(9) The department may audit any of the taxes covered by the agreement within the lookback period or in any prior period if, in the department's opinion, an audit of a prior period is necessary to determine the person's tax liability for the tax periods within the lookback period or to determine another person's tax liability.

(10) Nothing in subsections (2) to (9) shall be interpreted to allow or permit unjust enrichment as that term is defined in subsection (15). Any tax collected or withheld from another person by an applicant shall be remitted to the department without respect to whether it was collected during or before the lookback period.

(11) The department shall not require a person who enters into a voluntary disclosure agreement to make any filings that are additional to those otherwise required by law.

(12) The department may enter into a tribal agreement with a federally recognized Indian tribe specifying the applicability of a tax administered under this act to that tribe, its members, and any person conducting business with them. The tribe, its members, and any person conducting business with them shall remain fully subject to this state's tax acts except as otherwise specifically provided by an agreement in effect for the period at issue. A tribal agreement shall include all of the following:

(a) A statement of its purpose.

(b) Provisions governing duration and termination that make the agreement terminable by either party if there is noncompliance and terminable at-will after a period of not more than 2 years.

(c) Provisions governing administration, collection, and enforcement. Those provisions shall include all of the following:

(*i*) Collection of taxes levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or the use tax act, 1937 PA 94, MCL 205.91 to 205.111, on the sale of tangible personal property or the storage, use, or consumption of tangible personal property not exempt under the agreement.

(*ii*) Collection of taxes levied on tobacco products under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, and taxes levied under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, and the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234, on sales of tobacco products or motor fuels not exempt under the agreement.

(*iii*) Withholding and remittance of income taxes levied under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, from employees not exempt under the agreement.

(*iv*) Reporting of gambling winnings to the same extent and in the same manner as reported to the federal government.

(*v*) A waiver of tribal sovereign immunity sufficient to make the agreement enforceable against both parties.

(d) Provisions governing disclosure of information between the department and the tribe as necessary for the proper administration of the tribal agreement.

(e) A provision ensuring that the members of the tribe will be bound by the terms of the agreement.

(f) A designation of the agreement area within which the specific provisions of the tribal agreement apply.

(13) A tribal agreement authorized under subsection (12) may include 1 or more of the following:

(a) A provision for dispute resolution between this state and the tribe, which may include a nonjudicial forum.

(b) A provision for the sharing between the parties of certain taxes collected by the tribe and its members.

(c) Any other provisions beneficial to the administration or enforcement of the tribal agreement.

(14) A tribal agreement authorized under subsection (12) shall not authorize the approval of a class III gaming compact negotiated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467.

(15) As used in this section:

(a) "Lookback period" means 1 or more of the following:

(*i*) The most recent 48-month period as determined by the department or the first date the person subject to an agreement under this section began doing business in this state if less than 48 months.

(*ii*) For business taxes levied under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, the lookback period shall be the 4 most recent completed fiscal or calendar years over a 48-month period or the first date the person subject to an agreement under this section began doing business in this state if less than 48 months.

(*iii*) Notwithstanding subparagraphs (*i*), (*ii*), and (*iv*), the most recent 36-month period as determined by the department or the first date the person subject to an agreement under this section began doing business in this state if less than 36 months, if tax returns filed in another state for a tax based on net income that included sales in the numerator of the apportionment formula that now must be included in the numerator of the apportionment formula under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, and those sales increased the net tax liability payable to that state.

(*iv*) If there is doubt as to liability for the tax during the lookback period, another period as determined by the state treasurer to be in the best interest of this state and to preserve equitable and fair administration of taxes.

(b) "Nonfiler" for a particular tax means, beginning July 1, 1998, a person that has not filed a return for the particular tax being disclosed for periods beginning after December 31, 1988. Nonfiler also includes a person whose only filing was a single business tax estimated tax return filed before January 1, 1999.

(c) "Person" means an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, receiver, estate, trust, or any other group or combination acting as a unit.

(d) "Previous contact" means any notification of an impending audit pursuant to section 21(1), review, notice of intent to assess, or assessment. Previous contact also includes final letters of inquiry pursuant to section 21(2)(a) or a subpoena from the department.

