913 Payments to cities, villages, and townships from state income tax and single business tax; payments based on sales tax collections; population more than or less than 750,000; limitations; distributions; payment dates; annual appropriation by legislature; withholding payments.

Sec. 13. (1) This subsection and subsection (2) apply to distributions to cities, villages, and townships during the state fiscal years before the 1996-1997 state fiscal year of collections from the state income tax and single business tax. Except as otherwise provided in subsection (2), the department of treasury shall cause to be paid to each city, village, and township its share, computed in accordance with the tax effort formula, of the following revenues:

(a) During each August, November, February, and May, the collections from the state income tax for the quarter periods ending the prior June 30, September 30, December 31, and March 31 that are available for distribution to cities, villages, and townships under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(b) The amount of the collections from the single business tax available for distribution to cities, villages, and townships under former section 136 of the single business tax act, 1975 PA 228.

(2) The amount of collections of the state income tax otherwise available for distribution to cities, villages, and townships in November, February, and May, computed in accordance with the tax effort formula, shall be increased by $22,600,000.00. The amount of collections

otherwise available for distribution to cities, villages, and townships in August, computed in accordance with the tax effort formula, shall be decreased by $67,800,000.00.

(3) This subsection applies to distributions to cities, villages, and townships for the 1996-1997 state fiscal year. The department shall cause to be paid in accordance with the tax effort formula an amount equal to 75.5% of the difference between 21.3% of the sales tax collections at a rate of 4% in the 12-month period ending June 30 of the state fiscal year in which the payments are made and the total distribution for the state fiscal year under section 12a.

(4) The department of treasury shall cause to be paid during the 1997-1998 state fiscal year an amount equal to 75.5% of the difference between 21.3% of the sales tax collections at a rate of 4% in the 12-month period ending June 30 of the state fiscal year in which the payments are made and the total distribution for the state fiscal year under section 12a, both of the following:

(a) To each city, village, and township, the amount of collections distributed under subsection (3) to cities, villages, and townships for the 1996-1997 state fiscal year or its pro rata share of the collections if the collections are less than the amount of collections distributed under subsection (3) for the 1996-1997 state fiscal year. A city's, village's, or township's share of revenues under this subdivision shall be computed using the tax effort formula.

(b) To each city, village, and township its share of the collections to the extent the total collections available for distribution under this subsection exceed the amount distributed to cities, villages, and townships under subdivision (a) for the fiscal year. A city's, village's, or township's share of revenues under this subdivision shall be computed on a per capita basis.

(5) Subject to section 13d, for the 1998-1999 through 2006-2007 state fiscal years, the department of treasury shall cause distributions determined under subsections (6) to (13) to be paid to each city, village, and township from an amount equal to 74.94% of 21.3% of the sales tax collections at a rate of 4% in the 12-month period ending June 30 of the state fiscal year in which the payments are made. After September 30, 2007, 74.94% of 21.3% of sales tax collections at a rate of 4% shall be distributed to cities, villages, and townships as provided by law.

(6) Subject to section 13d, for the 1998-1999 through 2006-2007 state fiscal years, except for the 2002-2003 through 2005-2006 state fiscal years, and except as otherwise provided in subsection (15), the department of treasury shall cause to be paid $333,900,000.00 to a city with a population of 750,000 or more as the total combined distribution under this act and section 10 of article IX of the state constitution of 1963 as annualized for any period of less than 12 months to that city. For the 2002-2003 state fiscal year only, the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 shall be the lesser of $322,213,500.00 or $333,900,000.00 multiplied by the percentage as determined under this subsection. For the 2002-2003 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all payments under section 10 of article IX of the state constitution of 1963 and $791,070,000.00 by $1,515,644,218.00. For the 2003-2004 state fiscal year only, the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 shall be the lesser of 92%, or the percentage determined under this subsection, of the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 for the 2002-2003 state fiscal year. For the 2003-2004 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all payments under section 10 of article IX of the state constitution of

1963 and $724,800,000.00 by $1,407,850,000.00 and then subtracting 0.08. For the 2004-2005 state fiscal year only, the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 shall be the lesser of 100%, or the percentage determined under this subsection, of the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 for the 2003-2004 state fiscal year. For the 2004-2005 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all payments under section 10 of article IX of the state constitution of 1963 and $445,300,000.00 by $1,126,300,000.00. For the 2005-2006 state fiscal year only, the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 shall be the lesser of 100%, or the percentage determined under this subsection, of the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 for the 2004-2005 state fiscal year. For the 2005-2006 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all payments under section 10 of article IX of the state constitution of 1963 for the 2005-2006 state fiscal year and $423,350,000.00 by $1,115,875,000.00.

