

500.4715 Protected cell; consideration as separate person; purposes; distinct name or designation; subject to orders of court; service of process; contract with third party advisor or manager; recourse by creditors; availability of assets; attachment of security interest to protected cell; identification of protected cell assets and liabilities; provisions in contracts or other documentation; income; crediting to or charging against protected cell; investment or reinvestment of amounts; annual report; notification of insolvency.

Sec. 4715. (1) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding subsection (1), if an order of conservation, rehabilitation, or liquidation is entered for a counterparty, the SPFC and each protected cell of the SPFC shall be considered separate persons for purposes of any offset undertaken as part of the conservation, rehabilitation, or liquidation, such that any offset of mutual debts and credits between the counterparty and either the SPFC or any protected cell shall not involve the debts and credits of any other protected cell or, if the offset involves a protected cell, the SPFC.

(3) Notwithstanding subsection (1), a protected cell shall have its own distinct name or designation that includes the words “protected cell”. The SPFC shall transfer all assets attributable to the protected cell to 1 or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(4) Although the protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of a court by name as it would have been if the protected cell were a separate legal person.

(5) The property of an SPFC in a protected cell shall be served in its own name with process in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC in the manner described in section 1920 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1920.

(6) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan of operation submitted to the commissioner, the SPFC voluntarily shall close out the protected cell account.

(7) Nothing in this section shall be construed to prohibit an SPFC from contracting with, or arranging for, an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account.

(8) Creditors to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor for that obligation and that creditor is entitled to have recourse only to the assets of the SPFC's general account.

(9) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC counterparty and other creditors of the SPFC that are creditors only to that protected cell and, accordingly, are entitled, in conformity with this chapter, to have recourse to the protected cell assets attributable to that protected cell. Protected cell assets are absolutely protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or

counterparty arises from an SPFC contract or related insurance securitization transaction or is otherwise incurred for a protected cell, both of the following apply:

(a) That obligation of the SPFC extends only to the protected cell assets attributable to that protected cell, and the person or counterparty, for that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell.

(b) That obligation of the SPFC does not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and that person, for that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization of its protected cell or cells as required by section 4713(4) shall be available at all times to pay expenses of or claims against the SPFC and shall not be used to pay expenses or claims attributable to any protected cell.

(10) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate the insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the commissioner.

(11) An SPFC shall establish administrative and accounting procedures necessary to properly identify the 1 or more protected cells of the SPFC and the assets and liabilities of each protected cell. The directors of an SPFC shall keep protected cell assets and liabilities separate and separately identifiable from the assets and liabilities of the SPFC's general account. The assets and liabilities attributable to 1 protected cell shall be kept separate and separately identifiable from the assets and liabilities attributable to other protected cells.

(12) All contracts or other documentation reflecting protected cell liabilities shall indicate clearly that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, including the issuance of preferred securities, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation shall disclose clearly that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding the provisions of this subsection and subject to the provisions of this chapter and any other applicable law or regulation, the failure to include this language in the contracts or other documentation shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or reinsurers, or other claimants to circumvent this section.

(13) The income, and gains and losses, whether realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income and gains or losses of the SPFC, including income and gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested. The investments in a protected cell or cells shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the SPFC.

(14) An SPFC with protected cells shall file annually with the office accounting statements and financial reports required by this chapter that, among other things, shall do all of the following:

(a) Detail the financial experience of each protected cell and the SPFC separately.

(b) Provide the combined financial experience of the SPFC and all protected cells.

(c) Account for the financial experience of each protected cell and the SPFC, both separately and on a combined basis, in satisfaction of section 4731(4).

(15) An SPFC with protected cells shall notify the commissioner in writing within 10 business days of a protected cell becoming insolvent.

500.4717 Issuance of SPFC securities.

Sec. 4717. (1) An SPFC may issue securities, including SPFC securities and preferred securities, surplus notes, and other forms of financial instruments, subject to and in accordance with applicable law, the SPFC's approved plan of operation, and its organizational documents.

(2) An SPFC, its parent or an affiliated company, its counterparty, or a captive LLC may issue SPFC securities and any other securities necessary to implement the insurance securitization.

(3) Preferred securities may be issued by the SPFC to the issuer of the SPFC securities in connection with the insurance securitization in order to facilitate distributions to service SPFC securities and these preferred securities shall identify the associated protected cell. The SPFC may lawfully account for preferred securities as surplus and not as debt for purposes of statutory accounting.

(4) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(5) Subject to the commissioner's approval, the issuer of the SPFC securities or, if the issuer is a captive LLC, the party controlling the captive LLC, may lawfully account for the SPFC securities as surplus and not as debt for purposes of statutory accounting and submit for the commissioner's prior approval periodic written requests for payments of interest on and repayments of principal of surplus notes.

(6) Surplus notes issued pursuant to this section constitute surplus or contribution notes of the type described in section 8142(1)(h).

(7) The commissioner, without otherwise prejudicing the commissioner's authority, may approve formulas for an ongoing plan of interest payments, principal repayments, or both interest payments and principal repayments, to provide guidance in connection with his or her ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(8) The obligation to repay principal or interest, or both, on the SPFC securities shall reflect, in whole or in part, the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract, either directly or by being secured by assets, including the preferred securities, obtained with the proceeds of the sale of the SPFC securities.

500.4719 Asset management agreements.

Sec. 4719. An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of the SPFC under the SPFC contract.

500.4721 SPFC contracts; agreements with affiliated companies and third parties; contents of contract; withdrawal of assets or income from trust and transfer to SPFC; approval from counterparty.

Sec. 4721. (1) An SPFC, at any given time, may enter into and effectuate an SPFC contract with a counterparty, provided that the SPFC contract meets all of the following:

- (a) Complies with the plan of operation submitted to the commissioner.

(b) Obligates the SPFC to indemnify the counterparty for losses.

(c) Provides that contingent obligations of the SPFC under the SPFC contract are securitized through an SPFC insurance securitization and are funded and secured with assets held in trust for the benefit of the counterparty pursuant to this chapter and under agreements contemplated by this chapter and that are invested in a manner that meet the criteria under section 4727.

(2) An SPFC may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the SPFC contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in section 4719.

(3) An SPFC contract shall contain all of the following:

(a) A requirement for the SPFC to enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty.

(b) A stipulation that assets deposited in the trust account shall be valued according to their current fair value and shall consist only of permitted investments.

(c) A requirement for the SPFC, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the SPFC or another entity.

(d) A requirement that all settlements of account between the counterparty and the SPFC be made in cash or its equivalent.

(e) A stipulation that the SPFC and the counterparty agree that the assets in the trust account, established pursuant to the SPFC contract, are under the control of the counterparty and may be withdrawn by the counterparty at any time, notwithstanding any other provisions in the SPFC contract, and shall be utilized and applied by the counterparty or any successor by operation of law of the counterparty, including, subject to the provisions of section 4741, but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the following purposes:

(i) To transfer all of the assets into 1 or more trust accounts for the benefit of the counterparty pursuant to the terms of the SPFC contract and in compliance with this chapter.

(ii) To pay any other incurred and paid amounts that the counterparty claims are due pursuant to the terms of the SPFC contract and in compliance with this chapter.

(4) The SPFC contract may contain provisions that give the SPFC the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the SPFC, provided that at the time of the withdrawal, the SPFC shall replace the withdrawn assets, excluding any income withdrawn, with other assets having a fair value equal to the fair value of the assets withdrawn and that meet the provisions of section 4727; and after the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPFC under the SPFC contract is no less than an amount needed to satisfy the funded requirement of the SPFC contract. The counterparty shall be the sole judge as to the application of these provisions but shall not unreasonably nor arbitrarily withhold its approval.

500.4723 Insurance securitization; not considered as insurance producers or brokers.

Sec. 4723. SPFC securities and preferred securities issued pursuant to an insurance securitization are not, and shall not be considered to be, insurance or reinsurance contracts. An investor in these securities or a holder or issuer of these securities, by sole means of this investment, holding, or issuance, is not, and shall not be considered to be, transacting the business of insurance in this state. The underwriter's placement agent or selling agent and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this chapter shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with them.

500.4725 SPFC; duty to ensure contracts fulfill certain requirements.

Sec. 4725. In fulfilling its function, the SPFC shall adhere to the following and, to the extent of its powers, shall ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with all of the following:

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the SPFC contract with the counterparty, the issuance of preferred securities, or the insurance securitization and other related agreements.

(b) Assets held by an SPFC in trust shall be valued at their fair value.

(c) The proceeds from the sale of SPFC securities pursuant to the insurance securitization shall be deposited with the trustee to the extent required to secure the obligations of the SPFC under the SPFC contract as provided by this chapter and shall be held or invested by the trustee pursuant to section 4727 and an asset management agreement, if any.

(d) Assets of the SPFC, other than those held in trust for the counterparty, and income on trust assets received by the SPFC may be used to pay interest or other consideration on any SPFC securities or other securities or outstanding debt or payments on preferred securities or other obligation of the SPFC. Nothing in this chapter shall be construed or interpreted to prevent an SPFC from entering into a swap agreement or other asset management transaction that has the effect of hedging or guaranteeing the fixed or floating interest rate returns paid on the assets in trust or required for the securities issued by the SPFC generated from or other consideration or payment flows in the transaction.

(e) In the SPFC insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPFC.

(f) Unless otherwise approved by the commissioner, an SPFC shall not do any of the following:

(i) Issue or otherwise administer primary insurance policies.

(ii) Enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile.

(iii) Assume or retain exposure to insurance or reinsurance losses for its own account that is not funded by proceeds from an SPFC insurance securitization that meets the provisions of this chapter. However, the SPFC may wholly or partially reinsure or retrocede the risks assumed to a third party reinsurer.

(g) An SPFC shall not do any of the following:

(i) Have any direct obligation to the policyholders or reinsureds of the counterparty.

(ii) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

500.4727 Creation of trust to hold assets of SPFC.

Sec. 4727. (1) Assets of the SPFC held in trust to secure obligations under the SPFC contract shall at all times be held in cash and cash equivalents, securities listed by the securities valuation office of the national association of insurance commissioners, or another form of security acceptable to the commissioner.

(2) Assets of the SPFC that are pledged to secure obligations of the SPFC to a counterparty under an SPFC contract shall be held in trust and administered by a qualified United States financial institution that does not control, is not controlled by, or is not under common control with, the SPFC or the counterparty.

(3) The agreement governing a trust described in this section shall create 1 or more trust accounts into which all pledged assets shall be deposited and held until distributed in accordance with the trust agreement. The pledged assets shall be held by the trustee at 1 of the trustee's offices or branch offices in the United States and may be held in certificated or electronic form.

(4) The provisions for withdrawal by the counterparty of assets from the trust shall be clean and unconditional, subject only to the following:

(a) The counterparty has the right to withdraw assets from the trust account at any time, without notice to the SPFC, subject only to written notice to the trustee and the commissioner from the counterparty that funds in the amount requested are due and payable by the SPFC, pursuant to the SPFC contract.

(b) A statement or document does not need to be presented in order to withdraw assets, except the counterparty may be required to acknowledge receipt of withdrawn assets.

(c) The trust agreement shall indicate that it is not subject to any conditions or qualifications outside of the trust agreement.

(d) The trust agreement shall not contain references to any other agreements or documents.

(5) The trust agreement shall be established for the sole use and benefit of the counterparty at least to the full extent of the obligations of the SPFC to the counterparty under the SPFC contract. If there is more than 1 counterparty, or more than 1 SPFC contract with the same counterparty, a separate trust agreement shall be entered into with the counterparty and a separate trust account shall be maintained for each SPFC contract with the counterparty, unless otherwise approved by the commissioner.

(6) The trust agreement shall provide for the trustee to do all of the following:

(a) Receive assets and hold all assets in a safe place.

(b) Determine that all assets are in a form that the counterparty or the trustee, upon direction by the counterparty, may negotiate, whenever necessary, without consent or signature from the SPFC or another person or entity.

(c) Furnish to the SPFC, the commissioner, and the counterparty a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than 45 days after the end of each calendar quarter.

(d) Notify the SPFC and the counterparty, within 10 days, of any deposits to or withdrawals from the trust account.

(e) Upon written demand of the counterparty, immediately take the necessary steps to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the counterparty and deliver physical custody of the assets to the counterparty.

(f) Allow no substitutions or withdrawals of assets from the trust account, except pursuant to the trust agreement or SPFC contract, or as otherwise permitted by the counterparty.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, before termination of the trust account, written notification of termination shall be delivered by the trustee to the counterparty with a copy of the notice provided to the commissioner.

(8) In addition to the requirement for the trust as provided in this chapter, the trust agreement may be made subject to and governed by the laws of any state. The state shall be disclosed in the plan of operation submitted to the commissioner.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith.

(11) Notwithstanding subsection (4)(c) and (d), when a trust agreement is established in conjunction with an SPFC contract, then the trust agreement or SPFC contract, or both, may provide that the counterparty shall undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the counterparty or the SPFC, only for 1 or more of the following purposes:

(a) To pay or reimburse the counterparty for payment of the SPFC's share of premiums to be returned to owners of counterparty's policies covered under the SPFC contract on account of cancellations of the policies under the counterparty's policies.

(b) To pay or reimburse the counterparty for payment of the SPFC's share of surrenders, benefits, losses, or other benefits covered and payable pursuant to the SPFC contract.

(c) To fund an account with the counterparty in an amount to secure the credit or reduction from liability for reinsurance coverage provided under the SPFC contract.

(d) To pay any other amounts the counterparty claims are legally and properly due under the SPFC contract.