(e) "Unjust enrichment" includes the withholding of income tax under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and the collection of any other tax administered by this act that has not been remitted to the department.

(f) "Voluntary disclosure agreement" or "agreement" means a written agreement that complies with this act.

(16) The department of treasury shall post a copy of each tribal agreement and any changes to a tribal agreement on the department of treasury's website not later than 60 days after the tribal agreement takes effect or the changes to the tribal agreement take effect.

(17) Not later than January 31 of each year, the department of treasury shall report to each house of the legislature, including the majority leader and minority leader of the senate and the speaker and minority leader of the house of representatives, on the tribal agreement and changes to the tribal agreement entered into during the immediately preceding calendar year. The report shall include all of the following:

(a) A copy of the tribal agreement.

(b) A summary of the changes since the immediately preceding report.

(c) A detailed listing and description of changes to any agreement areas described in a tribal agreement.

This act is ordered to take immediate effect.
Approved December 20, 2007.
Filed with Secretary of State December 21, 2007.

[No. 195]

(SB 933)

AN ACT to amend 1974 PA 198, entitled "An act to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to impose and provide for the disposition of an administrative fee; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties," by amending section 11 (MCL 207.561), as amended by 2004 PA 323.

The People of the State of Michigan enact:

207.561 Industrial facility tax; payment; disbursements; allocation; receipt or retention of tax payment by local or intermediate school district; disposition of amount disbursed to local school district; facility located in renaissance zone; building or facility owned or operated by qualified start-up business; "qualified start-up business" defined.

Sec. 11. (1) Except as provided in subsections (6) and (7), there is levied upon every owner of a speculative building, a new facility, or a replacement facility to which an industrial facilities exemption certificate is issued a specific tax to be known as the industrial facility tax and an administrative fee calculated in the same manner and at the same rate that the local tax collecting unit imposes on ad valorem taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(2) The industrial facility tax and administrative fee are to be paid annually, at the same times, in the same installments, and to the same officer or officers as taxes and administrative fees, if any, imposed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, are payable. Except as otherwise provided in this section, the officer or officers shall disburse the industrial facility tax payments received each year to and among the state, cities, townships, villages, school districts, counties, and authorities, at the same times and in the same proportions as required by law for the disbursement of taxes collected under the

general property tax act, 1893 PA 206, MCL 211.1 to 211.155. To determine the proportion for the disbursement of taxes under this subsection and for attribution of taxes under subsection (5) for taxes collected under industrial facilities exemption certificates issued before January 1, 1994, the number of mills levied for local school district operating purposes to be used in the calculation shall equal the number of mills for local school district operating purposes levied in 1993 minus the number of mills levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, for the year for which the disbursement is calculated.

(3) Except as provided by subsections (4) and (5), for an intermediate school district receiving state aid under section 56, 62, or 81 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656, 388.1662, and 388.1681, of the amount that would otherwise be disbursed to or retained by the intermediate school district, all or a portion, to be determined on the basis of the tax rates being utilized to compute the amount of the state school aid, shall be paid instead to the state treasury to the credit of the state school aid fund established by section 11 of article IX of the state constitution of 1963. If the sum of any commercial facilities taxes prescribed by the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, and the industrial facility taxes paid to the state treasury to the credit of the state school aid fund that would otherwise be disbursed to the local or intermediate school district, under section 12 of the commercial redevelopment act, 1978 PA 255, MCL 207.662, and this section, exceeds the amount received by the local or intermediate school district under sections 56, 62, and 81 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656, 388.1662, and 388.1681, the department of treasury shall allocate to each eligible local or intermediate school district an amount equal to the difference between the sum of the commercial facilities taxes and the industrial facility taxes paid to the state treasury to the credit of the state school aid fund and the amount the local or intermediate school district received under sections 56, 62, and 81 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656, 388.1662, and 388.1681. This subsection does not apply to taxes levied for either of the following:

(a) Mills allocated to an intermediate school district for operating purposes as provided for under the property tax limitation act, 1933 PA 62, MCL 211.201 to 211.217a.