(7) Except as otherwise provided in this subsection, distributions under subsections (8) to (13) to cities, villages, and townships with populations of less than 750,000 shall be made from the amount available for distribution under this section that remains after the distribution under subsection (6) is made. For the 2002-2003 state fiscal year only, each city, village, and township with a population of less than 750,000 shall receive the lesser of 96.5%, or the percentage determined under this subsection, of the amount that the city, village, or township would have received if the total available for distribution under subsections (8) to (13) were $363,069,728.00 and the total available for distribution under section 10 of article IX of the state constitution of 1963 were $607,125,488.00. The total amount available for distribution to all cities, villages, and townships under this subsection shall not exceed $936,238,383.00. For the 2002-2003 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all payments under section 10 of article IX of the state constitution of 1963 and $791,070,000.00 by $1,515,644,218.00. For the 2003-2004 state fiscal year only, each city, village, and township with a population of less than 750,000 shall receive an amount equal to the lesser of 92%, or the percentage determined under this subsection, of the amount distributed to the city, village, or township under this subsection and section 10 of article IX of the state constitution of 1963 for the 2002-2003 state fiscal year. For the 2003-2004 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all payments under section 10 of article IX of the state constitution of 1963 and $724,800,000.00 by $1,407,850,000.00 and then subtracting 0.08. For the 2004-2005 state fiscal year only, the combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 to each city, village, and township with a population of less than 750,000 shall be the lesser of 100%, or the percentage determined under this subsection, of the total combined distribution to that city, village, or township under this subsection and section 10 of article IX of the state constitution of 1963 for the 2003-2004 state fiscal year. For the 2004-2005 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all payments under section 10 of article IX of the state constitution of 1963 and $445,300,000.00 by $1,126,300,000.00. For the 2005-2006 state fiscal year only, the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 shall be the lesser of 100%, or the percentage determined under this subsection, of the total combined distribution under this subsection and section 10 of article IX of the state constitution of 1963 for the 2004-2005 state fiscal year. For the 2005-2006 state fiscal year, the percentage under this subsection shall be determined by dividing the sum of all

payments under section 10 of article IX of the state constitution of 1963 for the 2005-2006 state fiscal year and $423,350,000.00 by $1,115,875,000.00. The amount of the adjustment under this subsection shall be accomplished by reducing the payments under subsections (8) to (13), and payments under section 10 of article IX shall not be reduced based on any adjustments made under this subsection.

(8) Subject to section 13d, for the 1998-1999 through 2006-2007 state fiscal years, for cities, villages, and townships with populations of less than 750,000, subject to the limitations under this section, a taxable value payment shall be made to each city, village, and township determined as follows:

(a) Determine the per capita taxable value for each city, village, and township by dividing the taxable value of that city, village, or township by the population of that city, village, or township.

(b) Determine the statewide per capita taxable value by dividing the total taxable value of all cities, villages, and townships by the total population of all cities, villages, and townships.

(c) Determine the per capita taxable value ratio for each city, village, and township by dividing the statewide per capita taxable value by the per capita taxable value for that city, village, or township.

(d) Determine the adjusted taxable value population for each city, village, and township by multiplying the per capita taxable value ratio as determined under subdivision (c) for that city, village, or township by the population of that city, village, or township.

(e) Determine the total statewide adjusted taxable value population which is the sum of all adjusted taxable value population for all cities, villages, and townships.

(f) Determine the taxable value payment rate by dividing 74.94% of 21.3% of the sales tax collections at a rate of 4% in the 12-month period ending June 30 of the state fiscal year in which the payments under this subsection are made by 3, and dividing that result by the total statewide adjusted taxable value population as determined under subdivision (e).

(g) Determine the taxable value payment for each city, village, and township by multiplying the result under subdivision (f) by the adjusted taxable value population for that city, village, or township.

(9) Subject to section 13d, for the 1998-1999 through 2005-2006 state fiscal years and for the period of October 1, 2006 through September 30, 2007, subject to the limitations under this section and except as provided in subsection (14), a unit type population payment shall be made to each city, village, and township with a population of less than 750,000 determined as follows:

(a) Determine the unit type population weight factor for each city, village, and township as follows:

(*i*) For a township with a population of 5,000 or less, the unit type population weight factor is 1.0.

(*ii*) For a township with a population of more than 5,000 but less than 10,001, the unit type population weight factor is 1.2.

(*iii*) For a township with a population of more than 10,000 but less than 20,001, the unit type population weight factor is 1.44.

(*iv*) For a township with a population of more than 20,000 but less than 40,001, the unit type population weight factor is 1.73.

(*v*) For a township with a population of more than 40,000 but less than 80,001, the unit type population weight factor is 2.07.

(*vi*) For a township with a population of more than 80,000, the unit type population weight factor is 2.49.

(*vii*) For a village with a population of 5,000 or less, the unit type population weight factor is 1.5.

(*viii*) For a village with a population of more than 5,000 but less than 10,001, the unit type population weight factor is 1.8.

(*ix*) For a village with a population of more than 10,000, the unit type population weight factor is 2.16.

(*x*) For a city with a population of 5,000 or less, the unit type population weight factor is 2.5.

(*xi*) For a city with a population of more than 5,000 but less than 10,001, the unit type population weight factor is 3.0.

(*xii*) For a city with a population of more than 10,000 but less than 20,001, the unit type population weight factor is 3.6.

(*xiii*) For a city with a population of more than 20,000 but less than 40,001, the unit type population weight factor is 4.32.