(12) Any assets deposited into an account of the counterparty pursuant to subsection (11)(c) or withdrawn by the counterparty pursuant to subsection (11)(d) and any interest or other earnings on them, shall be held by the counterparty in trust and separate and apart from any general assets of the counterparty, for the sole purpose of funding the payments and reimbursements of the SPFC contract described in subsection (11).

(13) The counterparty shall return to the SPFC amounts withdrawn under subsection (11) in excess of actual amounts required under subsection (11)(a) to (c), and in excess of the amounts subsequently determined to be due under subsection (11)(d), plus interest at a rate not in excess of the prime rate for the amounts held pursuant to subsection (11)(c) unless a higher rate of interest has been awarded by an arbitration panel, and any net costs or expenses, including attorney fees, awarded by an arbitration panel.

(14) If the counterparty has received notification of termination of the trust account while any of the SPFC's obligations or liabilities under the SPFC contract that are secured by the trust account remain unliquidated as of 10 days prior to the termination date of the trust account, then the counterparty may withdraw amounts from the trust account equal to the unliquidated obligations and shall deposit such amounts in an account established by the

counterparty, which account is separate and apart from the counterparty's general assets and is with a qualified United States financial institution, but only to the extent the obligations or liabilities have not been funded by the SPFC and only for those uses and purposes specified in subsection (11)(a) that may remain executory after the withdrawal and termination until such obligations or liabilities are discharged.

500.4729 Declaration and payment of dividends prohibited; exception; limitation; sufficiency of assets; provisions.

Sec. 4729. (1) An SPFC shall not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no event shall the dividends decrease the capital of the SPFC below \$250,000.00, and, after giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the commissioner that it can meet its obligations. Approval by the commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC with respect to securities shall be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC by the commissioner.

(2) The dividends may be declared by the management of the SPFC if the dividends do not violate the provisions of this chapter or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this chapter.

500.4731 Plan of operation; changes; filing of audited financial statements; inquiries by commissioner; filing of statement of operations; reports; preservation of books, records, documents, accounts, and vouchers; authority of securities commissioner.

Sec. 4731. (1) An SPFC may make the following material changes to its plan of operation pursuant to section 4705(6)(b), whether or not through an SPFC protected cell:

(a) If included in the initial plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of part or all of the securities issued pursuant to initial insurance securitization transactions, shall not be considered a material change.

(b) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to this chapter shall not be considered a material change if the replacement swap counterparty carries a similar or higher rating to its predecessor with 2 or more nationally recognized rating agencies.

(2) No later than 5 months after the fiscal year end of the SPFC, the SPFC shall file with the commissioner audited financial statements of the SPFC and the trust accounts prepared by an independent public accountant. The independent public accountant shall be an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in good standing in all states in which the independent public accountant is licensed to practice.

(3) The commissioner may address inquiries to any captive insurer concerning the insurer's activities or conditions or any matter connected with the insurer's transactions. An insurer so addressed shall reply in writing to each inquiry from the commissioner within 30 days of receipt of the inquiry.

(4) Each SPFC shall file by March 1 of each year a statement of operations. An SPFC with a counterparty that is authorized as an insurance company shall report using statutory accounting principles and shall value its assets and liabilities pursuant to this act and in a

manner consistent with the counterparty. An SPFC with a counterparty that uses GAAP may report using either GAAP or, with the approval of the commissioner, statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of operations shall include a statement of income and a balance sheet and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract and additional descriptions and accounting of the reserves required or maintained by the SPFC. The SPFC also may include with the filing risk based capital calculations and other adjusted capital calculations to assist the commissioner with evaluating the levels of the surplus of the SPFC for the year ending on December 31 of the previous year. The statements shall be prepared on forms required by the commissioner. In addition, the commissioner may require the filing of performance assessments of the SPFC contract.

(5) An SPFC that is authorized as an insurer other than solely pursuant to this chapter and chapter 46 or that is reinsuring risk of a counterparty that is authorized as an insurer under this act shall file annual reports pursuant to sections 438 and 438a and chapter 10. An SPFC shall maintain its records in this state, or in 1 or more locations outside the state with the approval of the commissioner, and shall make its records available for examination by the commissioner at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this chapter.

(6) The commissioner may require interim reporting on any or all of the SPFC's business, including any matter, condition, or requirement regulated by this chapter. The commissioner shall prescribe the format and content of the interim report.

(7) Each SPFC that fails to file a report required by this section, or fails to reply within 30 days to an inquiry of the commissioner, is subject to a civil penalty of not less than \$1,000.00 or more than \$5,000.00 per occurrence, and an additional \$50.00 for every day that the SPFC fails to file a report or reply to the inquiry. In addition, each SPFC that fails to file a report, or fails to make a satisfactory reply to an inquiry of the commissioner concerning the SPFC's affairs, is subject to proceedings under section 4735(2).

(8) All original books, records, documents, accounts, and vouchers shall be preserved and kept available in this state for the purpose of examination. The original records, however, may be kept and maintained outside this state if, according to a plan adopted by the management of the SPFC and approved by the commissioner, it maintains suitable records. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

(9) Nothing contained in this section with respect to an SPFC shall abrogate, limit, or rescind in any way the authority of the securities commissioner pursuant to 1935 PA 13, MCL 451.1 to 451.4.

500.4732 Activities requiring notice to commissioner.

Sec. 4732. An SPFC shall not enter into any of the following transactions or engage in any of the following activities unless the SPFC has notified the commissioner in writing of its intention to enter into the transaction or activity at least 30 days, or a shorter period as the commissioner allows, prior to entering into the transaction or activity and the commissioner has not disapproved of it within that period:

(a) A sale, an exchange, or another transfer of assets made by the SPFC between or among any of its protected cells.

(b) Any third party management contract or arrangement that does not meet the requirements of section 4715(7).

(c) Any material change to the SPFC's plan of operation submitted pursuant to section 4705(6)(b) except those changes listed in section 4731(1).

(d) Except as otherwise contemplated in the SPFC contract or related insurance securitization documents, or both, a sale, an exchange, or a transfer of assets from a protected cell to a counterparty, captive LLC, or parent or affiliated company of the SPFC.

500.4733 Captive insurance company examination; expenses and charges; payment; fee.

Sec. 4733. (1) The expenses and charges of a captive insurance company examination shall be paid to the state by the captive insurance company or companies examined, and the office shall issue warrants for the proper charges incurred in all examinations. The payments received by the state shall be deposited into the captive insurance regulatory and supervision fund.

(2) The office may charge a \$15.00 fee for any document requiring certification of authenticity or the signature of the commissioner. The payments received shall be deposited into the captive insurance regulatory and supervision fund.

(3) The office may charge a fee of \$25.00 payable to the attorney general for the examination of any amendment to the organizational documents.

500.4734 Confidentiality requirements; exception.

Sec. 4734. (1) Information and testimony submitted or furnished to the office pursuant to this chapter, examination reports, preliminary examination reports or results, and the office's work papers, correspondence, memoranda, reports, records, and other written or oral information related to an examination report or an investigation shall be confidential, shall be withheld from public inspection, shall not be subject to subpoena, and shall not be divulged to any person, except as provided in this section or with the written consent of the company. If assurances are provided that the information will be kept confidential, the commissioner may disclose confidential work papers, correspondence, memoranda, reports, records, or other information as follows:

(a) To the governor or the attorney general.

(b) To any relevant regulatory agency, including regulatory agencies of other states or the federal government.

(c) In connection with an enforcement action brought pursuant to this or another applicable act.

(d) To law enforcement officials.

(e) To persons authorized by the Ingham county circuit court to receive the information.

(f) To persons entitled to receive such information in order to discharge duties specifically provided for in this act.

(2) The confidentiality requirements of subsection (1) do not apply in any proceeding or action brought against or by the insurer under this act or any other applicable act of this state, any other state, or the United States.

500.4735 Cessation of business; suspension or revocation of limited certificate of authority; violations; penalties; notice.

Sec. 4735. (1) At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related SPFC securities issued in connection with it, the authority granted by the commissioner expires or, for retiring and surviving protected cells, is modified. The SPFC is no longer authorized to conduct activities

unless and until a new or modified limited certificate of authority is issued pursuant to a new filing under section 4705 or as agreed by the commissioner.

(2) The commissioner may suspend or revoke the limited certificate of authority of an SPFC in this state for any of the following:

(a) Insolvency.

(b) Failure to meet the provisions of section 4709 or 4713(4).

(c) The SPFC is no longer safe, reliable, or entitled to public confidence or is unsound, or the SPFC is using financial methods and practices in the conduct of its business that render further transaction of insurance by the SPFC in this state hazardous to the public, the holders of the securities, or counterparties in the SPFC.

(d) Failure to respond within 30 days to an inquiry from the commissioner under section 4731(3).

(e) Failure to submit to examination or any legal obligation relative to an examination under section 4703.

(f) Refusal or failure to pay the costs of examination under section 4733.

(g) For a captive insurer formed as a limited liability company, the captive insurer is no longer in good standing under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.

(h) The SPFC has failed, after written request by the commissioner, to remove or discharge an officer or director whose record of business conduct does not satisfy the requirements of section 4603 or who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(i) The captive insurance company has failed for an unreasonable period to pay any final judgment rendered against it in this state on any policy, bond, recognizance, or undertaking issued or guaranteed by it.

(j) Failure to otherwise comply in any material respect with applicable laws of this state.

(3) If the commissioner finds, upon examination or other evidence, that an SPFC has committed any of the acts specified in subsection (2)(b), (c), or (d), the commissioner may impose the penalties provided in section 150 if the commissioner considers it in the best interest of the public, the holders of the securities, and the policyholders of the SPFC.

(4) Unless the grounds for suspension or revocation relate only to the financial condition or soundness of the SPFC or to a deficiency in its assets, the commissioner shall notify the SPFC not less than 30 days before revoking its authority to do business in this state and shall specify in the notice the particulars of the alleged violation of the law or its organizational documents or grounds for revocation and the SPFC shall be offered the opportunity to be heard pursuant to section 437.

500.4741 Administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers.

Sec. 4741. (1) Except as otherwise provided in this section, the terms and conditions under chapter 81 pertaining to administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers apply in full to SPFCs or each of the SPFC's protected cells, individually or in combination, without causing or otherwise effecting an administrative supervision, conservation, rehabilitation, receivership, or liquidation of the SPFC or another protected cell.

(2) Notwithstanding any other provision of this act and without causing or otherwise affecting the conservation or rehabilitation of an otherwise solvent protected cell of an SPFC

and subject to subsection (7)(e), the commissioner may petition the circuit court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate an SPFC domiciled in this state on 1 or more of the following grounds:

(a) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities.

(b) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to conservation, rehabilitation, or liquidation pursuant to this chapter.

(3) Notwithstanding any other provision of this act, the commissioner may petition the circuit court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate 1 or more of an SPFC's protected cells, independently, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the SPFC generally or another of its protected cells, on 1 or more of the following grounds:

(a) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected cell or cells.

(b) The affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to conservation, rehabilitation, or liquidation pursuant to this chapter.

(4) The court may not grant relief provided by subsection (2)(a) or subsection (3)(a) unless, after notice and a hearing, the commissioner, who shall have the burden of proof, establishes by the applicable rules of evidence that relief must be granted. The court's order may be made in respect of 1 or more protected cells by name, rather than the SPFC generally.

(5) Notwithstanding any other provision of this act, rules promulgated or regulations entered under this act, or other applicable law, rule, or regulation, a receiver appointed pursuant to any order or conservation, rehabilitation, or liquidation shall do all of the following:

(a) For an SPFC subject to an order of conservation, rehabilitation, or liquidation, manage the assets and liabilities of the SPFC pursuant to this chapter.

(b) For a protected cell or cells subject to an order of conservation, rehabilitation, or liquidation, manage the assets and liabilities of the protected cell or cells pursuant to this chapter and the SPFC contract.

(c) Ensure that the assets of 1 protected cell are not utilized to satisfy the liabilities of another protected cell or of the SPFC generally.

(6) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver, including all expenses of taking possession of the SPFC or 1 or more of the SPFC's protected cells, shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding any other provision in the contracts or other documentation governing the SPFC insurance securitization.

(7) Notwithstanding any other provision of this act or other laws of this state:

(a) An application or petition, or a temporary restraining order or injunction issued pursuant to this act, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.

(b) The commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security or SPFC contract or the SPFC from taking any action required to make the payment.

(c) A receiver of a counterparty shall not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.

(d) A receiver of an SPFC shall not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.

(e) The commissioner shall not seek to have an SPFC with protected cells declared insolvent as long as at least 1 of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle SPFC's assets in compliance with subsection (5) and other laws of this state.

(8) Subsection (7) does not prohibit the commissioner from taking any action permitted under chapter 81 with respect only to the conservation or rehabilitation of an SPFC with protected cell or cells, provided the commissioner would have had sufficient grounds to seek to declare the SPFC insolvent, subject to and without otherwise affecting subsection (7)(e). In this case, with respect to the solvent protected cell or cells, the commissioner shall not prohibit payments made by the SPFC pursuant to an SPFC security, an SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(9) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding any other provision of this chapter or other laws of this state, the assets of an SPFC, including assets held in trust, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to this chapter for any purpose including, without limitation, distribution to creditors of the counterparty.

500.4745 Contested case brought by third party; suspension, revocation, or modification of limited certificate of authority.

Sec. 4745. (1) A contested case brought by a third party based on a decision of the commissioner pursuant to this chapter is governed by applicable law of this state except that the third party shall do all of the following:

(a) Prove its case in accordance with the applicable rules of evidence.

(b) Demonstrate irreparable harm to the SPFC or its counterparty, or both.

(c) Show that there is no other adequate remedy at law.

(d) Post a bond of sufficient surety to protect the interests of the holders of the SPFC securities and policyholders so long as it is not less than 15% of the total amount of the securitized transaction.