(b) An intermediate school district that is not receiving state aid under section 56 or 62 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656 and 388.1662.

(4) For industrial facilities taxes levied before 1994, a local or intermediate school district shall receive or retain its industrial facility tax payment that is levied in any year and becomes a lien before December 1 of the year if the district files a statement with the state treasurer not later than June 30 of the year certifying that the district does not expect to receive state school aid payments under section 56, 62, or 81 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656, 388.1662, and 388.1681, in the state fiscal year commencing in the year this statement is filed and if the district did not receive state school aid payments under section 56, 62, or 81 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656, 388.1662, and 388.1681, for the state fiscal year concluding in the year the statement required by this subsection is filed. However, if a local or intermediate school district receives or retains its summer industrial facility tax payment under this subsection and becomes entitled to receive state school aid payments under section 56, 62, or 81 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656, 388.1662, and 388.1681, in the state fiscal year commencing in the year in which it filed the statement required by this subsection, the district immediately shall pay to the state treasury to the credit of the state school aid fund an amount of the summer industrial facility tax payments that would have been paid to the state treasury to the credit of the state school aid fund under subsection (3) had not this subsection allowed the district to receive or retain the summer industrial facility tax payment.

(5) For industrial facilities taxes levied after 1993, the amount to be disbursed to a local school district, except for that amount of tax attributable to mills levied under section 1211(2)

or 1211c of the revised school code, 1976 PA 451, MCL 380.1211 and 380.1211c, and mills that are not included as mills levied for school operating purposes under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, shall be paid to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(6) A speculative building, a new facility, or a replacement facility located in a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, is exempt from the industrial facility tax levied under this act to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, except for that portion of the industrial facility tax attributable to a special assessment or a tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff. The industrial facility tax calculated under this subsection shall be disbursed proportionately to the local taxing unit or units that levied the special assessment or the tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff.

(7) Upon application for an exemption under this subsection by a qualified start-up business, the governing body of a local tax collecting unit may adopt a resolution to exempt a speculative building, a new facility, or a replacement facility of a qualified start-up business from the collection of the industrial facility tax levied under this act in the same manner and under the same terms and conditions as provided for the exemption in section 7hh of the general property tax act, 1893 PA 206, MCL 211.7hh. The clerk of the local tax collecting unit shall notify in writing the assessor of the local tax collecting unit and the legislative body of each taxing unit that levies ad valorem property taxes in the local tax collecting unit. Before acting on the resolution, the governing body of the local tax collecting unit shall afford the assessor and a representative of the affected taxing units an opportunity for a hearing. If a resolution authorizing the exemption is adopted in the same manner as provided in section 7hh of the general property tax act, 1893 PA 206, MCL 211.7hh, a speculative building, a new facility, or a replacement facility owned or operated by a qualified start-up business is exempt from the industrial facility tax levied under this act, except for that portion of the industrial facility tax attributable to a special assessment or a tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff, for the year in which the resolution is adopted. A qualified start-up business is not eligible for an exemption under this subsection for more than 5 years. A qualified start-up business may receive the exemption under this subsection in nonconsecutive years. The industrial facility tax calculated under this subsection shall be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff. As used in this subsection, "qualified start-up business" means that term as defined in section 31a of the single business tax act, 1975 PA 228, MCL 208.31a, or in section 415 of the Michigan business tax act, 2007 PA 36, MCL 208.1415.

This act is ordered to take immediate effect.
Approved December 20, 2007.
Filed with Secretary of State December 21, 2007.