(*xiv*) For a city with a population of more than 40,000 but less than 80,001, the unit type population weight factor is 5.18.

(*xv*) For a city with a population of more than 80,000 but less than 160,001, the unit type population weight factor is 6.22.

(*xvi*) For a city with a population of more than 160,000 but less than 320,001, the unit type population weight factor is 7.46.

(*xvii*) For a city with a population of more than 320,000 but less than 640,001, the unit type population weight factor is 8.96.

(*xviii*) For a city with a population of more than 640,000, the unit type population weight factor is 10.75.

(b) Determine the adjusted unit type population for each city, village, and township by multiplying the unit type population weight factor for that city, village, or township as determined under subdivision (a) by the population of the city, village, or township.

(c) Determine the total statewide adjusted unit type population, which is the sum of the adjusted unit type population for all cities, villages, and townships.

(d) Determine the unit type population payment rate by dividing 74.94% of 21.3% of the sales tax collections at a rate of 4% in the 12-month period ending June 30 of the state fiscal year in which the payments under this subsection are made by 3, and then dividing that result by the total statewide adjusted unit type population as determined under subdivision (c).

(e) Determine the unit type population payment for each city, village, and township by multiplying the result under subdivision (d) by the adjusted unit type population for that city, village, or township.

(10) Subject to section 13d, for the 1998-1999 through 2005-2006 state fiscal years and for the period of October 1, 2006 through September 30, 2007, subject to the limitations under this section, a yield equalization payment shall be made to each city, village, and township with a population of less than 750,000 sufficient to provide the guaranteed tax base for a local tax effort not to exceed 0.02. The payment shall be determined as follows:

(a) The guaranteed tax base is the maximum combined state and local per capita taxable value that can be guaranteed in a state fiscal year to each city, village, and township

for a local tax effort not to exceed 0.02 if an amount equal to 74.94% of 21.3% of the state sales tax at a rate of 4% is distributed to cities, villages, and townships whose per capita taxable value is below the guaranteed tax base.

(b) The full yield equalization payment to each city, village, and township is the product of the amounts determined under subparagraphs (*i*) and (*ii*):

(*i*) An amount greater than zero that is equal to the difference between the guaranteed tax base determined in subdivision (a) and the per capita taxable value of the city, village, or township.

(*ii*) The local tax effort of the city, village, or township, not to exceed 0.02, multiplied by the population of that city, village, or township.

(c) The yield equalization payment is the full yield equalization payment divided by 3.

(11) For state fiscal years after the 1997-1998 state fiscal year, distributions under this section for cities, villages, and townships with populations of less than 750,000 shall be determined as follows:

(a) For the 1998-1999 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Ninety percent of the total amount available for distribution under subsections (8), (9), and (10) for the 1998-1999 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Ten percent of the total amount available for distribution under subsections (8), (9), and (10) for the 1998-1999 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(b) For the 1999-2000 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Eighty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 1999-2000 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Twenty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 1999-2000 state fiscal year multiplied by the city's, village's, or township's percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(c) For the 2000-2001 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Seventy percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2000-2001 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Thirty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2000-2001 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(d) For the 2001-2002 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Sixty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2001-2002 state fiscal year multiplied by the city's, village's, or township's

percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Forty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2001-2002 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(e) For the 2002-2003 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Fifty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2002-2003 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Fifty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2002-2003 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(f) For the 2003-2004 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Forty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2003-2004 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Sixty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2003-2004 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(g) For the 2004-2005 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Thirty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2004-2005 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Seventy percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2004-2005 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(h) For the 2005-2006 state fiscal year, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Twenty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2005-2006 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Eighty percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2005-2006 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(i) For the period of October 1, 2006 through September 30, 2007, the payment under this section for each city, village, and township shall be the sum of the following:

(*i*) Ten percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2006-2007 state fiscal year multiplied by the city's, village's, or township's percentage share of the distributions under this section and section 12a minus the amount of a distribution under this section and section 12a to a city that is eligible to receive a distribution under subsection (6) in the 1997-1998 state fiscal year.

(*ii*) Ninety percent of the total amount available for distribution under subsections (8), (9), and (10) for the 2006-2007 state fiscal year multiplied by the percentage share of the distribution amounts calculated under subsections (8), (9), and (10).

(12) Except as otherwise provided in this subsection, the total payment to any city, village, or township under this act and section 10 of article IX of the state constitution of 1963 shall not increase by more than 8% over the amount of the payment under this act and section 10 of article IX of the state constitution of 1963 in the immediately preceding state fiscal year. From the amount not distributed because of the limitation imposed by this subsection, the department shall distribute an amount to certain cities, villages, and townships such that the percentage increase in the total payment under this act and section 10 of article IX of the state constitution of 1963 from the immediately preceding state fiscal year to each of those cities, villages, and townships is equal to, but does not exceed, the percentage increase from the immediately preceding state fiscal year of any city, village, or township that does not receive a distribution under this subsection. This subsection does not apply for state fiscal years after the 2000 federal decennial census becomes official to a city, village, or township with a 10% or more increase in population from the official 1990 federal decennial census to the official 2000 federal decennial census.