(2) The commissioner may suspend, revoke, or modify a limited certificate of authority issued to an SPFC or an order made in connection with a limited certificate of authority issued to an SPFC in compliance with the standards and criteria provided in subsection (1) or in conformance with section 4735(2).

500.4747 Issuance of regulations; employment of legal counsel.

Sec. 4747. (1) The commissioner may issue regulations necessary to effectuate the purposes of this chapter. Regulations issued pursuant to this section do not affect an SPFC insurance securitization in effect at the time of the issuance of the regulation.

(2) Notwithstanding any other provision of law, the commissioner may employ legal counsel as he or she considers necessary to assist in his or her responsibilities under this chapter.

CHAPTER 48

PROTECTED CELL INSURANCE COMPANIES

500.4801 Definitions.

Sec. 4801. As used in this chapter:

(a) “Domestic insurer” means an insurer domiciled in this state.

(b) “Fair value” means the following:

(i) For cash, the amount of the cash.

(ii) For assets other than cash, the amount at which that asset could be bought or sold in the current transaction between arm’s length, willing parties. If available, the quoted mid-market price for the asset in active markets shall be used; and if quoted mid-market prices are not available, a value shall be determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same and similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset.

(c) “Fully funded” means that, with respect to any exposure attributed to a protected cell, the fair value of the protected cell assets, on the date on which the insurance securitization is effected, equals or exceeds the maximum possible exposure attributable to the protected cell with respect to such exposures.

(d) “General account” means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities.

(e) “Indemnity trigger” means a transaction term by which relief of the issuer’s obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts.

(f) “Nonindemnity trigger” means a transaction term by which relief of the issuer’s obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company incurring a specified level of losses under its insurance or reinsurance contracts.

(g) “Protected cell” means an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of this chapter from the remainder of the protected cell company’s assets and liabilities.

(h) “Protected cell account” means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of 1 protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company’s general account.

(i) “Protected cell assets” means all assets, contract rights, and general intangibles, identified with and attributable to a specific protected cell of a protected cell company.

(j) “Protected cell company” means a domestic insurer or captive insurer that has 1 or more protected cells.

(k) “Protected cell company insurance securitization” means the issuance of debt instruments, the proceeds from which support the exposures attributed to the protected cell, by a protected cell company where repayment of principal or interest, or both, to investors pursuant to the transaction terms is contingent upon the occurrence or nonoccurrence of an

event with respect to which the protected cell company is exposed to loss under insurance or reinsurance contracts it has issued.

(l) “Protected cell liabilities” means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company.

500.4803 Protected cells; establishment; written approval of commissioner; name or designation; attribution of assets and liabilities; attachment of security interest; contracting with third party; identification of protected cell assets and protected cell liabilities.

Sec. 4803. (1) A protected cell company may establish 1 or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell company with respect to each protected cell in connection with an insurance securitization. Upon the written approval of the commissioner of the plan of operation, which shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell, the protected cell company, in accordance with the approved plan of operation, may attribute to the protected cell insurance obligations for its insurance business and obligations relating to the insurance securitization and assets to fund the obligations. A protected cell shall have its own distinct name or designation, which shall include the words “protected cell”. The protected cell company shall transfer all assets attributable to a protected cell to 1 or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(2) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell company between the protected cell company’s general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell, or from investors in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company securitization, shall be in cash or in readily marketable securities with established fair values.

(3) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell company. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell company, and the protected cell company shall not be, and shall not hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, the protected cell company may allow for a security interest to attach to protected cell assets or a protected cell account if in favor of a creditor of the protected cell and as otherwise allowed under applicable law.

(4) This chapter shall not be construed to prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell company’s general account.

(5) A protected cell company shall establish administrative and accounting procedures necessary to properly identify the 1 or more protected cells of the protected cell company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell company shall keep protected cell assets and protected cell liabilities separate and separately identifiable from the assets and liabilities of the protected

cell company's general account and attributable to 1 protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells. If this subsection is violated, the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account. The remedy of tracing is not an exclusive remedy.

(6) When establishing a protected cell, the protected cell company shall attribute to the protected cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

500.4805 Income credited to or charged against protected cell; insurance securitization; language to be contained in documentation; cessation of business of protected cell.

Sec. 4805. (1) The protected cell assets of a protected cell shall not be charged with liabilities arising out of any other business the protected cell company may conduct. All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities.

(2) The income, and gains and losses, whether realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income and gains or losses of the protected cell company, including income and gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested. The investments in a protected cell or cells shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

(3) Assets attributed to a protected cell shall be valued at their fair value on the date of valuation or if there is no readily available market, as provided in the contract or the rules or other written documentation applicable to the protected cell.

(4) A protected cell company with respect to any of its protected cells shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization under the terms of this chapter only after the commissioner by rule, regulation, or order addresses the methods of funding of the portion of this risk that is not indemnity based and addressing accounting, disclosure, risk based capital treatment, and risks associated with such securitizations. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell. Nothing in this subsection shall be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

(5) In all protected cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection and subject to the provisions of this chapter and any other applicable law, rule, or regulation, the failure to include such language in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent this chapter.

(6) A protected cell company may attribute to a protected cell account only the insurance obligations relating to the protected cell company's general account. Under no circumstances shall a protected cell be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or have any obligation to the policyholders or reinsureds of the protected cell company's general account.

(7) At the cessation of business of a protected cell in accordance with the plan approved by the commissioner, the protected cell company voluntarily shall close out the protected cell account.

500.4807 Creditors; recourse; activities, assets, and obligations not subject to chapters 77 and 79; establishment of protected cell not considered fraudulent conveyance.

Sec. 4807. (1) Protected cell assets are only available to the creditors of the protected cell company that are creditors for that protected cell and are entitled, in conformity with this chapter, to have recourse to the protected cell assets attributable to that protected cell. Protected cell assets are absolutely protected from the creditors of the protected cell company that are not creditors for that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors for a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account. Protected cell assets are only available to creditors of a protected cell company after all protected cell liabilities have been extinguished or otherwise provided for in accordance with the plan of operation relating to that protected cell.

(2) When an obligation of a protected cell company to a person arises from a transaction, or is otherwise imposed, with respect to a protected cell, both of the following apply:

(a) That obligation of the protected cell company extends only to the protected cell assets attributable to that protected cell, and the person, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell.

(b) That obligation of the protected cell company does not extend to the protected cell assets of any other protected cell or the assets of the protected cell company's general account, and that person, with respect to that obligation, is not entitled to have recourse to the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

(3) When an obligation of a protected cell company relates solely to the general account, the obligation of the protected cell company extends only to, and that creditor, with respect to that obligation, is entitled to have recourse only to, the assets of the protected cell company's general account.

(4) The activities, assets, and obligations relating to a protected cell are not subject to the provisions of chapters 77 and 79, and neither a protected cell nor a protected cell company shall be assessed by, or otherwise be required to contribute to, any guaranty fund or guaranty association in this state with respect to the activities, assets, or obligations of a protected cell. Nothing in this subsection affects the activities or obligations of an insurer's general account.

(5) The establishment of 1 or more protected cells alone does not constitute, and shall not be considered to be, a fraudulent conveyance, an intent by the protected cell company to defraud creditors, or the carrying out of business by the protected cell company for any other fraudulent purpose.

500.4809 Receiver to deal with protected cell company's assets and liabilities; effect of order of conservation, rehabilitation, or liquidation.

Sec. 4809. (1) Notwithstanding any other provision of law, rule, or regulation, upon an order of conservation, rehabilitation, or liquidation of a protected cell company, the receiver shall deal with the protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, in accordance with this chapter.

(2) For amounts recoverable under a protected cell company insurance securitization, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding any other provision to the contrary in the contracts or other documentation governing the protected cell company insurance securitization.

500.4811 Insurance securitization not considered insurance or reinsurance contract; investor not considered as conducting insurance business in state.

Sec. 4811. A protected cell company insurance securitization is not, and shall not be considered to be, an insurance or reinsurance contract. An investor in a protected cell company insurance securitization, by sole means of this investment, is not, and shall not be considered to be, conducting an insurance business in this state. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a protected cell company insurance securitization are not, and shall not be considered to be, conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection with that business.

500.4813 Rules, regulations, or orders.

Sec. 4813. The commissioner may issue rules, regulations, or orders necessary to effectuate the purposes of this chapter.

This act is ordered to take immediate effect.

Approved March 13, 2008.

Filed with Secretary of State March 13, 2008.

[No. 30]**(SB 1062)**

AN ACT to amend 2007 PA 36, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations," by amending section 235 (MCL 208.1235).

The People of the State of Michigan enact:

208.1235 Insurance companies; tax payment; determination; direct premiums; exceptions; tax in lieu of privilege or franchise fees or taxes; nonapplicability of tax to MCL 500.4601 to 500.4673 and MCL 500.4701 to 500.4747.

Sec. 235. (1) Except as otherwise provided under subsection (4), each insurance company shall pay a tax determined under this chapter.

(2) The tax imposed by this chapter on each insurance company shall be a tax equal to 1.25% of gross direct premiums written on property or risk located or residing in this state. Direct premiums do not include any of the following:

- (a) Premiums on policies not taken.
- (b) Returned premiums on canceled policies.
- (c) Receipts from the sale of annuities.
- (d) Receipts on reinsurance premiums if the tax has been paid on the original premiums.

(e) The first \$190,000,000.00 of disability insurance premiums written in this state, other than credit insurance and disability income insurance premiums, of each insurance company subject to tax under this chapter. This exemption shall be reduced by \$2.00 for each \$1.00 by which the insurance company's gross direct premiums from insurance carrier services in this state and outside this state exceed \$280,000,000.00.

(3) The tax calculated under this chapter is in lieu of all other privilege or franchise fees or taxes imposed by this act or any other law of this state, except taxes on real and personal property, taxes collected under the general sales tax act, 1933 PA 167, MCL 205.1 to 205.78, and taxes collected under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and except as otherwise provided in the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(4) The tax imposed and levied under this act does not apply to an insurance company authorized under chapter 46 or 47 of the insurance code of 1956, 1956 PA 218, MCL 500.4601 to 500.4673, and MCL 500.4701 to 500.4747.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1061 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 13, 2008.

Filed with Secretary of State March 13, 2008.

Compiler's note: Senate Bill No. 1061, referred to in enacting section 1, was filed with the Secretary of State March 13, 2008, and became 2008 PA 29, Imd. Eff. Mar. 13, 2008.

[No. 31]

(SB 654)

AN ACT to amend 1972 PA 222, entitled "An act to provide for an official personal identification card; to provide for its form, issuance and use; to regulate the use and disclosure of information obtained from the card; to prescribe the powers and duties of the secretary of state; to prescribe fees; to prescribe certain penalties for violations; and to provide an

appropriation for certain purposes,” by amending sections 1, 1a, and 2 (MCL 28.291, 28.291a, and 28.292), sections 1 and 2 as amended by 2005 PA 143 and section 1a as added by 1997 PA 99.

The People of the State of Michigan enact:

28.291 Official state personal identification card; application; requirements; limitation; applicant not citizen of United States; disclosure or display of social security number; exception; agreements with federal government; termination of official state personal identification card issued by another state; duties of secretary of state.

Sec. 1. (1) A person who is a resident of this state may apply to the department of state for an official state personal identification card. Upon application, the applicant shall supply a photographic identity document, a birth certificate or other nonphotographic identity document, and other sufficient documents as the secretary of state may require to verify the identity and citizenship of the applicant. If an applicant for an official state personal identification card is not a citizen of the United States, the applicant shall supply a photographic identity document and other sufficient documents to verify the identity of the applicant and the applicant's legal presence in the United States under subsection (3). The documents required under this subsection shall include the applicant's full legal name, date of birth, and address and residency and demonstrate that the applicant is a citizen of the United States or is legally present in the United States. If the applicant's full legal name differs from the name of the applicant that appears on a document presented under this subsection, the applicant shall present documents to verify his or her current full legal name. An application for a state personal identification card shall be made in a manner prescribed by the secretary of state and shall contain the applicant's full legal name, date of birth, residence address, height, sex, eye color, signature, intent to be an organ donor, other information required or permitted on the official state personal identification card and, only to the extent to comply with federal law, the applicant's social security number. The applicant may provide a mailing address if the applicant receives mail at an address different from his or her residence address.

(2) The secretary of state shall not issue an official state personal identification card to a person who holds an operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, unless the license has been suspended, revoked, or restricted.

(3) If the applicant is not a citizen of the United States, the applicant shall provide documents demonstrating his or her legal presence in the United States. A person legally present in the United States includes, but is not limited to, a person authorized by the United States government for employment in the United States, a person with nonimmigrant status authorized under federal law, and a person who is the beneficiary of an approved immigrant visa petition or an approved labor certification. The secretary of state shall adopt rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as are necessary for the administration of this subsection. A determination by the secretary of state that an applicant is not legally present in the United States may be appealed under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(4) The secretary of state shall not disclose a social security number obtained under subsection (1) to another person except for use for 1 or more of the following purposes:

(a) Compliance with 49 USC 31301 to 31317 and regulations and rules related to this act.

(b) To carry out the purposes of section 466(a) of the social security act, 42 USC 666, in connection with matters relating to paternity, child support, or overdue child support.

(c) With the department of community health, for comparison with vital records maintained by the department of community health under part 28 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899.

(d) As otherwise required by law.

(5) The secretary of state shall not display a person's social security number on the person's official state personal identification card.

(6) A requirement under this section to include a social security number on an application does not apply to an applicant who demonstrates he or she is exempt under law from obtaining a social security number.