[No. 196]

(HB 4869)

AN ACT to amend 2004 PA 403, entitled "An act to regulate certain forms of boxing; to create certain commissions and to provide certain powers and duties for certain state agencies and departments; to license and regulate certain persons engaged in boxing, certain persons

connected to the business of boxing, and certain persons conducting certain contests and exhibitions; to confer immunity under certain circumstances; to provide for the conducting of certain tests; to assess certain fees; to create certain funds; to promulgate rules; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending sections 1, 10, 11, 12, 20, 21, 22, 31, 32, 33, 34, 35, 47, 48, 51, 53, 54, 55, 56, 57, and 58 (MCL 338.3601, 338.3610, 338.3611, 338.3612, 338.3620, 338.3621, 338.3622, 338.3631, 338.3632, 338.3633, 338.3634, 338.3635, 338.3647, 338.3648, 338.3651, 338.3653, 338.3654, 338.3655, 338.3656, 338.3657, and 338.3658), sections 11, 31, 33, 34, 47, 48, and 54 as amended by 2005 PA 49.

The People of the State of Michigan enact:

338.3601 Short title.

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

338.3610 Definitions; A to M.

Sec. 10. As used in this act:

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

(b) "Commission" means the Michigan unarmed combat commission created in section 20.

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

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

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

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

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

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

(i) "Mixed martial arts" means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts and includes grappling, kicking, jujitsu, and striking, subject to limitations contained in this act and rules promulgated under this act.

338.3611 Definitions; P to S.

Sec. 11. As used in this act:

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

(b) "Prize" means something offered or given of present or future value to a participant in a contest, exhibition, or match.

(c) "Professional" means a person who is competing or has competed in boxing or mixed martial arts for a money prize.

(d) "Promoter" means any person who produces or stages any professional contest or exhibition of boxing or mixed martial arts, or both, but does not include the venue where the

exhibition or contest is being held unless the venue contracts with the individual promoter to be a co-promoter.

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

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

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

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

338.3612 Applicability of act; exceptions.

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

(a) Professional or amateur wrestling.

(b) Amateur martial arts sports or activities.

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

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

(e) Boxing elimination contests regulated by section 50.

(f) Amateur mixed martial arts.

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

Sec. 20. (1) The Michigan unarmed combat commission, consisting of 11 voting members, appointed by the governor with the advice and consent of the senate, is created within the department. The director is appointed as a nonvoting ex officio member of the commission. A majority of the members appointed by the governor shall be licensees under this act. Four of the members shall be licensees in boxing, and 4 members shall be licensees in mixed martial arts. Three members shall be members of the general public. Budgeting, procurement, human resources, information technology, and related management functions of the commission shall be performed by the department.

(2) Except as otherwise provided in this subsection, the 11 members appointed by the governor shall serve a term of 4 years. Of the initial members appointed under this act, the terms of 2 of the members shall be 4 years, the term of 2 of the members shall be 2 years, and the term of 3 of the members shall be 1 year. When so designated by the director, any board action taken on only a boxing or mixed martial arts matter shall only be considered by the appropriately licensed members and members of the general public. The terms of members appointed by the governor are subject to the pleasure of the governor.

(3) Five members of the commission constitute a quorum for the exercise of the authority conferred upon the commission except that after all of the additional members appointed as a result of the 2007 amendatory act that added this clause, the quorum shall consist of 7 members. Subject to subsection (2), a concurrence of at least 4 of the members, or a concurrence of a majority of those members who have not participated in an investigation or administrative hearing regarding a matter before the commission, is necessary to render

a decision by the commission. In the case of proposed board action to be taken on a matter involving only boxing or only mixed martial arts and where only the members of the board designated for the particular sport are eligible to confer, the quorum shall be 4 members, 2 of whom shall be licensed under the appropriate sport. Under those circumstances, a concurrence of 3 members is necessary to render a decision by the commission.

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

(5) Except as otherwise provided in section 33(9), the records of the commission are subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

338.3621 Person with financial interest ineligible for appointment.

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

338.3622 Chairperson; seal; rules; unarmed combat fund; creation; use; carrying forward remaining money; compensation of members; affiliation with other commissions or athletic authorities; duties of commission and department; incorporation by reference of certain standards.

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

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

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

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

(c) Qualifications of licensees.