(13) The percentage allocations to distributions under subsections (8) to (10) pursuant to subsection (11) shall be calculated as if, in any state fiscal year, the amount appropriated under this section for distribution to cities, villages, and townships is 74.94% of 21.3% of the sales tax at a rate of 4%. If the amount appropriated under this section to cities, villages, and townships is less than 74.94% of 21.3% of the sales tax at a rate of 4%, any reduction made necessary by this appropriation in distributions to cities, villages, and townships shall first be applied to the distribution under subsections (8) to (10) and any remaining amount shall be applied to the other distributions under this section.

(14) A township that provides for or makes available fire, police on a 24-hour basis either through contracting for or directly employing personnel, water to 50% or more of its residents, and sewer services to 50% or more of its residents and has a population of 10,000 or more or a township that has a population of 20,000 or more shall use the unit type population weight factor under subsection (9)(a) for a city with the same population as the township.

(15) For a state fiscal year in which the sales tax collections decrease from the sales tax collections for the immediately preceding state fiscal year, the department shall reduce the amount to be distributed to a city with a population of 750,000 or more under subsection (6) by an amount determined by subtracting the amount the city is eligible for under section 10 of article IX of the state constitution of 1963 for the state fiscal year from $333,900,000.00 and multiplying that result by the same percentage as the percentage decrease in sales tax collections for that state fiscal year as compared to sales tax collections for the immediately preceding state fiscal year. This subsection does not apply to the 2002-2003 through 2005-2006 state fiscal years.

(16) Notwithstanding any other provision of this section for the 1998-1999 state fiscal year, the total combined amount received by each city, village, and township under this

section and section 10 of article IX of the state constitution of 1963 shall not be less than the combined amount received under this section, section 12a, and section 10 of article IX of the state constitution of 1963 in the 1997-1998 state fiscal year. The increase, if any, for each city, village, and township from the 1997-1998 state fiscal year, other than a city that receives a distribution under subsection (6), shall be reduced by a uniform percentage to the extent necessary to fund distributions under this subsection.

(17) The payments under subsections (3), (4), and (5) shall be made during each October, December, February, April, June, and August. Payments under subsections (3), (4), and (5) shall be based on collections from the sales tax at the rate of 4% in the 2-month period ending the prior August 31, October 31, December 31, February 28, April 30, and June 30, and for the 1996-1997 and 1997-1998 state fiscal years only, the payments shall be reduced by 1/6 of the total distribution for the state fiscal year under section 12a.

(18) Payments under this section shall be made from revenues collected during the state fiscal year in which the payments are made.

(19) Distributions provided for by this act are subject to an annual appropriation by the legislature.

(20) After the department has informed a city, village, or township in writing of the intent to withhold all or a portion of payments under this section and offered the affected city, village, or township an opportunity for an informal conference on the matter, the department of treasury may withhold all or a portion of payments under this section to a city, village, or township that has not distributed 1 or more of the following:

(a) An industrial facilities tax as required under 1974 PA 198, MCL 207.551 to 207.572.

(b) The specific tax as required under section 21b of the enterprise zone act, 1985 PA 224, MCL 125.2121b.

(c) Any portion of the state education tax levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, or of property taxes levied for any purpose by a local or intermediate school district under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, determined by the state tax commission to have been wrongfully captured and retained to implement a tax increment financing plan under 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.

This act is ordered to take immediate effect.
Approved November 5, 2005.
Filed with Secretary of State November 7, 2005.

[No. 197]

(HB 4737)

AN ACT to amend 1990 PA 100, entitled "An act to permit the imposition, revival, and continued collection by cities of a population of 750,000 or more of a utility users tax; to provide the procedure for, and to require the adoption of a prescribed uniform city utility users tax ordinance by cities desiring to impose and collect such a tax; to limit the rate of such tax; to prescribe the powers and duties of the state commissioner of revenue; and to provide for appeals," by amending section 2 (MCL 141.1152), as amended by 1998 PA 548.

The People of the State of Michigan enact:

141.1152 Uniform city utility users tax ordinance; authorization; adoption; rescission; amendment; notice; report; placement of revenue in police department budget; "police officer" defined.

Sec. 2. (1) The governing body of a city having a population of 750,000 or more, by a lawfully adopted ordinance that incorporates by reference the uniform city utility users tax ordinance set forth in chapter 2, may levy, assess, and collect from those users in that city a utility users tax as provided in the ordinance. However, a uniform city utility users tax ordinance containing substantially the same provisions provided for in chapter 2 adopted by the governing body of a city before June 13, 1990 that has not been rescinded by that governing body is considered an ordinance adopted under this act and a tax imposed and collected under that ordinance is revived. The governing body shall set the rate of tax in increments of 1/4 of 1% that shall not exceed 5%.