(7) The secretary of state, with the approval of the state administrative board created under 1921 PA 2, MCL 17.1 to 17.3, may enter into agreements with the United States government to verify whether an applicant for an official state personal identification card under this section who is not a citizen of the United States is authorized under federal law to be present in the United States.

(8) The secretary of state shall not issue an official state personal identification card to a person holding an official state personal identification card issued by another state without confirmation that the person is terminating or has terminated the official state personal identification card issued by the other state.

(9) The secretary of state shall do all of the following:

(a) Ensure the physical security of locations where official state personal identification cards are produced and the security of document materials and papers from which official state personal identification cards are produced.

(b) Subject all persons authorized to manufacture or produce official state personal identification cards and all persons who have the ability to affect the identity information that appears on official state personal identification cards to appropriate security clearance requirements. The security requirements of this subdivision and subdivision (a) may require that official state personal identification cards be manufactured or produced in this state.

(c) Provide fraudulent document recognition programs to department of state employees engaged in the issuance of official state personal identification cards.

28.291a Definitions.

Sec. 1a. As used in this act:

(a) "Highly restricted personal information" includes an individual's photograph or image, social security number, digitized signature, and medical and disability information and source documents presented by an applicant to obtain a personal identification card under section 1.

(b) "Personal information" means information that identifies an individual, including the individual's photograph or image, name, address (but not the 5-digit zip code), driver license number, social security number, telephone number, digitized signature, and medical and disability information.

(c) "Residence address" means the place that is the settled home or domicile at which a person legally resides, which meets the definition of residence as defined in section 11 of the Michigan election law, 1954 PA 116, MCL 168.11.

(d) "Resident" means every person who resides in this state and establishes that he or she is legally present in the United States. This definition applies to the provisions of this act only.

28.292 Official state personal identification card; contents; duties of secretary of state; methods; placement of name on organ and tissue donor registry; form; emergency medical information card; fingerprint or finger image; retention and use of person's digital photographic image; evidence of blindness; information contained; issuance; manufacture; fees; expiration; renewal; waiver of fee; correction for change of name or address; application for renewal; other information; emancipated minor; participation in organ, tissue, and eye donor registry; validity.

Sec. 2. (1) The official state personal identification card shall contain the following:

(a) An identification number permanently assigned to the person.

(b) The full legal name, date of birth, sex, residence address, height, weight, eye color, digital photographic image, signature of the applicant, and expiration date of the official state personal identification card.

(c) An indication that the identification card contains 1 or more of the following:

(i) The blood type of the person.

(ii) Immunization data of the person.

(iii) Medication data of the person.

(iv) A statement that the person is deaf.

(d) In the case of a holder of an official state personal identification card who has indicated his or her wish to participate in the organ and tissue donor registry under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10109, a heart insignia on the front of the official state personal identification card.

(e) Physical security features designed to prevent tampering, counterfeiting, or duplication of the official state personal identification card for fraudulent purposes.

(2) In conjunction with the application for or, until January 1, 2007, the issuance of an official state personal identification card, the secretary of state shall do all of the following:

(a) Provide the applicant with all of the following:

(i) Information explaining the applicant's right to make an anatomical gift in the event of death under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10109, and in accordance with this section.

(ii) Information describing the organ, tissue, and eye donor registry program maintained by Michigan's federally designated organ procurement organization or its successor organization. The information required under this subparagraph includes the address and telephone number of Michigan's federally designated organ procurement organization or its successor organization.

(iii) Information giving the applicant the opportunity to have his or her name placed on the registry described in subparagraph (ii).

(b) Provide the applicant with the opportunity to specify on his or her official state personal identification card that he or she is willing to make an anatomical gift in the event of death pursuant to part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10109, and in accordance with this section.

(c) Inform the applicant that, if he or she indicates to the secretary of state under this section a willingness to have his or her name placed on the registry described in subdivision (a)(ii), the secretary of state will mark the applicant's record for the registry.

(3) The secretary of state may fulfill the requirements of subsection (2) by 1 or more of the following methods:

(a) Providing printed material enclosed with a mailed notice for the issuance or renewal of an official state personal identification card.

(b) Providing printed material to an applicant who personally appears at a secretary of state branch office.

(c) Through electronic information transmittals for applications processed by electronic means.

(4) Until January 1, 2007, if an applicant indicates a willingness under this section to have his or her name placed on the registry described in subsection (2)(a)(ii), the secretary of state shall within 10 days forward the applicant's name, address, and date of birth to the organ donor registry maintained by Michigan's federally designated organ procurement organization or its successor organization. The secretary of state may forward information under this subsection by mail or by electronic means. The secretary of state shall not maintain a record of the name or address of an individual who indicates a willingness to have his or her name placed on the organ donor registry after forwarding that information to the organ donor registry under this subsection. Information about an applicant's indication of a willingness to have his or her name placed on the organ donor registry obtained by the secretary of state under subsection (2) and forwarded under this subsection is exempt from disclosure under section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243.

(5) The secretary of state shall prescribe the form of the identification card. The secretary of state shall designate on the identification card a space where the applicant may place a sticker or decal of the uniform size as the secretary may specify to indicate that the cardholder carries a separate emergency medical information card. The sticker or decal may be provided by any person, hospital, school, medical group, or association interested in assisting in implementing the emergency medical information card, but shall meet the specifications of the secretary of state. The sticker or decal also may be used to indicate that the cardholder has designated 1 or more patient advocates in accordance with section 5506 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506. The emergency medical information card, carried separately by the cardholder, may contain the information described in subsection (2)(c), information concerning the cardholder's patient advocate designation, other emergency medical information, or an indication as to where the cardholder has stored or registered emergency medical information. An original identification card or the renewal of an existing identification card issued to a person less than 21 years of age shall be portrait or vertical in form and an identification card issued to a person 21 years of age or over shall be landscape or horizontal in form. Except as otherwise required in this act, other information required on the identification card under this act may appear on the identification card in a form prescribed by the secretary of state.

(6) The identification card shall not contain a fingerprint or finger image of the applicant.

(7) Except as provided in this subsection, the secretary of state shall retain and use a person's digital photographic image and signature described in subsection (1)(b) only for programs administered by the secretary of state as specifically authorized by law. A person's digital photographic image or signature shall only be used as follows:

(a) By a federal, state, or local governmental agency for a law enforcement purpose authorized by law.

(b) By the secretary of state for a use specifically authorized by law.

(c) The secretary of state shall forward to the department of state police the images of persons required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, upon the department of state police providing the secretary of state an updated list of those persons.

(d) As necessary to comply with a law of this state or the United States.

(8) If a person presents evidence of statutory blindness as provided in 1978 PA 260, MCL 393.351 to 393.368, and is issued or is the holder of an official state personal identification card, the secretary of state shall mark the person's identification card in a manner that clearly indicates that the cardholder is legally blind.

(9) The secretary of state shall maintain a record of an individual who indicates a willingness to have his or her name placed on the registry described in subsection (2)(a)(ii). Information about a person's indication of a willingness to have his or her name placed on the registry that is obtained by the secretary of state and forwarded under this section is exempt from disclosure under section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243. The secretary of state shall establish and maintain the organ, tissue, and eye donor registry in a manner that provides electronic access, including, but not limited to, the transfer of data to this state's federally designated organ procurement organizations, their successor organizations, and tissue and eye banks with limitations on the use of and access to the donor registry as determined by the secretary of state.

(10) An official state personal identification card may contain an identifier for voter registration purposes.

(11) An official state personal identification card shall contain information appearing in electronic or machine readable codes needed to conduct a transaction with the secretary of state. The information shall be limited to the person's identification card number, birth date, expiration date, full legal name, date of transaction, gender, address, state of issuance, and other information necessary for use with electronic devices, machine readers, or automatic teller machines and shall not contain the person's driving record or other personal identifier. The identification card shall identify the encoded information.

(12) An official state personal identification card shall be issued only upon authorization of the secretary of state, and shall be manufactured in a manner to prohibit as nearly as possible the ability to reproduce, alter, counterfeit, forge, or duplicate the identification card without ready detection.

(13) Except as otherwise provided in this act, an applicant shall pay a fee of \$10.00 to the secretary of state for each original or renewal identification card issued. The department of treasury shall deposit the fees received and collected under this section in the state treasury to the credit of the general fund. The legislature shall appropriate the fees credited to the general fund under this act to the secretary of state for the administration of this act. Appropriations from the Michigan transportation fund created under section 10 of 1951 PA 51, MCL 247.660, shall not be used to compensate the secretary of state for costs incurred and services performed under this section.

(14) An original or renewal official state personal identification card expires on the birthday of the person to whom it is issued in the fourth year following the date of issuance or on the date the person is no longer considered to be legally present in the United States under section 1, whichever is earlier. The secretary of state shall not issue an official state personal identification card under this act for a period greater than 4 years. Except as provided in this subsection, a person may apply for a renewal of an official state personal identification card by mail or by other methods prescribed by the secretary of state. The secretary of state shall require renewal in person by a person required under section 5a of

the sex offenders registration act, 1994 PA 295, MCL 28.725a, to maintain a valid operator's or chauffeur's license or official state personal identification card.

(15) The secretary of state shall waive the fee under this section if the applicant is any of the following:

(a) A person 65 years of age or older.

(b) A person who has had his or her operator's or chauffeur's license suspended, revoked, or denied under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, because of a mental or physical infirmity or disability.

(c) A person who presents evidence of statutory blindness as provided in 1978 PA 260, MCL 393.351 to 393.368.

(d) A person who presents other good cause for a fee waiver.

(e) A person who wishes to add or remove a heart insignia described in subsection (1)(f).

(16) A person who has been issued an official state personal identification card shall apply for a renewal official state personal identification card if the person changes his or her name.

(17) A person who has been issued an official state personal identification card shall apply for a corrected identification card if he or she changes his or her residential address. The secretary of state may correct the address on an identification card by a method prescribed by the secretary of state. A fee shall not be charged for a change of residential address.

(18) Except as otherwise provided in subsections (16) and (17), a person who has been issued an official state personal identification card may apply for a renewal official state personal identification card for 1 or more of the following reasons:

(a) The person wants to change any information on the identification card.

(b) An identification card issued under this act is lost, destroyed, or mutilated, or becomes illegible.

(19) A person may indicate on an official state personal identification card in a place designated by the secretary of state his or her blood type, emergency contact information, immunization data, medication data, a statement that the person is deaf, or, until January 1, 2007, a statement that the person has made an anatomical gift under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10109.

(20) If an applicant provides proof to the secretary of state that he or she is a minor who has been emancipated under 1968 PA 293, MCL 722.1 to 722.6, the official state personal identification card shall bear the designation of the individual's emancipated status in a manner prescribed by the secretary of state.

(21) The secretary of state shall inquire of each person who applies for or who holds an official state personal identification card, in person or by mail, whether he or she agrees to participate in the organ, tissue, and eye donor registry under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10109. A person who has agreed to participate in that registry shall not be considered to have revoked that agreement solely because the person's official state personal identification card has expired. Enrollment in the organ, tissue, and eye donor registry constitutes a legal agreement that remains binding and in effect after the donor's death regardless of the expressed desires of the deceased donor's next of kin who may oppose the donor's organ, tissue, or eye donation.

(22) A valid official state personal identification card presented by the person to whom the card is issued shall be considered the same as a valid state of Michigan driver license when identification is requested except as otherwise specifically provided by law.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4505 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 13, 2008.

Filed with Secretary of State March 13, 2008.

Compiler's note: House Bill No. 4505, referred to in enacting section 1, was filed with the Secretary of State February 15, 2008, and became 2008 PA 7, Imd. Eff. Feb. 15, 2008.

[No. 32]**(SB 966)**

AN ACT to amend 1972 PA 222, entitled "An act to provide for an official personal identification card; to provide for its form, issuance and use; to regulate the use and disclosure of information obtained from the card; to prescribe the powers and duties of the secretary of state; to prescribe fees; to prescribe certain penalties for violations; and to provide an appropriation for certain purposes," by amending section 8 (MCL 28.298), as added by 1997 PA 99 and by adding section 9a.

The People of the State of Michigan enact:

28.298 Disclosure of personal information; uses.

Sec. 8. (1) Except as provided in this section and in section 10, personal information in a record maintained under this act shall not be disclosed, unless the person requesting the information furnishes proof of identity satisfactory to the secretary of state and certifies that the personal information requested will be used for a permissible purpose identified in this section or in section 10. Highly restricted personal information shall be used and disclosed only as expressly permitted in section 2 or in another applicable provision of law.

(2) Personal information in a record maintained under this act shall be disclosed by the secretary of state if required to carry out the purposes of a specified federal law. As used in this section, "specified federal law" means the automobile information disclosure act, 15 USC 1231 to 1233, the former motor vehicle information and cost savings act, Public Law 92-513, the former national traffic and motor vehicle safety act of 1966, Public Law 89-563, the anti-car theft act of 1992, Public Law 102-519, the clean air act, chapter 360, 69 Stat. 322, and all federal regulations promulgated to implement these federal laws.

(3) Personal information in a record maintained under this act may be disclosed by the secretary of state as follows:

(a) For use by a federal, state, or local governmental agency, including a court or law enforcement agency, in carrying out the agency's functions, or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions.

(b) For use in connection with matters of motor vehicle and driver safety or auto theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles; motor vehicle market research activities, including survey research; and the removal of nonowner records from the original records of motor vehicle manufacturers.

(c) For use in the normal course of business by a legitimate business, including the agents, employees, and contractors of the business, but only to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as so submitted is no longer correct, to obtain the correct information, for the sole purpose of preventing fraud by pursuing legal remedies against, or recovering on a debt against, the individual.

(d) For use in connection with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or governmental agency or before a self-regulatory body, including use for service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body.