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

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

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

(3) An unarmed combat fund is created as a revolving fund in the state treasury and administered by the director. The money in the fund is to be only used for the costs of administration and enforcement of this act and for any costs associated with the administration of this act, including, but not limited to, reimbursing the department of attorney general for

the reasonable costs of services provided to the department under this act. Money remaining in the fund at the end of the fiscal year and interest earned shall be carried forward into the next fiscal year and shall not revert to the general fund. The department shall deposit into the fund all money received from the regulatory and enforcement fee, license fees, event fees, and administrative fines imposed under this act, and from any other source.

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

(5) The commission may affiliate with any other state or national boxing or mixed martial arts commission or athletic authority. The commission, upon approval of the director, may enter into any appropriate reciprocity agreements.

(6) The commission and department are vested with management, control, and jurisdiction over all professional boxing and professional mixed martial arts contests or exhibitions to be conducted, held, or given within the state of Michigan. Except for any contests or exhibitions exempt from this act, a contest or exhibition shall not be conducted, held, or given within this state except in compliance with this act.

(7) The requirements and standards contained in standards adopted by the New Jersey state athletic control board, N.J.A.C. 13:46-24A and 24B, as they may exist on the effective date of this act, entitled the mixed martial arts unified rules, dated 2000, except for the license fees described in those rules, are incorporated by reference. Any requirements and standards incorporated by reference in this subsection that are in conflict with the requirements and standards of this act are considered superseded by the provisions of this act. The director, in consultation with the commission, may promulgate rules consistent with section 35 to alter, supplement, update, or amend the standards incorporated by reference under this subsection. Any references to the commission in the mixed martial arts unified rules shall mean the department. The standards contained in 13:46-24B.3 are not incorporated by reference.

(8) Any boxing, mixed martial arts, or sparring contest conforming to the requirements of this act and to the rules of the department is not considered to be a prize fight for purposes of chapter LXVI of the Michigan penal code, 1931 PA 328, MCL 750.442 to 750.447.

338.3631 Application for licensure.

Sec. 31. By filing an application for a license, an applicant does both of the following:

(a) Certifies his or her general suitability, character, integrity, and ability to participate, engage in, or be associated with boxing or mixed martial arts contests or exhibitions. The burden of proof is on the applicant to establish to the satisfaction of the commission and the department that the applicant is qualified to receive a license.

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

338.3632 Promoter's license required.

Sec. 32. A contest or exhibition regulated by this act and not exempt from this act shall be held or conducted in this state only under a promoter's license issued by the department as provided for in section 33.

338.3633 Promoter's license; application; good moral character; bond; fees; submission of contract; deposit of money; disclosure of contract; drug test results.

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

(2) An applicant for a promoter's license must demonstrate good moral character. If an applicant for a promoter's license is denied a license due to lack of good moral character, the applicant may petition the commission for a review of the decision under section 46.

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

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

(5) A boxing promoter shall pay an event fee of $125.00. A mixed martial arts promoter shall pay an event fee of $2,000.00.

(6) There is imposed a regulatory and enforcement fee upon the promoter to assure the integrity of the sports of boxing and mixed martial arts, the public interest, and the welfare and safety of the professionals in the amount of 3% of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights, but not to exceed $25,000.00 per contract, for boxing or mixed martial arts events to which the following apply:

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

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

(c) The event is designed to promote professional boxing or mixed martial arts contests in this state.

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

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

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

(10) Beginning June 23, 2005, a promoter's license is subject to revocation unless at least 10% of the purse in a contest or exhibition, but not more than $10,000.00 per contestant, is withheld or escrowed until such time as the results of the postcontest drug test, as required by this act, are available to the department. If the drug test results confirm or demonstrate compliance with this act, the department shall issue an order allowing the promoter to forward to the professional the amount withheld or escrowed. If the results do not confirm or demonstrate compliance with this act, the department shall serve a formal complaint on the professional under section 44(2), and the department shall issue an order to the promoter requiring the promoter to forward the amount withheld or escrowed to the department. Upon receipt, the department shall deposit the money into the fund. If after a hearing the professional is found in violation of the act, the professional shall forfeit the amount withheld from the purse and the professional is subject to the penalties prescribed in section 48. However, if the formal complaint is dismissed or any final order issued as the result of the complaint is overturned, the department shall issue a refund to the professional for the amount withheld.