(2) A uniform city utility users tax ordinance may be lawfully adopted or rescinded by the governing body at any time and its adoption shall become effective on the first day of any month, following adoption of the ordinance, as specified in the ordinance. The ordinance may be rescinded at any time by the governing body in the same manner in which the ordinance was adopted and with appropriate enforcement, collection, and refund provisions with respect to liabilities incurred before the effective date of its rescission. The ordinance shall not be amended except as provided by the legislature. A village and a city under 750,000 population shall not impose and collect a utility users tax. A city that adopts or rescinds the tax shall notify within 7 days by certified mail all public utilities or resale customers affected by the action of the governing body. Except as otherwise provided in this section, a city now having or that may attain a population of 750,000 or more shall not impose a utility users tax except by adopting the entire uniform city utility users tax ordinance as set forth in chapter 2.

(3) The administrator, as that term is defined in chapter 2, of the tax shall file a report indicating the total amount of revenue collected in the prior fiscal year with the state revenue commissioner by August 1 of each year, beginning on August 1, 1985. The administrator shall make the report available to the public at the same time.

(4) The revenue generated from this tax shall be placed directly in the budget of the police department of a city described in this act and shall be used exclusively to retain or hire police officers.

(5) As used in this section, "police officer" means a police officer, investigator, or police sergeant.

This act is ordered to take immediate effect.
Approved November 9, 2005.
Filed with Secretary of State November 9, 2005.

[No. 198]

(HB 4729)

AN ACT to amend 1968 PA 317, entitled "An act relating to the conduct of public servants in respect to governmental decisions and contracts with public entities; to provide penalties for the violation of this act; to repeal certain acts and parts of acts; and to validate certain contracts," by amending section 4 (MCL 15.324).

The People of the State of Michigan enact:

15.324 Public servants; contracts excepted; violation as felony.

Sec. 4. (1) The prohibitions of section 2 shall not apply to any of the following:

(a) Contracts between public entities.

(b) Contracts awarded to the lowest qualified bidder, other than a public servant, upon receipt of sealed bids pursuant to a published notice. Except as authorized by law, the notice shall not bar any qualified person, firm, corporation, or trust from bidding. This subsection shall not apply to amendments or renegotiations of a contract nor to additional payments made under a contract which were not authorized by the contract at the time of award.

(c) Contracts for public utility services where the rates are regulated by the state or federal government.

(d) Contracts to purchase residential property. A public servant of a city or village may purchase 1 to 4 parcels not less than 18 months between each purchase. This subdivision does not apply to public servants of a city or village who have been appointed or elected to their position or whose employment responsibilities include the purchase or selling of property for the city or village. This subdivision shall apply only to a city or village that has adopted an ethics ordinance which was in effect at the time the residential property was purchased.

(2) A person that violates subsection (1)(d) is guilty of a felony punishable by imprisonment for not more than 1 year or a fine of not less than $1,000.00 or more than 3 times the value of the property purchased.

This act is ordered to take immediate effect.
Approved November 9, 2005.
Filed with Secretary of State November 9, 2005.

[No. 199]

(HB 5149)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 11701, 11702, and 11715b (MCL 324.11701, 324.11702, and 324.11715b), sections 11701 and 11702 as amended and section 11715b as added by 2004 PA 381.

The People of the State of Michigan enact:

324.11701 Definitions.

Sec. 11701. As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

conservation officer appointed by the department or the department of natural resources pursuant to section 1606.

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

(r) "Receiving facility" means a structure that is designed to receive septage waste for treatment at a wastewater treatment plant or at a research, development, and demonstration project authorized under section 11511b to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government where the structure is located or in an operating plan. Receiving facility does not include either of the following:

(*i*) A septic tank.

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

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

(*i*) Beginning October 12, 2005 and before the 2011 state fiscal year, the geographic service area of a receiving facility shall not extend more than 15 radial miles from the receiving facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

324.11702 Septage waste licensing; requirement.

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

(2) The septage waste servicing license and septage waste vehicle license requirements provided in this part are not applicable to a publicly owned receiving facility subject to a permit issued under part 31 or section 11511b.

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

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

(2) A person shall not commence construction of a receiving facility on or after the date on which rules are promulgated under subsection (1) unless the owner has a permit from the department authorizing the construction of the receiving facility. The application for a permit shall include a basis of design for the receiving facility, engineering plans for the receiving facility sealed by an engineer licensed to practice in Michigan, and any other information required by the department. If the proposed receiving facility will be part of a sewerage system whose construction is required to be permitted under part 41 or a research, development, and demonstration project whose construction and operation is required to be permitted under section 11511b, the permit issued under part 41 or part 115, respectively, satisfies the permitting requirement of this subsection.

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

(4) If the operation of a receiving facility commenced before October 12, 2004, subsection (3) applies to that receiving facility beginning October 12, 2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Within 1 year after the date on which rules are promulgated under subsection (1), the owner of the receiving facility shall submit to the department and obtain department approval of a report prepared by a professional engineer licensed to practice in Michigan describing the receiving facility's state of compliance with the rules and proposing any modifications to the receiving facility necessary to comply with the rules.

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

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

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

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) Senate Bill No. 747.

(b) House Bill No. 5148.