(e) For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, if the personal information is not published, redisclosed, or used to contact individuals.

(f) For use by an insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigating activity, antifraud activity, rating, or underwriting.

(g) For use in providing notice to the owner of an abandoned, towed, or impounded vehicle.

(h) For use either by a private detective or private investigator licensed under the private detective license act, 1965 PA 285, MCL 338.821 to 338.851, or by a private security guard agency or alarm system contractor licensed under the private security business and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1083, only for a purpose permitted under this section.

(i) For use by an employer, or the employer's agent or insurer, to obtain or verify information relating either to the holder of a commercial driver license that is required under the commercial motor vehicle safety act of 1986, Public Law 99-570, or to the holder of a chauffeur's license that is required under chapter 3 of the Michigan vehicle code, 1949 PA 300, MCL 257.301 to 257.329.

(j) For use by a car rental business, or its employees, agents, contractors, or service firms, for the purpose of making rental decisions.

(k) For use by a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. "News medium" includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the foregoing.

(l) For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the secretary of state provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.

(4) Copies or images of source documents retained by the secretary of state under section 1 of this act and section 5 of the enhanced driver license and enhanced official state personal identification card act, MCL 28.305, may be used and disclosed for the purposes of subsection (3)(a) and (l).

28.299a Application for official state identification card; examination and determination.

Sec. 9a. The department shall examine and determine the genuineness, regularity, and legality of every application for an official state identification card, and may in all cases make

investigation as the department considers necessary or require additional information. The department shall reject any application for an official state identification card if not satisfied of the genuineness, regularity, or legality of the application or the truth of any statement contained in the application, or for any other reason when authorized by law.

This act is ordered to take immediate effect.

Approved March 13, 2008.

Filed with Secretary of State March 13, 2008.

[No. 33]

(SB 206)

AN ACT to codify the laws regarding and to provide for county, township, city, and village planning; to provide for the creation, organization, powers, and duties of local planning commissions; to provide for the powers and duties of certain state and local governmental officers and agencies; to provide for the regulation and subdivision of land; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

ARTICLE I. GENERAL PROVISIONS

125.3801 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan planning enabling act”.

125.3803 Definitions.

Sec. 3. As used in this act:

(a) “Chief administrative official” means the manager or other highest nonelected administrative official of a city or village.

(b) “Chief elected official” means the mayor of a city, the president of a village, the supervisor of a township, or, subject to section 5, the chairperson of the county board of commissioners of a county.

(c) “County board of commissioners”, subject to section 5, means the elected county board of commissioners, except that, as used in sections 39 and 41, county board of commissioners means 1 of the following:

(i) A committee of the county board of commissioners, if the county board of commissioners delegates its powers and duties under this act to the committee.

(ii) The regional planning commission for the region in which the county is located, if the county board of commissioners delegates its powers and duties under this act to the regional planning commission.

(d) “Ex officio member”, in reference to a planning commission, means a member, with full voting rights unless otherwise provided by charter, who serves on the planning commission by virtue of holding another office, for the term of that other office.

(e) “Legislative body” means the county board of commissioners of a county, the board of trustees of a township, or the council or other elected governing body of a city or village.

(f) “Local unit of government” or “local unit” means a county or municipality.

(g) “Master plan” means either of the following:

(i) As provided in section 81(1), any plan adopted or amended before the effective date of this act under a planning act repealed under section 85.

(ii) Any plan adopted or amended under this act. This includes, but is not limited to, a plan prepared by a planning commission authorized by this act and used to satisfy the requirement of section 203(1) of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3203, regardless of whether it is entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, township plan, plan, or any other term.

(h) “Municipality” or “municipal” means or refers to a city, village, or township.

(i) “Planning commission” means either of the following, as applicable:

(i) A planning commission created pursuant to section 11(1).

(ii) A planning commission retained pursuant to section 81(2) or (3), subject to the limitations on the application of this act provided in section 81(2) and (3).

(j) “Planning jurisdiction” for a county, city, or village refers to the areas encompassed by the legal boundaries of that county, city, or village, subject to section 31(1). Planning jurisdiction for a township refers to the areas encompassed by the legal boundaries of that township outside of the areas of incorporated villages and cities, subject to section 31(1).

(k) “Population” means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is the more recent.

(l) “Street” means a street, avenue, boulevard, highway, road, lane, alley, viaduct, or other way intended for use by automobiles.

125.3805 Assignment of power or duty to county officer or body.

Sec. 5. The assignment of a power or duty under this act to a county officer or body is subject to 1966 PA 293, MCL 45.501 to 45.521, or 1973 PA 139, MCL 45.551 to 45.573, in a county organized under 1 of those acts.

125.3807 Master plan; adoption, amendment, and implementation by local government; purpose.

Sec. 7. (1) A local unit of government may adopt, amend, and implement a master plan as provided in this act.

(2) The general purpose of a master plan is to guide and accomplish, in the planning jurisdiction and its environs, development that satisfies all of the following criteria:

(a) Is coordinated, adjusted, harmonious, efficient, and economical.

(b) Considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.

(c) Will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.

(d) Includes, among other things, promotion of or adequate provision for 1 or more of the following:

(i) A system of transportation to lessen congestion on streets.

(ii) Safety from fire and other dangers.

(iii) Light and air.

(iv) Healthful and convenient distribution of population.

(v) Good civic design and arrangement and wise and efficient expenditure of public funds.

(vi) Public utilities such as sewage disposal and water supply and other public improvements.

(vii) Recreation.

(viii) The use of resources in accordance with their character and adaptability.

ARTICLE II. PLANNING COMMISSION CREATION AND ADMINISTRATION

125.3811 Planning commission; creation; adoption of ordinance by local unit of government; notice required; exception; adoption of charter provision by city or home rule village; effect of repeal of planning act; continued exercise or transfer of powers and duties of zoning board or zoning commission.

Sec. 11. (1) A local unit of government may adopt an ordinance creating a planning commission with powers and duties provided in this act. The planning commission of a local unit of government shall be officially called “the planning commission”, even if a charter, ordinance, or resolution uses a different name such as “plan board” or “planning board”.

(2) Within 14 days after a local unit of government adopts an ordinance under subsection (1) creating a planning commission, the clerk of the local unit shall transmit notice of the adoption to the planning commission of the county where the local unit is located. However, if there is not a county planning commission or if the local unit adopting the ordinance is a county, notice shall be transmitted to the regional planning commission engaged in planning for the region within which the local unit is located. Notice under this subsection is not required when a planning commission created before the effective date of this act continues in existence under this act, but is required when an ordinance governing or creating a planning commission is amended or superseded under section 81(2)(b) or (3)(b).

(3) If, after the effective date of this act, a city or home rule village adopts a charter provision providing for a planning commission, the charter provision shall be implemented by an ordinance that conforms to this act. Section 81(2) provides for the continuation of a planning commission created by a charter provision adopted before the effective date of this act.

(4) Section 81(3) provides for the continuation of a planning commission created under a planning act repealed under section 85.

(5) Section 83 provides for the continued exercise by a planning commission, or the transfer to a planning commission, of the powers and duties of a zoning board or zoning commission.

125.3813 Planning commission; effect of township ordinance; number of days; petition requesting submission of ordinance to electors; filing; petition subject to Michigan election law; violation.

Sec. 13. (1) Subject to subsection (2), a township ordinance creating a planning commission under this act shall take effect 63 days after the ordinance is published by the township board in a newspaper having general circulation in the township.

(2) Subject to subsection (3), before a township ordinance creating a planning commission takes effect, a petition may be filed with the township clerk requesting the submission of the ordinance to the electors residing in the unincorporated portion of the township for their approval or rejection. The petition shall be signed by a number of qualified and registered

electors residing in the unincorporated portion of the township equal to not less than 8% of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected. If such a petition is filed, the ordinance shall not take effect until approved by a majority of the electors residing in the unincorporated portion of the township voting thereon at the next regular or special election that allows reasonable time for proper notices and printing of ballots or at any special election called for that purpose, as determined by the township board. The township board shall specify the language of the ballot question.

(3) Subsection (2) does not apply if the planning commission created by the ordinance is the successor to an existing zoning commission or zoning board as provided for under section 301 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3301.

(4) If a township board does not on its own initiative adopt an ordinance under this act creating a planning commission, a petition may be filed with the township clerk requesting the township board to adopt such an ordinance. The petition shall be signed by a number of qualified and registered electors as provided in subsection (2). If such a petition is filed, the township board, at its first meeting following the filing shall submit the question to the electors of the township in the same manner as provided under subsection (2).

(5) A petition under this section, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

125.3815 Planning commission; membership; appointment; terms; vacancy; representation; qualifications; ex officio members; board serving as planning commission; removal of member; conditions; conflict of interest; additional requirements.

Sec. 15. (1) In a municipality, the chief elected official shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving. In a county, the county board of commissioners shall determine the method of appointment of members of the planning commission by resolution of a majority of the full membership of the county board.

(2) A city, village, or township planning commission shall consist of 5, 7, or 9 members. A county planning commission shall consist of 5, 7, 9, or 11 members. Members of a planning commission other than ex officio members under subsection (5) shall be appointed for 3-year terms. However, of the members of the planning commission, other than ex officio members, first appointed, a number shall be appointed to 1-year or 2-year terms such that, as nearly as possible, the terms of 1/3 of all the planning commission members will expire each year. If a vacancy occurs on a planning commission, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment. A member shall hold office until his or her successor is appointed.

(3) The membership of a planning commission shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the local unit of government, in accordance with the major interests as they exist in the local unit of government, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire geography of the local unit of government to the extent practicable.

(4) Members of a planning commission shall be qualified electors of the local unit of government, except that the following number of planning commission members may be individuals who are not qualified electors of the local unit of government:

(a) 3, in a city that on the effective date of this act had a population of more than 2,700 but less than 2,800.

(b) 2, in a city or village that has, or on the effective date of this act had, a population of less than 5,000, except as provided in subdivision (a).

(c) 1, in local units of government other than those described in subdivision (a) or (b).

(5) In a township that on the effective date of this act had a planning commission created under former 1931 PA 285, 1 member of the legislative body or the chief elected official, or both, may be appointed to the planning commission, as ex officio members. In any other township, 1 member of the legislative body shall be appointed to the planning commission, as an ex officio member. In a city, village, or county, the chief administrative official or a person designated by the chief administrative official, if any, the chief elected official, 1 or more members of the legislative body, or any combination thereof, may be appointed to the planning commission, as ex officio members, unless prohibited by charter. However, in a city, village, or county, not more than 1/3 of the members of the planning commission may be ex officio members. Except as provided in this subsection, an elected officer or employee of the local unit of government is not eligible to be a member of the planning commission. The term of an ex officio member of a planning commission shall be as follows:

(a) The term of a chief elected official shall correspond to his or her term as chief elected official.

(b) The term of a chief administrative official shall expire with the term of the chief elected official that appointed him or her as chief administrative official.

(c) The term of a member of the legislative body shall expire with his or her term on the legislative body.

(6) For a county planning commission, the county shall make every reasonable effort to ensure that the membership of the county planning commission includes a member of a public school board or an administrative employee of a school district included, in whole or in part, within the county's boundaries. The requirements of this subsection apply whenever an appointment is to be made to the planning commission, unless an incumbent is being reappointed or an ex officio member is being appointed under subsection (5).

(7) Subject to subsection (8), a city or village that has a population of less than 5,000, and that has not created a planning commission by charter, may by an ordinance adopted under section 11(1) provide that 1 of the following boards serve as its planning commission:

(a) The board of directors of the economic development corporation of the city or village created under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636.

(b) The board of a downtown development authority created under 1975 PA 197, MCL 125.1651 to 125.1681, if the boundaries of the downtown district are the same as the boundaries of the city or village.

(c) A board created under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, if the boundaries of the authority district are the same as the boundaries of the city or village.

(8) Subsections (1) to (5) do not apply to a planning commission established under subsection (7). All other provisions of this act apply to a planning commission established under subsection (7).

(9) The legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the planning commission. The member is disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members of the planning commission. Failure of a member to disclose a potential conflict of interest as required by this subsection constitutes malfeasance in office. Unless the legislative body, by ordinance, defines conflict of interest for the purposes of this subsection, the planning commission shall do so in its bylaws.

(10) An ordinance creating a planning commission may impose additional requirements relevant to the subject matter of, but not inconsistent with, this section.

125.3817 Chairperson, secretary, and other offices; election; terms; appointment of advisory committees.

Sec. 17. (1) A planning commission shall elect a chairperson and secretary from its members and create and fill other offices as it considers advisable. An ex officio member of the planning commission is not eligible to serve as chairperson. The term of each officer shall be 1 year, with opportunity for reelection as specified in bylaws adopted under section 19.

(2) A planning commission may appoint advisory committees whose members are not members of the planning commission.

125.3819 Bylaws; adoption; public record requirements; annual report by planning commission.

Sec. 19. (1) A planning commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings, and determinations.

(2) A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.

125.3821 Meetings; frequency; time; place; special meeting; notice; compliance with open meetings act; availability of writings to public.

Sec. 21. (1) A planning commission shall hold not less than 4 regular meetings each year, and by resolution shall determine the time and place of the meetings. Unless the bylaws provide otherwise, a special meeting of the planning commission may be called by the chairperson or by 2 other members, upon written request to the secretary. Unless the bylaws provide otherwise, the secretary shall send written notice of a special meeting to planning commission members not less than 48 hours before the meeting.

(2) The business that a planning commission may perform shall be conducted at a public meeting of the planning commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.