(11) Subsection (10) does not prohibit a licensed promoter from including a provision in a contract with a professional that requires the promoter to withhold 10% of the purse in a contest or exhibition until such time as the postcontest drug test results are available to the department.

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

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

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

(a) An initial application processing fee sufficient to cover the costs of processing a boxing or mixed martial arts promoter's license, but not less than $250.00.

(b) A requirement that background information be disclosed by the applicant who is an individual or by the principal officers or members and individuals having at least a 10% ownership interest in the case of any other legal entity, with emphasis on the applicant's business experience.

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

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

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

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

338.3635 Rules; fees.

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

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

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

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

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

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

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

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

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

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

(h) Practices fraud or deceit in obtaining a license.

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

(a) The timing of drug tests for contestants.

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

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

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

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

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

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

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

338.3648 Reinstatement; fine; penalties; grounds for summary suspension.

Sec. 48. (1) Upon receipt of an application for reinstatement and the payment of an administrative fine prescribed by the commission, the commission may reinstate a revoked license

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

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

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

(4) A professional or participant in a professional contest or exhibition shall submit to a postexhibition test of body fluids to determine the presence of controlled substances, prohibited substances, or enhancers. The department shall promulgate rules to set requirements regarding preexhibition tests of body fluids to determine the presence of controlled substances, prohibited substances, or enhancers.

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

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

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

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

338.3651 Participant license.

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

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

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

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

338.3653 Licensure as professional referee, judge, or timekeeper.

Sec. 53. (1) In addition to the requirements of section 52, a person seeking a license as a professional referee, judge, or timekeeper shall referee, judge, or keep time for a minimum of 300 rounds of amateur competitive boxing. To the extent standards are not contained in the mixed martial arts unified rules incorporated by reference under section 22(7), the department shall promulgate rules establishing standards for a person seeking licensure as a mixed martial arts professional referee, judge, or timekeeper.

(2) After a person has successfully completed the requirements of section 51(2) and subsection (1), the department may issue the person a license.

338.3654 Unofficial scoring; rules; completion of standardized evaluation sheet by licensee.

Sec. 54. (1) In addition to the requirements of section 53, a person seeking a license as a professional judge shall score, unofficially, not fewer than 200 rounds of professional boxing. In order to fulfill the requirements of this subsection, an applicant shall only unofficially judge contests that are approved by the commission for that purpose. An applicant shall not receive compensation for judging boxing contests or exhibitions under this subsection. Scorecards shall be transmitted to the department and the commission for review and evaluation.

(2) To the extent standards are not contained in the mixed martial arts unified rules incorporated by reference under section 22(7), the department shall promulgate rules establishing experience standards for a person seeking licensure as a mixed martial arts professional judge.

(3) An employee authorized by the department or the commission shall complete a standardized evaluation sheet for each contest or exhibition judged by a licensee. The commission shall annually review the evaluation sheets. A commission member attending a contest or exhibition may also submit to the department a standardized evaluation sheet.

338.3655 Medical or hospital insurance.

Sec. 55. (1) A professional participating in a contest or exhibition shall be insured by the promoter for not less than $50,000.00 for medical and hospital expenses to be paid to the contestant to cover injuries sustained in the contest and for not less than $50,000.00 to be paid in accordance with the statutes of descent and distribution of personal property if the contestant should die as a result of injuries received in a boxing contest or exhibition.

(2) A promoter shall pay the policy premium and deductible regarding any medical or hospital expenses for a contestant's injuries.

338.3656 Number of rounds; weight of contest gloves; certification of physical condition.

Sec. 56. (1) A professional boxing contest or exhibition shall be of not more than 10 rounds in length, except a boxing contest or exhibition which involves a national or international championship may last not more than 12 rounds in the determination of the department. The contestants shall wear during a contest gloves weighing at least 8 ounces each. Rounds shall be not longer than 3 minutes, with not less than 1-minute rest between rounds.