This act is ordered to take immediate effect.
Approved November 10, 2005.
Filed with Secretary of State November 10, 2005.

Compiler's note: Senate Bill No. 747, referred to in enacting section 1, was filed with the Secretary of State November 22, 2005, and became 2005 PA 243, Imd. Eff. Nov. 22, 2005.

House Bill No. 5148, also referred to in enacting section 1, was filed with the Secretary of State November 22, 2005, and became 2005 PA 236, Imd. Eff. Nov. 22, 2005.

[No. 200]

(HB 4307)

AN ACT to make, supplement, and adjust appropriations for various state departments and agencies for the fiscal year ending September 30, 2005; to provide for the expenditure of the appropriations; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

GENERAL SECTIONS

Appropriations; supplemental; various state departments and agencies.

Sec. 201. (1) From the unreserved balance of the general fund for the fiscal year ending September 30, 2005, after all payments are made pursuant to section 701(2) of 2005 PA 11, an amount not to exceed $8,850,000.00 is appropriated for the following:

DEPARTMENT OF LABOR AND ECONOMIC GROWTH		
Fire protection grants	$	3,700,000
MICHIGAN STATE POLICE		
Justice training grants	$	1,900,000
Uniform services to restore post closings		1,050,000
Fire investigations—11.0 FTE positions		1,200,000
Public safety grants to counties for 2006 superbowl and 2005 major league baseball all-star games		1,000,000

(2) If an insufficient general fund balance is available to support the line items identified in subsection (1), then all line items identified in subsection (1) shall be reduced proportionately according to the available balance.

(3) The line items identified in subsection (1) are established as work project accounts with the funds being available for expenditure in fiscal year 2005-2006 for the programs as indicated.

REPEALERS

Repeal of section 226 of 2005 PA 159.

Sec. 301. Section 226 of 2005 PA 159 is repealed.

This act is ordered to take immediate effect.
Approved November 10, 2005.
Filed with Secretary of State November 10, 2005.

[No. 201]

(HB 4133)

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending section 1831 (MCL 600.1831), as amended by 1984 PA 29.

The People of the State of Michigan enact:

600.1831 Civil process; exemptions.

Sec. 1831. (1) Civil process shall not be served on an elector entitled to vote at an election during the day that election is held. However, if sufficient cause is shown by affidavit to the satisfaction of a judge, that judge may issue a restraining order or authorize the issuance and service or execution of a writ on an election day, as on other days.

(2) Civil process shall not be served or executed on a person attending a worship meeting of a religious organization that has tax exempt status under section 501(c)(3) of the internal revenue code, 26 USC 501, on property where the organization normally conducts its worship, or going to or coming from such a meeting within 500 feet of that property. A judge may order service or execution of process notwithstanding this subsection if, to the judge's satisfaction, sufficient cause is shown by affidavit.

This act is ordered to take immediate effect.
Approved November 10, 2005.
Filed with Secretary of State November 10, 2005.

[No. 202]

(HB 5110)

AN ACT to amend 1973 PA 116, entitled "An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and

duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts," by amending section 1 (MCL 722.111), as amended by 2002 PA 696.

The People of the State of Michigan enact:

722.111 Definitions; exemption from inspections and on-site visits.

Sec. 1. (1) As used in this act:

(a) "Child care organization" means a governmental or nongovernmental organization having as its principal function the receiving of minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Child care organization includes organizations commonly described as child caring institutions, child placing agencies, children's camps, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or day care homes. Child care organization does not include a governmental or nongovernmental organization that does either of the following:

(*i*) Provides care exclusively to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4.

(*ii*) Provides care exclusively to persons who are 18 years of age or older and to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

(b) "Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes institutions for mentally retarded or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

(c) "Child placing agency" means a governmental organization or an agency organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include supervising children who are 16 or 17 years of age and who are living in unlicensed residences as provided in section 5(4).

(d) "Children's camp" means a residential, day, troop, or travel camp that provides care and supervision and is conducted in a natural environment for more than 4 children, apart from the children's parents, relatives, or legal guardians, for 5 or more days in a 14-day period.

(e) "Child care center" or "day care center" means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center or day care center includes a facility that provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, before- or after-school program, or drop-in center. Child care center or day care center does not include any of the following:

(*i*) A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are attending for not more than 3 hours per day for an indefinite period or for not more than 8 hours per day for a period not to exceed 4 weeks during a 12-month period.

(*ii*) A facility operated by a religious organization where children are cared for not more than 3 hours while persons responsible for the children are attending religious services.

(*iii*) A program that is primarily supervised, school-age-child-focused training in a specific subject, including, but not limited to, dancing, drama, music, or religion. This exclusion applies only to the time a child is involved in supervised, school-age-child-focused training.

(*iv*) A program that is primarily an incident of group athletic or social activities for school-age children sponsored by or under the supervision of an organized club or hobby group, including, but not limited to, youth clubs, scouting, and school-age recreational or supplementary education programs. This exclusion applies only to the time the school-age child is engaged in the group athletic or social activities and if the school-age child can come and go at will.