(3) A writing prepared, owned, used, in the possession of, or retained by a planning commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

125.3823 Compensation; expenses; preparation of budget; acceptance of gifts.

Sec. 23. (1) Members of a planning commission may be compensated for their services as provided by the legislative body. A planning commission may adopt bylaws relative to

compensation and expenses of its members and employees for travel when engaged in the performance of activities authorized by the legislative body, including, but not limited to, attendance at conferences, workshops, educational and training programs, and meetings.

(2) After preparing the annual report required under section 19, a planning commission may prepare a detailed budget and submit the budget to the legislative body for approval or disapproval. The legislative body annually may appropriate funds for carrying out the purposes and functions permitted under this act, and may match local government funds with federal, state, county, or other local government or private grants, contributions, or endowments.

(3) A planning commission may accept gifts for the exercise of its functions. However, in a township, other than a township that on the effective date of this act had a planning commission created under former 1931 PA 285, only the township board may accept such gifts, on behalf of the planning commission. A gift of money so accepted in either case shall be deposited with the treasurer of the local unit of government in a special nonreverting planning commission fund for expenditure by the planning commission for the purpose designated by the donor. The treasurer shall draw a warrant against the special nonreverting fund only upon receipt of a voucher signed by the chairperson and secretary of the planning commission and an order drawn by the clerk of the local unit of government. The expenditures of a planning commission, exclusive of gifts and grants, shall be within the amounts appropriated by the legislative body.

125.3825 Employment of planning director and other personnel; contract for services; use of information and advice provided by public officials, departments, and agencies.

Sec. 25. (1) A local unit of government may employ a planning director and other personnel as it considers necessary, contract for the services of planning and other technicians, and incur other expenses, within a budget authorized by the legislative body. This authority shall be exercised by the legislative body, unless a charter provision or ordinance delegates this authority to the planning commission or another body or official. The appointment of employees is subject to the same provisions of law as govern other corresponding civil employees of the local unit of government.

(2) For the purposes of this act, a planning commission may make use of maps, data, and other information and expert advice provided by appropriate federal, state, regional, county, and municipal officials, departments, and agencies. All public officials, departments, and agencies shall make available public information for the use of planning commissions and furnish such other technical assistance and advice as they may have for planning purposes.

ARTICLE III. PREPARATION AND ADOPTION OF MASTER PLAN

125.3831 Master plan; preparation by planning commission; conditions; duties; meetings with other governmental planning commissions or agency staff; powers.

Sec. 31. (1) A planning commission shall make and approve a master plan as a guide for development within the planning jurisdiction subject to section 81 and the following:

(a) For a county, the master plan may include planning in cooperation with the constituted authorities for incorporated areas in whole or to the extent to which, in the planning commission's judgment, they are related to the planning of the unincorporated territory or of the county as a whole.

(b) For a township that on the effective date of this act had a planning commission created under former 1931 PA 285, or for a city or village, the planning jurisdiction may include any

areas outside of the municipal boundaries that, in the planning commission's judgment, are related to the planning of the municipality.

(2) In the preparation of a master plan, a planning commission shall do all of the following, as applicable:

(a) Make careful and comprehensive surveys and studies of present conditions and future growth within the planning jurisdiction with due regard to its relation to neighboring jurisdictions.

(b) Consult with representatives of adjacent local units of government in respect to their planning so that conflicts in master plans and zoning may be avoided.

(c) Cooperate with all departments of the state and federal governments and other public agencies concerned with programs for economic, social, and physical development within the planning jurisdiction and seek the maximum coordination of the local unit of government's programs with these agencies.

(3) In the preparation of the master plan, the planning commission may meet with other governmental planning commissions or agency staff to deliberate.

(4) In general, a planning commission has such lawful powers as may be necessary to enable it to promote local planning and otherwise carry out the purposes of this act.

125.3833 Master plan; land use and infrastructure issues; inclusion of maps, plats, charts, and other related matter; recommendations for physical development; additional subjects; implementation of master street plan; specifications; section subject to MCL 125.3881(1).

Sec. 33. (1) A master plan shall address land use and infrastructure issues and may project 20 years or more into the future. A master plan shall include maps, plats, charts, and descriptive, explanatory, and other related matter and shall show the planning commission's recommendations for the physical development of the planning jurisdiction.

(2) A master plan shall also include those of the following subjects that reasonably can be considered as pertinent to the future development of the planning jurisdiction:

(a) A land use plan that consists in part of a classification and allocation of land for agriculture, residences, commerce, industry, recreation, ways and grounds, public buildings, schools, soil conservation, forests, woodlots, open space, wildlife refuges, and other uses and purposes. If a county has not adopted a zoning ordinance under former 1943 PA 183 or the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, a land use plan and program for the county may be a general plan with a generalized future land use map.

(b) The general location, character, and extent of streets, railroads, airports, bicycle paths, pedestrian ways, bridges, waterways, and waterfront developments; sanitary sewers and water supply systems; facilities for flood prevention, drainage, pollution prevention, and maintenance of water levels; and public utilities and structures.

(c) Recommendations as to the general character, extent, and layout of redevelopment or rehabilitation of blighted areas; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of streets, grounds, open spaces, buildings, utilities, or other facilities.

(d) For a local unit of government that has adopted a zoning ordinance, a zoning plan for various zoning districts controlling the height, area, bulk, location, and use of buildings and premises. The zoning plan shall include an explanation of how the land use categories on the future land use map relate to the districts on the zoning map.

(e) Recommendations for implementing any of the master plan's proposals.

(3) If a master plan is or includes a master street plan, the means for implementing the master street plan in cooperation with the county road commission and the state transportation department shall be specified in the master street plan in a manner consistent with the respective powers and duties of and any written agreements between these entities and the municipality.

(4) This section is subject to section 81(1).

125.3835 Subplan; adoption.

Sec. 35. A planning commission may, by a majority vote of the members, adopt a subplan for a geographic area less than the entire planning jurisdiction, if, because of the unique physical characteristics of that area, more intensive planning is necessary for the purposes set forth in section 7.

125.3837 Metropolitan county planning commission; designation; powers.

Sec. 37. (1) A county board of commissioners may designate the county planning commission as the metropolitan county planning commission. A county planning commission so designated shall perform metropolitan and regional planning whenever necessary or desirable. The metropolitan county planning commission may engage in comprehensive planning, including, but not limited to, the following:

(a) Preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, together with long-range fiscal plans for such development.

(b) Programming of capital improvements based on relative urgency, together with definitive financing plans for the improvements to be constructed in the earlier years of the program.

(c) Coordination of all related plans of local governmental agencies within the metropolitan area or region.

(d) Intergovernmental coordination of all related planning activities among the state and local governmental agencies within the metropolitan area or region.

(2) In addition to the powers conferred by other provisions of this act, a metropolitan county planning commission may apply for, receive, and accept grants from any local, regional, state, or federal governmental agency and agree to and comply with the terms and conditions of such grants. A metropolitan county planning commission may do any and all things necessary or desirable to secure the financial aid or cooperation of a regional, state, or federal governmental agency in carrying out its functions, when approved by a 2/3 vote of the county board of commissioners.

125.3839 Master plan; adoption; procedures; notice; submittals; use of electronic mail.

Sec. 39. (1) A master plan shall be adopted under the procedures set forth in this section and sections 41 and 43. A master plan may be adopted as a whole or by successive parts corresponding with major geographical areas of the planning jurisdiction or with functional subject matter areas of the master plan.

(2) Before preparing a master plan, a planning commission shall send to all of the following, by first-class mail or personal delivery, a notice explaining that the planning commission intends to prepare a master plan and requesting the recipient's cooperation and comment:

(a) For any local unit of government undertaking a master plan, the planning commission, or if there is no planning commission, the legislative body, of each municipality located within or contiguous to the local unit of government.

(b) For a county undertaking a master plan, the regional planning commission for the region in which the county is located, if any.

(c) For a county undertaking a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for each county located contiguous to the county.

(d) For a municipality undertaking a master plan, the regional planning commission for the region in which the municipality is located, if there is no county planning commission for the county in which that municipality is located. If there is a county planning commission, the municipal planning commission may consult with the regional planning commission but is not required to do so.

(e) For a municipality undertaking a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for the county in which that municipality is located.

(f) For any local unit of government undertaking a master plan, each public utility company and railroad company owning or operating a public utility or railroad within the local unit of government, and any government entity that registers its name and mailing address for this purpose with the planning commission.

(g) If the master plan will include a master street plan, the county road commission and the state transportation department.

(3) A submittal under section 41 or 43 by or to an entity described in subsection (2) may be made by personal or first-class mail delivery of a hard copy or by electronic mail. However, the planning commission preparing the plan shall not make such submittals by electronic mail unless, in the notice described in subsection (2), the planning commission states that it intends to make such submittals by electronic mail and the entity receiving that notice does not respond by objecting to the use of electronic mail. Electronic mail may contain a link to a website on which the submittal is posted if the website is accessible to the public free of charge.

125.3841 Preparation of proposed master plan; submission to legislative body for review and comment; approval required; notice; submission of comments; statements as advisory.

Sec. 41. (1) After preparing a proposed master plan, a planning commission shall submit the proposed master plan to the legislative body for review and comment. The process of adopting a master plan shall not proceed further unless the legislative body approves the distribution of the proposed master plan.

(2) If the legislative body approves the distribution of the proposed master plan, it shall notify the secretary of the planning commission, and the secretary of the planning commission shall submit, in the manner provided in section 39(3), a copy of the proposed master plan, for review and comment, to all of the following:

(a) For any local unit of government proposing a master plan, the planning commission, or if there is no planning commission, the legislative body, of each municipality located within or contiguous to the local unit of government.

(b) For a county proposing a master plan, the regional planning commission for the region in which the county is located, if any.

(c) For a county proposing a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for each county located contiguous to the county.

(d) For a municipality proposing a master plan, the regional planning commission for the region in which the municipality is located, if there is no county planning commission for

the county in which that local unit of government is located. If there is a county planning commission, the secretary of the planning commission may submit a copy of the proposed master plan to the regional planning commission but is not required to do so.

(e) For a municipality proposing a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for the county in which that municipality is located. The secretary of the planning commission shall concurrently submit to the county planning commission, in the manner provided in section 39(3), a statement that the requirements of subdivision (a) have been met or, if there is no county planning commission, shall submit to the county board of commissioners, in the manner provided in section 39(3), a statement that the requirements of subdivisions (a) and (d) have been met. The statement shall be signed by the secretary and shall include the name and address of each planning commission or legislative body to which a copy of the proposed master plan was submitted under subdivision (a) or (d), as applicable, and the date of submittal.

(f) For any local unit of government proposing a master plan, each public utility company and railroad company owning or operating a public utility or railroad within the local unit of government, and any government entity that registers its name and address for this purpose with the secretary of the planning commission. An entity described in this subdivision that receives a copy of a proposed master plan, or of a final master plan as provided in section 43(5), shall reimburse the local unit of government for any copying and postage costs thereby incurred.

(g) If the proposed master plan is or includes a proposed master street plan, the county road commission and the state transportation department.

(3) An entity described in subsection (2) may submit comments on the proposed master plan to the planning commission in the manner provided in section 39(3) within 63 days after the proposed master plan was submitted to that entity under subsection (2). If the county planning commission or the county board of commissioners that receives a copy of a proposed master plan under subsection (2)(e) submits comments, the comments shall include, but need not be limited to, both of the following, as applicable:

(a) A statement whether the county planning commission or county board of commissioners considers the proposed master plan to be inconsistent with the master plan of any municipality or region described in subsection (2)(a) or (d).

(b) If the county has a county master plan, a statement whether the county planning commission considers the proposed master plan to be inconsistent with the county master plan.

(4) The statements provided for in subsection (3)(a) and (b) are advisory only.

125.3843 Proposed master plan; public hearing; notice; approval by resolution of planning commission; statement; submission of copy of master plan to legislative body; approval or rejection by legislative body; procedures; submission of adopted master plan to certain entities.

Sec. 43. (1) Before approving a proposed master plan, a planning commission shall hold not less than 1 public hearing on the proposed master plan. The hearing shall be held after the expiration of the deadline for comment under section 41(3). The planning commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the local unit of government. The planning commission shall also submit notice of the public hearing in the manner provided in section 39(3) to each entity described in section 39(2). This notice may accompany the proposed master plan submitted under section 41.

(2) The approval of the proposed master plan shall be by resolution of the planning commission carried by the affirmative votes of not less than 2/3 of the members of a city or

village planning commission or not less than a majority of the members of a township or county planning commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the planning commission to form the master plan. A statement recording the planning commission's approval of the master plan, signed by the chairperson or secretary of the planning commission, shall be included on the inside of the front or back cover of the master plan and, if the future land use map is a separate document from the text of the master plan, on the future land use map. Following approval of the proposed master plan by the planning commission, the secretary of the planning commission shall submit a copy of the master plan to the legislative body.

(3) Approval of the proposed master plan by the planning commission under subsection (2) is the final step for adoption of the master plan, unless the legislative body by resolution has asserted the right to approve or reject the master plan. In that case, after approval of the proposed master plan by the planning commission, the legislative body shall approve or reject the proposed master plan. A statement recording the legislative body's approval of the master plan, signed by the clerk of the legislative body, shall be included on the inside of the front or back cover of the master plan and, if the future land use map is a separate document from the text of the master plan, on the future land use map.

(4) If the legislative body rejects the proposed master plan, the legislative body shall submit to the planning commission a statement of its objections to the proposed master plan. The planning commission shall consider the legislative body's objections and revise the proposed master plan so as to address those objections. The procedures provided in subsections (1) to (3) and this subsection shall be repeated until the legislative body approves the proposed master plan.

(5) Upon final adoption of the master plan, the secretary of the planning commission shall submit, in the manner provided in section 39(3), copies of the adopted master plan to the same entities to which copies of the proposed master plan were required to be submitted under section 41(2).