(2) A professional or participant in a contest or exhibition shall be certified to be in proper physical condition by a licensed physician, a licensed physician's assistant, or a certified nurse practitioner before participating in a contest or exhibition. The department shall designate any medical test that may be required to determine if the individual is in proper physical condition.

338.3657 Duties of physician.

Sec. 57. (1) A licensed physician shall be in attendance at each contest or exhibition. The physician shall observe the physical condition of the contestants and advise the referee or judges with regard to the health of those contestants. The physician shall examine each contestant before entering the ring.

(2) The licensed physician shall file with the commission the report of the physical examination of a contestant not later than 24 hours after termination of the contest or exhibition.

(3) If, in the opinion of the physician, the health or safety of a contestant requires that the contest or exhibition in which he or she is participating be terminated, the physician shall notify the referee. The referee shall terminate the contest or exhibition.

338.3658 Loss of consciousness; physical examination required; cost.

Sec. 58. (1) If a contestant or participant loses consciousness during or as a result of a contest or exhibition in which he or she participates, he or she shall not again be eligible to participate in a contest or exhibition in this state unless examined by a physician appointed by the commission and unless the physician certifies the contestant's or participant's fitness to participate.

(2) The contestant or participant shall pay the cost of the examination conducted under subsection (1).

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4870 of the 94th Legislature is enacted into law.

Approved December 20, 2007.
Filed with Secretary of State December 21, 2007.

Compiler's note: House Bill No. 4870, referred to in enacting section 1, was filed with the Secretary of State December 21, 2007, and became 2007 PA 197, Eff. Mar. 27, 2008.

[No. 197]

(HB 4870)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 447 (MCL 750.447), as amended by 2004 PA 404.

The People of the State of Michigan enact:

750.447 Inapplicability of chapter.

Sec. 447. This chapter does not apply to any contests or exhibitions conducted, held, or given pursuant to the provisions of the Michigan unarmed combat regulatory act, 2004 PA 403, MCL 338.3601 to 338.3663.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4869 of the 94th Legislature is enacted into law.

Approved December 20, 2007.
Filed with Secretary of State December 21, 2007.

Compiler's note: House Bill No. 4869, referred to in enacting section 1, was filed with the Secretary of State December 21, 2007, and became 2007 PA 196, Eff. Mar. 27, 2008.

[No. 198]

(HB 5449)

AN ACT to amend 1980 PA 243, entitled "An act to provide emergency financial assistance for certain municipalities; to create a local emergency financial assistance loan board and to prescribe the powers and duties of this board; to prescribe conditions for granting and receiving loans, to prescribe terms and conditions for the repayment of loans, and to allow the limiting of repayment by a county from specified revenue sources; to impose certain requirements and duties on certain state departments, municipalities of this state, and officials of the state and municipalities of this state; and to prescribe remedies and penalties," by amending sections 4 and 5 (MCL 141.934 and 141.935), section 4 as amended by 2002 PA 405 and section 5 as amended by 1987 PA 282.

The People of the State of Michigan enact:

141.934 Application for loan; resolution; certification of information and conditions; inspection, copying, or auditing of books and records; applicability of subsection (1).

Sec. 4. (1) If the governing body of a municipality desires to request a loan, it shall provide by resolution for the submission of an application to the board for a loan made under this act. The municipality shall certify and substantiate all of the following information and conditions to be eligible for consideration for a loan authorization by the board:

(a) A deficit for the municipality's general fund is projected for the current fiscal year.

(b) That 1 or both of the following have occurred within the 6 months immediately preceding the loan request:

(*i*) The municipality has issued tax anticipation notes or revenue sharing notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(*ii*) The department of treasury has acted upon a request by the municipality to issue tax anticipation notes or revenue sharing notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(c) The municipality meets 1 or more of the following conditions:

(*i*) Its income tax revenue growth rate is .90 or less, or the municipality has 2 or more emergency loans outstanding at the time its application is submitted and its income tax revenue growth rate is 1.3 or less.

(*ii*) Its local tax base growth rate is 75% or less of the statewide tax base growth rate.