(f) "Private home" means a private residence in which the licensee or registrant permanently resides as a member of the household, which residency is not contingent upon caring for children or employment by a licensed or approved child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group day care home, or a family day care home, as follows:

(*i*) "Foster family home" is a private home in which 1 but not more than 4 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

(*ii*) "Foster family group home" means a private home in which more than 4 but fewer than 7 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are provided care for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

(*iii*) "Family day care home" means a private home in which 1 but fewer than 7 minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Family day care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(*iv*) "Group day care home" means a private home in which more than 6 but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group day care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(g) "Licensee" means a person, partnership, firm, corporation, association, nongovernmental organization, or local or state government child care organization that has been issued a license under this act to operate a child care organization.

(h) "Provisional license" means a license issued to a child care organization that is temporarily unable to conform to all of the rules promulgated under this act.

(i) "Regular license" means a license issued to a child care organization indicating that the organization is in compliance with all rules promulgated under this act.

(j) "Guardian" means the guardian of the person.

(k) "Minor child" means any of the following:

(*i*) A person less than 18 years of age.

(*ii*) A person who is a resident in a child caring institution, children's camp, foster family home, or foster family group home; who becomes 18 years of age while residing in the child caring institution, children's camp, foster family home, or foster family group home; and who continues residing in the child caring institution, children's camp, foster family home, or foster family group home to receive care, maintenance, training, and supervision. However, a minor child under this subparagraph does not include a person 18 years of age or older who is placed in a child caring institution, foster family home, or foster family group home pursuant to an adjudication under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1. This subparagraph applies only if the number of those residents who become 18 years of age does not exceed the following:

(A) Two, if the total number of residents is 10 or fewer.

(B) Three, if the total number of residents is not less than 11 and not more than 14.

(C) Four, if the total number of residents is not less than 15 and not more than 20.

(D) Five, if the total number of residents is 21 or more.

(*iii*) A person 18 years of age or older who is placed in a foster family home under section 5(7).

(*l*) "Registrant" means a person who has been issued a certificate of registration under this act to operate a family day care home.

(m) "Registration" means the process by which the department of human services regulates family day care homes, and includes the requirement that a family day care home certify to the department of human services that the family day care home has complied with and will continue to comply with the rules promulgated under this act.

(n) "Certificate of registration" means a written document issued under this act to a family day care home through registration.

(o) "Related" means a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or stepgrandparent related by marriage, blood, or adoption.

(p) "Religious organization" means church, ecclesiastical corporation, or group, not organized for pecuniary profit, that gathers for mutual support and edification in piety or worship of a supreme deity.

(q) "School-age child" means a child who is eligible to be enrolled in a grade of kindergarten or above, but is less than 13 years of age.

(2) A facility or program for school-age children that is currently operated and has been in operation and licensed or approved as provided in this act for a minimum of 2 years may apply to the department of human services to be exempt from inspections and on-site visits required under section 5. The department of human services shall respond to a facility or program requesting exemption from inspections and on-site visits required under section 5 as provided under this subsection within 45 days from the date the completed application is received. The department of human services may grant exemption from inspections and on-site visits required under section 5 to a facility or program that meets all of the following criteria:

(a) The facility or program has been in operation and licensed or approved under this act for a minimum of 2 years before the application date.

(b) During the 2 years before the application date, the facility or program has not had a substantial violation of this act, rules promulgated under this act, or the terms of a licensure or an approval under this act.

(c) The school board, board of directors, or governing body adopts a resolution supporting the application for exemption from inspections and on-site visits required under section 5 as provided for in this subsection.

(3) A facility or program granted exemption from inspections and on-site visits required under section 5 as provided for under subsection (2) is required to maintain status as a licensed or approved program under this act and must continue to meet the requirements of this act, the rules promulgated under this act, or the terms of a license or approval under this act. A facility or program granted exemption from inspections and on-site visits required under section 5 as provided for under subsection (2) is subject to an investigation by the department of human services when a violation of this act or a violation of a rule promulgated under this act is alleged.

(4) A facility or program granted exemption from inspections and on-site visits required under section 5 as provided for under subsection (2) is not subject to interim or annual licensing reviews. A facility or program granted exemption from inspections and on-site visits required under section 5 as provided for under subsection (2) is required to submit documentation annually demonstrating compliance with the requirements of this act, the rules promulgated under this act, or the terms of a license or approval under this act.

(5) An exemption provided under subsection (2) may be rescinded by the department of human services if the facility or program willfully and substantially violates this act, the rules promulgated under this act, or the terms of a license or approval granted under this act.

This act is ordered to take immediate effect.
Approved November 10, 2005.
Filed with Secretary of State November 10, 2005.

[No. 203]

(SB 480)

AN ACT to amend 1984 PA 233, entitled "An act to authorize certain organizations to enter into prudent purchaser agreements with health care providers; to control health care costs, assure appropriate utilization of health care services, and maintain quality of

health care; to provide for the regulation of certain organizations, health care providers, health care facilities, and prudent purchaser arrangements; to establish a joint legislative committee to investigate the degree of competition in the health care coverage market in this state; and to provide for the powers and duties of certain state officers and agencies," by repealing section 10 (MCL 550.60).