125.3845 Extension, addition, revision, or other amendment to master plan; adoption; procedures; review and findings.

Sec. 45. (1) An extension, addition, revision, or other amendment to a master plan shall be adopted by following the procedure under sections 39, 41, and 43, subject to all of the following:

(a) Any of the following amendments to a master plan may be made without following the procedure under sections 39, 41, and 43:

- (i) A grammatical, typographical, or similar editorial change.
- (ii) A title change.
- (iii) A change to conform to an adopted plat.

(b) Subject to subdivision (a), the review period provided for in section 41(3) shall be 42 days instead of 63 days.

(c) When a planning commission sends notice to an entity under section 39(2) that it intends to prepare a subplan, the notice may indicate that the local unit of government intends not to provide that entity with further notices of or copies of proposed or final subplans otherwise required to be submitted to that entity under section 39, 41, or 43. Unless the entity responds that it chooses to receive notice of subplans, the local unit of government is not required to provide further notice of subplans to that entity.

(2) At least every 5 years after adoption of a master plan, a planning commission shall review the master plan and determine whether to commence the procedure to amend the master plan or adopt a new master plan. The review and its findings shall be recorded in the minutes of the relevant meeting or meetings of the planning commission.

125.3847 Part of county master plan covering incorporated area; adoption by appropriate city or village required; exception.

Sec. 47. (1) Subject to subsection (2), a part of a county master plan covering an incorporated area within the county shall not be recognized as the official master plan or part of the official master plan for that area unless adopted by the appropriate city or village in the manner prescribed by this act.

(2) Subsection (1) does not apply if the incorporated area is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536.

125.3849 City or village planning department; authority to submit proposed master plan, or proposed extension, addition, revision, or other amendment.

Sec. 49. (1) This act does not alter the authority of a planning department of a city or village created by charter to submit a proposed master plan, or a proposed extension, addition, revision, or other amendment to a master plan, to the planning commission, whether directly or indirectly as provided by charter.

(2) Subsection (1) notwithstanding, a planning commission described in subsection (1) shall comply with the requirements of this act.

125.3851 Public interest and understanding; promotion.

Sec. 51. (1) To promote public interest in and understanding of the master plan, a planning commission may publish and distribute copies of the master plan or of any report, and employ other means of publicity and education.

(2) A planning commission shall consult with and advise public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens concerning the promotion or implementation of the master plan.

ARTICLE IV. SPECIAL PROVISIONS, INCLUDING
CAPITAL IMPROVEMENTS AND SUBDIVISION REVIEW

125.3861 Construction of certain projects in area covered by municipal master plan; approval; initiation of work on project; requirements; report and advice.

Sec. 61. (1) A street; square, park, playground, public way, ground, or other open space; or public building or other structure shall not be constructed or authorized for construction in an area covered by a municipal master plan unless the location, character, and extent of the street, public way, open space, structure, or utility have been submitted to the planning commission by the legislative body or other body having jurisdiction over the authorization or financing of the project and has been approved by the planning commission. The planning commission shall submit its reasons for approval or disapproval to the body having jurisdiction. If the planning commission disapproves, the body having jurisdiction may overrule the planning commission by a vote of not less than 2/3 of its entire membership for a township that on the enactment date of this act had a planning commission created under former 1931 PA 285, or for a city or village, or by a vote of not less than a majority of its membership for any other township. If the planning commission fails to act within 35 days after submission of the proposal to the planning commission, the project shall be considered to be approved by the planning commission.

(2) Following adoption of the county plan or any part of a county plan and the certification by the county planning commission to the county board of commissioners of a copy of

the plan, work shall not be initiated on any project involving the expenditure of money by a county board, department, or agency for the acquisition of land, the erection of structures, or the extension, construction, or improvement of any physical facility by any county board, department, or agency unless a full description of the project, including, but not limited to, its proposed location and extent, has been submitted to the county planning commission and the report and advice of the planning commission on the proposal have been received by the county board of commissioners and by the county board, department, or agency submitting the proposal. However, work on the project may proceed if the planning commission fails to provide in writing its report and advice upon the proposal within 35 days after the proposal is filed with the planning commission. The planning commission shall provide copies of the report and advice to the county board, department, or agency sponsoring the proposal.

125.3863 Approval of construction project before effective date of act; rescission of authorization; failure of planning commission to act within certain period of time.

Sec. 63. If the opening, widening, or extension of a street, or the acquisition or enlargement of any square, park, playground, or other open space has been approved by a township planning commission that was created before the effective date of this act under former 1931 PA 285 or by a city or village planning commission and authorized by the legislative body as provided under section 61, the legislative body shall not rescind its authorization unless the matter has been resubmitted to the planning commission and the rescission has been approved by the planning commission. The planning commission shall hold a public hearing on the matter. The planning commission shall submit its reasons for approval or disapproval of the rescission to the legislative body. If the planning commission disapproves the rescission, the legislative body may overrule the planning commission by a vote of not less than 2/3 of its entire membership. If the planning commission fails to act within 63 days after submission of the proposed rescission to the planning commission, the proposed rescission shall be considered to be approved by the planning commission.

125.3865 Capital improvements program of public structures and improvements; preparation; basis.

Sec. 65. (1) To further the desirable future development of the local unit of government under the master plan, a planning commission, after adoption of a master plan, shall annually prepare a capital improvements program of public structures and improvements, unless the planning commission is exempted from this requirement by charter or otherwise. If the planning commission is exempted, the legislative body either shall prepare and adopt a capital improvements program, separate from or as a part of the annual budget, or shall delegate the preparation of the capital improvements program to the chief elected official or a non-elected administrative official, subject to final approval by the legislative body. The capital improvements program shall show those public structures and improvements, in the general order of their priority, that in the commission's judgment will be needed or desirable and can be undertaken within the ensuing 6-year period. The capital improvements program shall be based upon the requirements of the local unit of government for all types of public structures and improvements. Consequently, each agency or department of the local unit of government with authority for public structures or improvements shall upon request furnish the planning commission with lists, plans, and estimates of time and cost of those public structures and improvements.

(2) Any township may prepare and adopt a capital improvement program. However, subsection (1) is only mandatory for a township if the township, alone or jointly with 1 or more other local units of government, owns or operates a water supply or sewage disposal system.

125.3867 Programs for public structures and improvements; recommendations.

Sec. 67. A planning commission may recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof, regardless of whether the planning commission is exempted from the requirement to prepare a capital improvements program under section 65.

125.3869 Copy of zoning ordinance and amendments; request by county planning commission for submission by municipal planning commission.

Sec. 69. If a municipal planning commission has zoning duties pursuant to section 83 and the municipality has adopted a zoning ordinance, the county planning commission, if any, may, by first-class mail or personal delivery, request the municipal planning commission to submit to the county planning commission a copy of the zoning ordinance and any amendments. The municipal planning commission shall submit the requested documents to the county planning commission within 63 days after the request is received and shall submit any future amendments to the zoning ordinance within 63 days after the amendments are adopted. The municipal planning commission may submit a zoning ordinance or amendment under this subsection electronically.

125.3871 Recommendations for ordinances or rules governing subdivision of land; public hearing; notice; action on proposed plat; approval, approval with conditions, or disapproval by planning commission; approval of plat as amendment to master plan.

Sec. 71. (1) A planning commission may recommend to the legislative body provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105. If a township is subject to county zoning consistent with section 209 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3209, or a city or village is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, the county planning commission may recommend to the legislative body of the municipality provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105. A planning commission may proceed under this subsection on its own initiative or upon request of the appropriate legislative body.

(2) Recommendations for a subdivision ordinance or rule may address plat design, including the proper arrangement of streets in relation to other existing or planned streets and to the master plan; adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air; and the avoidance of congestion of population, including minimum width and area of lots. The recommendations may also address the extent to which streets shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of a plat.

(3) Before recommending an ordinance or rule described in subsection (1), the planning commission shall hold a public hearing on the proposed ordinance or rule. The planning commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the local unit of government.

(4) If a municipality has adopted a master plan or master street plan, the planning commission of that municipality shall review and make recommendations on plats before action thereon by the legislative body under section 112 of the land division act, 1967 PA 288,

MCL 560.112. If a township is subject to county zoning consistent with section 209 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3209, or a city or village is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, and the municipality has adopted a master plan or master street plan, the county planning commission shall also review and make recommendations on plats before action thereon by the legislative body of the municipality under section 112 of the land division act, 1967 PA 288, MCL 560.112.

(5) A planning commission shall not take action on a proposed plat without affording an opportunity for a public hearing thereon. A plat submitted to the planning commission shall contain the name and address of the proprietor or other person to whom notice of a hearing shall be sent. Not less than 15 days before the date of the hearing, notice of the date, time, and place of the hearing shall be sent to that person at that address by mail and shall be published in a newspaper of general circulation in the municipality. Similar notice shall be mailed to the owners of land immediately adjoining the proposed platted land.

(6) A planning commission shall recommend approval, approval with conditions, or disapproval of a plat within 63 days after the plat is submitted to the planning commission. If applicable standards under the land division act, 1967 PA 288, MCL 560.101 to 560.293, and an ordinance or published rules governing the subdivision of land authorized under section 105 of that act, MCL 560.105, are met, the planning commission shall recommend approval of the plat. If the planning commission fails to act within the required period, the plat shall be considered to have been recommended for approval, and a certificate to that effect shall be issued by the planning commission upon request of the proprietor. However, the proprietor may waive this requirement and consent to an extension of the 63-day period. The grounds for any recommendation of disapproval of a plat shall be stated upon the records of the planning commission.

(7) A plat approved by a municipality and recorded under section 172 of the land division act, 1967 PA 288, MCL 560.172, shall be considered to be an amendment to the master plan and a part thereof. Approval of a plat by a municipality does not constitute or effect an acceptance by the public of any street or other open space shown upon the plat.

ARTICLE V. TRANSITIONAL PROVISIONS AND REPEALER

125.3881 Plan adopted or amended under planning act repealed under MCL 125.3885; effect; city or home rule village charter provision creating planning commission or ordinance implementing provision before effective date of act; ordinance creating planning commission under former law; ordinance or rules governing subdivision of land.

Sec. 81. (1) Unless rescinded by the local unit of government, any plan adopted or amended under a planning act repealed under section 85 need not be readopted under this act but continues in effect as a master plan under this act, regardless of whether it is entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, township plan, plan, or any other term. This includes, but is not limited to, a plan prepared by a planning commission and adopted before the effective date of this act to satisfy the requirements of section 1 of the former city and village zoning act, 1921 PA 207, section 3 of the former township zoning act, 1943 PA 184, section 3 of the former county zoning act, 1943 PA 183, or section 203(1) of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3203. The master plan is subject to the requirements of this act, including, but not limited to, the requirement for periodic review under section 45(2) and the amendment procedures set forth in this act. However, the master plan is not subject to the requirements of section 33 until it is first amended under this act.

(2) Unless repealed, a city or home rule village charter provision creating a planning commission before the effective date of this act and any ordinance adopted before the effective date of this act implementing that charter provision continues in effect under this act, and the planning commission need not be newly created by an ordinance adopted under this act. However, both of the following apply:

(a) The legislative body may by ordinance increase the powers and duties of the planning commission to correspond with the powers and duties of a planning commission created under this act. Provisions of this act regarding planning commission powers and duties do not otherwise apply to a planning commission created by charter before the effective date of this act and provisions of this act regarding planning commission membership, appointment, and organization do not apply to such a planning commission. All other provisions of this act, including, but not limited to, provisions regarding planning commission selection of officers, meetings, rules, records, appointment of employees, contracts for services, and expenditures, do apply to such a planning commission.

(b) The legislative body shall amend any ordinance adopted before the effective date of this act to implement the charter provision, or repeal the ordinance and adopt a new ordinance, to fully conform to the requirements of this act made applicable by subdivision (a), by the earlier of the following dates:

(i) The date when an amendatory or new ordinance is first adopted under this act for any purpose.

(ii) July 1, 2011.

(3) Unless repealed, an ordinance creating a planning commission under former 1931 PA 285 or former 1945 PA 282 or a resolution creating a planning commission under former 1959 PA 168 continues in effect under this act, and the planning commission need not be newly created by an ordinance adopted under this act. However, all of the following apply:

(a) Beginning on the effective date of this act, the duties of the planning commission are subject to the requirements of this act.

(b) The legislative body shall amend the ordinance, or repeal the ordinance or resolution and adopt a new ordinance, to fully conform to the requirements of this act by the earlier of the following dates:

(i) The date when an amendatory or new ordinance is first adopted under this act for any purpose.

(ii) July 1, 2011.

(c) An ordinance adopted under subdivision (b) is not subject to referendum.

(4) Unless repealed or rescinded by the legislative body, an ordinance or published rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105, need not be readopted under this act or amended to comply with this act but continue in effect under this act. However, if amended, the ordinance or published rules shall be amended under the procedures of this act.

125.3883 Transfer of powers, duties, and records.

Sec. 83. (1) If, on the effective date of this act, a planning commission had the powers and duties of a zoning board or zoning commission under the former city and village zoning act, 1921 PA 207, the former county zoning act, 1943 PA 183, or the former township zoning act, 1943 PA 184, and under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, the planning commission may continue to exercise those powers and duties without amendment of the ordinance, resolution, or charter provision that created the planning commission.

(2) If, on the effective date of this act, a local unit of government had a planning commission without zoning authority created under former 1931 PA 285, former 1945 PA 282, or former 1959 PA 168, the legislative body may by amendment to the ordinance creating the planning commission, or, if the planning commission was created by resolution, may by resolution, transfer to the planning commission all the powers and duties provided to a zoning board or zoning commission created under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702. If an existing zoning board or zoning commission in the local unit of government is nearing the completion of its draft zoning ordinance, the legislative body shall postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but is not required to postpone the transfer more than 1 year.