The People of the State of Michigan enact:

Repeal of MCL 550.60.

Enacting section 1. Section 10 of the prudent purchaser act, 1984 PA 233, MCL 550.60, is repealed.

This act is ordered to take immediate effect.
Approved November 10, 2005.
Filed with Secretary of State November 10, 2005.

[No. 204]

(HB 4968)

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending sections 1104, 2301, 2519, 2908, 3715, 3804, 3919, 5202, 5204, 5217, 5301, 5308, 5423, 7401, 7502, and 7508 (MCL 700.1104, 700.2301, 700.2519, 700.2908, 700.3715, 700.3804, 700.3919, 700.5202, 700.5204, 700.5217, 700.5301, 700.5308, 700.5423, 700.7401, 700.7502, and 700.7508), sections 1104, 2519, 5202, 5204, 5301, and 5308 as amended by 2000 PA 54, sections 2301 and 3715 as amended by 2004 PA 314, section 5423 as amended by 2000 PA 469, and section 7508 as amended by 2000 PA 177.

The People of the State of Michigan enact:

700.1104 Definitions; E to H.

Sec. 1104. As used in this act:

(a) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance that relates to the protection of the environment or human health.

(b) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration. Estate also includes the rights described in sections 3805, 3922, and 7502 to collect from others amounts necessary to pay claims, allowances, and taxes.

(c) "Exempt property" means property of a decedent's estate that is described in section 2404.

(d) "Family allowance" means the allowance prescribed in section 2403.

(e) "Fiduciary" includes, but is not limited to, a personal representative, guardian, conservator, trustee, plenary or partial guardian appointed as provided in chapter 6 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644, and successor fiduciary.

(f) "Financial institution" means an organization authorized to do business under state or federal laws relating to a financial institution and includes, but is not limited to, a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(g) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(h) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(i) "General personal representative" means a personal representative other than a special personal representative.

(j) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(k) "Guardian" means a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in sections 5205, 5206, and 5306. Guardian does not include a guardian ad litem.

(*l*) "Hazardous substance" means a substance defined as hazardous or toxic or otherwise regulated by an environmental law.

(m) "Heir" means, except as controlled by section 2720, a person, including the surviving spouse or the state, that is entitled under the statutes of intestate succession to a decedent's property.

(n) "Homestead allowance" means the allowance prescribed in section 2402.

700.2301 Entitlement of spouse; premarital will.

Sec. 2301. (1) Except as provided in subsection (2), if a testator's surviving spouse marries the testator after the testator executes his or her will, the surviving spouse is entitled to receive, as an intestate share, not less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is not any of the following:

(a) Property devised to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child.

(b) Property devised to or in trust for the benefit of a descendant of a child described in subdivision (a).

(c) Property that passes under section 2603 or 2604 to a child described in subdivision (a) or to a descendant of such a child.

(2) Subsection (1) does not apply if any of the following are true:

(a) From the will or other evidence, it appears that the will was made in contemplation of the testator's marriage to the surviving spouse.

(b) The will expresses the intention that it is to be effective notwithstanding a subsequent marriage.

(c) The testator provided for the spouse by transfer outside the will, and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child or a devise or substitute gift under section 2603 or 2604 to a descendant of such a child, abate as provided in section 3902.

(4) A spouse who receives an intestate share under this section may also exercise the right of election under section 2202, but the intestate share received by the spouse under this section reduces the sum available to the spouse under section 2202(2)(b).

700.2519 Statutory will.

Sec. 2519. (1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1. An individual age 18 or older and of sound mind may sign a will.

2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.

3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.

4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.

5. This will is not designed to reduce estate taxes.

6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.

7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file this will in your county's probate court for safekeeping. You should tell your family where the will is kept.

8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF _____
(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils. I live in _____ County, Michigan.

My spouse is _____.
(Insert spouse's name or write "none")

My children now living are:

_____ _____

_____ _____

_____ _____
(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1 person or charity here):

_____
(Insert name of person or charity)

_____
(Insert address)

AMOUNT OF GIFT (In figures): $_____

AMOUNT OF GIFT (In words): _____ Dollars

_____
(Your signature)

Full name and address of person or charity to receive cash gift (Name only 1 person or charity):

_____
(Insert name of person or charity)

_____
(Insert address)

AMOUNT OF GIFT (In figures): $_____

AMOUNT OF GIFT (In words): _____ Dollars

_____
(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

_____

(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

_____

(Your signature)

GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate _____

(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.

(Insert address)

If my first choice does not serve, I nominate _____

_____

(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.

(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of mine, I nominate _____

_____
(Insert name of individual)

of _____ as guardian and
(Insert address)

_____
(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.
(Insert address)

If my first choice cannot serve, I nominate

_____
(Insert name of individual)

of _____ as guardian and
(Insert address)

_____
(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.
(Insert address)

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve with bond.

_____
(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

_____
(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on _____, 20____.

_____
(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.