(3) If, on or after the effective date of this act, a planning commission is created in a local unit of government that has had a zoning board or zoning commission since before the effective date of this act, the legislative body shall transfer all the powers, duties, and records of the zoning board or zoning commission to the planning commission before July 1, 2011. If the existing zoning board or zoning commission is nearing the completion of its draft zoning ordinance, the legislative body may, by resolution, postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but not later than until 1 year after creation of the planning commission or July 1, 2011, whichever comes first.

125.3885 Repeal of certain acts.

Sec. 85. (1) The following acts are repealed:

- (a) 1931 PA 285, MCL 125.31 to 125.45.
- (b) 1945 PA 282, MCL 125.101 to 125.115.
- (c) 1959 PA 168, MCL 125.321 to 125.333.

(2) Any plan adopted or amended under an act repealed under subsection (1) is subject to section 81(1).

Effective date.

Enacting section 1. This act takes effect September 1, 2008.

This act is ordered to take immediate effect.

Approved March 13, 2008.

Filed with Secretary of State March 13, 2008.

[No. 34]

(SB 523)

AN ACT to authorize the state administrative board to convey certain state owned property in Lapeer county; to prescribe certain conditions for the conveyance; to prescribe certain powers and duties of the department of management and budget; and to provide for the disposition of the revenue derived from the conveyance.

The People of the State of Michigan enact:

Conveyance of property known as old Lapeer state police post; location; jurisdiction; highest bidder; description; adjustments; surplus, salvage, and scrap property or equipment; preparations for conveyance; appraisal; quitclaim deed; reservation of rights in aboriginal antiquities; reservation of mineral rights; deposit of net revenue.

Sec. 1. (1) The state administrative board, on behalf of the state, may convey to the highest bidder, but for not less than fair market value as determined pursuant to subsection (5), all or portions of state owned property now under the jurisdiction of the department of state police, known as the old Lapeer state police post and located in the city of Lapeer, Lapeer county, Michigan, and more specifically described as follows:

A parcel of land in the Northwest 1/4 of Section 8, T7N, R10E, City of Lapeer, Michigan, and being more specifically described as commencing at the West 1/4 corner of said Section 8; thence North 89 degrees 21'36" East 212.35 feet, on the East-West 1/4 line of said Section 8 to the easterly line of Michigan Highway M-24 and the point of beginning; thence North 89 degrees 21'36" East 1102.50 feet, on said East-West 1/4 line to the east line of the West 1/2 of the Northwest 1/4 of said section; thence North 02 degrees 21'28" West 120.64 feet on the east line of the West 1/2 of the Northwest 1/4 of said section; thence South 89 degrees 21'36" West 1064.87 feet to the easterly line of M-24; thence South 15 degrees 06'41" West 125.29 feet on the easterly line of M-24 to the point of beginning. The above described parcel contains 3.0 acres, more or less. All bearings are relative and referenced to the north line of Section 8 from a previous survey by Fred J. W. Soll, R.L.S. #1090, by which observations of Polaris were taken.

(2) The description of the parcel in subsection (1) is approximate and for purposes of the conveyance is subject to adjustments as the state administrative board or the attorney general considers necessary by survey or other legal description.

(3) The property described in subsection (1) includes all surplus, salvage, and scrap property or equipment.

(4) The department of management and budget shall take the necessary steps to prepare to convey the property described in subsection (1) using any of the following at any time:

(a) Competitive bidding designed to realize the best value to the state, as determined by the department of management and budget.

(b) A public auction designed to realize the best value to the state, as determined by the department of management and budget.

(c) Real estate brokerage services designed to realize the best value to the state, as determined by the department of management and budget.

(d) Offering the property for sale for fair market value to a local unit or units of government.

(5) The fair market value of the property described in subsection (1) shall be determined by an appraisal prepared for the department of management and budget by an independent appraiser.

(6) The department of attorney general shall approve as to legal form the quitclaim deed required by this act.

(7) The state reserves all rights in aboriginal antiquities, including mounds, earthworks, forts, burial and village sites, mines, or other relics lying on, within, or under the property conveyed under this act, including the right to explore and excavate for the aboriginal antiquity by the state or its authorized agents.

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

(9) The net revenue received under this act shall be deposited in the state treasury and credited to the general fund. As used in this subsection, “net revenue” means the proceeds from the sale of the property less reimbursement for any costs to the department of management and budget associated with the sale of the property.

This act is ordered to take immediate effect.

Approved March 13, 2008.

Filed with Secretary of State March 13, 2008.

[No. 35]

(SB 1076)

AN ACT to amend 1975 PA 197, entitled “An act to provide for the establishment of a downtown development authority; to prescribe its powers and duties; to correct and prevent deterioration in business districts; to encourage historic preservation; to authorize the acquisition and disposal of interests in real and personal property; to authorize the creation and implementation of development plans in the districts; to promote the economic growth of the districts; to create a board; to prescribe its powers and duties; to authorize the levy and collection of taxes; to authorize the issuance of bonds and other evidences of indebtedness; to authorize the use of tax increment financing; to reimburse downtown development authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state officials,” by amending section 1 (MCL 125.1651), as amended by 2006 PA 659.

The People of the State of Michigan enact:

125.1651 Definitions.

Sec. 1. As used in this act:

(a) “Advance” means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority in anticipation of repayment by the authority. Evidence of the intent to repay an advance may include, but is not limited to, an executed agreement to repay, provisions contained in a tax increment financing plan approved prior to the advance, or a resolution of the authority or the municipality.

(b) “Assessed value” means 1 of the following:

(i) For valuations made before January 1, 1995, the state equalized valuation as determined under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(ii) For valuations made after December 31, 1994, the taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) “Authority” means a downtown development authority created pursuant to this act.

(d) “Board” means the governing body of an authority.

(e) “Business district” means an area in the downtown of a municipality zoned and used principally for business.

(f) “Captured assessed value” means the amount in any 1 year by which the current assessed value of the project area, including the assessed value of property for which specific local taxes are paid in lieu of property taxes as determined in subdivision (z), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

(g) “Chief executive officer” means the mayor or city manager of a city, the president or village manager of a village, or the supervisor of a township or, if designated by the township board for purposes of this act, the township superintendent or township manager of a township.

(h) “Development area” means that area to which a development plan is applicable.

(i) “Development plan” means that information and those requirements for a development plan set forth in section 17.

(j) “Development program” means the implementation of the development plan.

(k) “Downtown district” means that part of an area in a business district that is specifically designated by ordinance of the governing body of the municipality pursuant to this act. A downtown district may include 1 or more separate and distinct geographic areas in a business district as determined by the municipality if the municipality enters into an agreement with a qualified township under section 3(7) or if the municipality is a city that surrounds another city and that other city lies between the 2 separate and distinct geographic areas. If the downtown district contains more than 1 separate and distinct geographic area in the downtown district, the separate and distinct geographic areas shall be considered 1 downtown district.

(l) “Eligible advance” means an advance made before August 19, 1993.

(m) “Eligible obligation” means an obligation issued or incurred by an authority or by a municipality on behalf of an authority before August 19, 1993 and its subsequent refunding by a qualified refunding obligation. Eligible obligation includes an authority’s written agreement entered into before August 19, 1993 to pay an obligation issued after August 18, 1993 and before December 31, 1996 by another entity on behalf of the authority.

(n) “Fire alarm system” means a system designed to detect and annunciate the presence of fire, or by-products of fire. Fire alarm system includes smoke detectors.

(o) “Fiscal year” means the fiscal year of the authority.

(p) “Governing body of a municipality” means the elected body of a municipality having legislative powers.

(q) “Initial assessed value” means the assessed value, as equalized, of all the taxable property within the boundaries of the development area at the time the ordinance establishing the tax increment financing plan is approved, as shown by the most recent assessment roll of the municipality for which equalization has been completed at the time the resolution is adopted. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero. For the purpose of determining initial assessed value, property for which a specific local tax is paid in lieu of a property tax shall not be considered to be property that is exempt from taxation. The initial assessed value of property for which a specific local tax was paid in lieu of a property tax shall be determined as provided in subdivision (z). In the case of a municipality having a population of less than 35,000 that established an authority prior to 1985, created a district or districts, and approved a development plan or tax increment financing plan or amendments to a plan, and which plan or tax increment financing plan or amendments to a plan, and which plan expired by its terms December 31, 1991, the initial assessed value for the purpose of any plan or plan amendment adopted as an extension of the expired plan shall be determined as if the plan had not expired December 31, 1991. For a development area designated before 1997 in which

a renaissance zone has subsequently been designated pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, the initial assessed value of the development area otherwise determined under this subdivision shall be reduced by the amount by which the current assessed value of the development area was reduced in 1997 due to the exemption of property under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, but in no case shall the initial assessed value be less than zero.

(r) “Municipality” means a city, village, or township.

(s) “Obligation” means a written promise to pay, whether evidenced by a contract, agreement, lease, sublease, bond, or note, or a requirement to pay imposed by law. An obligation does not include a payment required solely because of default upon an obligation, employee salaries, or consideration paid for the use of municipal offices. An obligation does not include those bonds that have been economically defeased by refunding bonds issued under this act. Obligation includes, but is not limited to, the following:

(i) A requirement to pay proceeds derived from ad valorem property taxes or taxes levied in lieu of ad valorem property taxes.

(ii) A management contract or a contract for professional services.

(iii) A payment required on a contract, agreement, bond, or note if the requirement to make or assume the payment arose before August 19, 1993.

(iv) A requirement to pay or reimburse a person for the cost of insurance for, or to maintain, property subject to a lease, land contract, purchase agreement, or other agreement.

(v) A letter of credit, paying agent, transfer agent, bond registrar, or trustee fee associated with a contract, agreement, bond, or note.

(t) “On behalf of an authority”, in relation to an eligible advance made by a municipality, or an eligible obligation or other protected obligation issued or incurred by a municipality, means in anticipation that an authority would transfer tax increment revenues or reimburse the municipality from tax increment revenues in an amount sufficient to fully make payment required by the eligible advance made by the municipality, or eligible obligation or other protected obligation issued or incurred by the municipality, if the anticipation of the transfer or receipt of tax increment revenues from the authority is pursuant to or evidenced by 1 or more of the following:

(i) A reimbursement agreement between the municipality and an authority it established.

(ii) A requirement imposed by law that the authority transfer tax increment revenues to the municipality.

(iii) A resolution of the authority agreeing to make payments to the incorporating unit.

(iv) Provisions in a tax increment financing plan describing the project for which the obligation was incurred.

(u) “Operations” means office maintenance, including salaries and expenses of employees, office supplies, consultation fees, design costs, and other expenses incurred in the daily management of the authority and planning of its activities.

(v) “Other protected obligation” means:

(i) A qualified refunding obligation issued to refund an obligation described in subparagraph (ii), (iii), or (iv), an obligation that is not a qualified refunding obligation that is issued to refund an eligible obligation, or a qualified refunding obligation issued to refund an obligation described in this subparagraph.

(ii) An obligation issued or incurred by an authority or by a municipality on behalf of an authority after August 19, 1993, but before December 31, 1994, to finance a project described

in a tax increment finance plan approved by the municipality in accordance with this act before December 31, 1993, for which a contract for final design is entered into by or on behalf of the municipality or authority before March 1, 1994 or for which a written agreement with a developer, titled preferred development agreement, was entered into by or on behalf of the municipality or authority in July 1993.

(iii) An obligation incurred by an authority or municipality after August 19, 1993, to reimburse a party to a development agreement entered into by a municipality or authority before August 19, 1993, for a project described in a tax increment financing plan approved in accordance with this act before August 19, 1993, and undertaken and installed by that party in accordance with the development agreement.

(iv) An obligation incurred by the authority evidenced by or to finance a contract to purchase real property within a development area or a contract to develop that property within the development area, or both, if all of the following requirements are met:

(A) The authority purchased the real property in 1993.

(B) Before June 30, 1995, the authority enters a contract for the development of the real property located within the development area.

(C) In 1993, the authority or municipality on behalf of the authority received approval for a grant from both of the following:

(I) The department of natural resources for site reclamation of the real property.

(II) The department of consumer and industry services for development of the real property.

(v) An ongoing management or professional services contract with the governing body of a county which was entered into before March 1, 1994 and which was preceded by a series of limited term management or professional services contracts with the governing body of the county, the last of which was entered into before August 19, 1993.

(vi) A loan from a municipality to an authority if the loan was approved by the legislative body of the municipality on April 18, 1994.

(vii) Funds expended to match a grant received by a municipality on behalf of an authority for sidewalk improvements from the Michigan department of transportation if the legislative body of the municipality approved the grant application on April 5, 1993 and the grant was received by the municipality in June 1993.

(viii) For taxes captured in 1994, an obligation described in this subparagraph issued or incurred to finance a project. An obligation is considered issued or incurred to finance a project described in this subparagraph only if all of the following are met:

(A) The obligation requires raising capital for the project or paying for the project, whether or not a borrowing is involved.

(B) The obligation was part of a development plan and the tax increment financing plan was approved by a municipality on May 6, 1991.

(C) The obligation is in the form of a written memorandum of understanding between a municipality and a public utility dated October 27, 1994.

(D) The authority or municipality captured school taxes during 1994.

(ix) An obligation incurred by an authority on October 1, 2001 that was used to finance streetscape capital projects, to the extent taxes described in subdivision (bb)(ii) were captured in 2002 through 2004, if a plan for the subsequent repayment of those taxes has been approved by the state tax commission and that plan provides for the payment of interest on those taxes at a rate described in section 23(2) of 1941 PA 122, MCL 205.23.