(*iii*) The state equalized valuation of real and personal property within the municipality at the time the loan application is made is less than the state equalized valuation of real and personal property within the municipality in the immediately preceding year.

(d) The municipality submits a long-range plan, that has been approved by the governing body of the municipality, outlining actions to be taken to balance future expenditures with anticipated revenues.

(2) If the board determines it necessary, the board may inspect, copy, or audit the books and records of a municipality.

(3) Subsection (1) does not apply to a loan authorized under section 3(2) or (3).

141.935 Maximum amount of loans; eligibility.

Sec. 5. Except for a county subject to section 3(2), the board may authorize loans to any 1 municipality in an amount not to exceed $3,000,000.00 in any 1 fiscal year of the municipality. Except for a county subject to section 3(2), a municipality is not eligible to receive loans in more than 5 fiscal years in any 10-year period.

This act is ordered to take immediate effect.
Approved December 20, 2007.
Filed with Secretary of State December 21, 2007.

[No. 199]

(HB 4979)

AN ACT to amend 1951 PA 51, entitled "An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, local bridge fund, comprehensive transportation fund, and certain other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts

of acts," by amending sections 1g and 9a (MCL 247.651g and 247.659a), section 1g as added by 1997 PA 79 and section 9a as amended by 2002 PA 499.

The People of the State of Michigan enact:

247.651g Pavement management system.

Sec. 1g. The transportation asset management council, in conjunction with the department, counties, and municipalities, shall develop and implement a pavement management system for each mile of roadway on the federal-aid eligible highway system in Michigan. This pavement management system shall attempt to ensure that a disproportionate share of pavement shall not become due for replacement or major repair at the same time. The transportation asset management council shall provide local road agencies with the training needed to utilize the pavement management system in accordance with this section.

247.659a Definitions; transportation asset management council; creation; charge; membership; appointments; staff and technical assistance; requirements and procedures; technical advisory panel; report including multiyear program; funding; records on road and bridge work performed and funds expended; report.

Sec. 9a. (1) As used in this section:

(a) "Asset management" means an ongoing process of maintaining, upgrading, and operating physical assets cost-effectively, based on a continuous physical inventory and condition assessment.

(b) "Bridge" means a structure including supports erected over a depression or an obstruction, such as water, a highway, or a railway, for the purposes of carrying traffic or other moving loads, and having an opening measuring along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes where the clear distance between openings is less than 1/2 of the smaller contiguous opening.

(c) "Central storage data agency" means that agency or office chosen by the council where the data collected is stored and maintained.

(d) "Council" means the transportation asset management council created by this section.

(e) "County road commission" means the board of county road commissioners elected or appointed pursuant to section 6 of chapter IV of 1909 PA 283, MCL 224.6, or, in the case of a charter county with a population of 2,000,000 or more with an elected county executive that does not have a board of county road commissioners, the county executive for ministerial functions and the county commission provided for in section 14(1)(d) of 1966 PA 293, MCL 45.514, for legislative functions.

(f) "Department" means the state transportation department.

(g) "Federal-aid eligible" means any public road or bridge that is eligible for federal aid to be spent for the construction, repair, or maintenance of that road or bridge.

(h) "Local road agency" means a county road commission or designated county road agency or city or village that is responsible for the construction or maintenance of public roads within the state under this act.

(i) "Multiyear program" means a compilation of road and bridge projects anticipated to be contracted for by the department or a local road agency during a 3-year period. The multiyear program shall include a listing of each project to be funded in whole or in part with state or federal funds.

(j) "State planning and development regions" means those agencies required by section 134(b) of title 23 of the United States Code, 23 USC 134, and those agencies established by Executive Directive 1968-1.

(2) In order to provide a coordinated, unified effort by the various roadway agencies within the state, the transportation asset management council is hereby created within the state transportation commission and is charged with advising the commission on a statewide asset management strategy and the processes and necessary tools needed to implement such a strategy beginning with the federal-aid eligible highway system, and once completed, continuing on with the county road and municipal systems, in a cost-effective, efficient manner. Nothing in this section shall prohibit a local road agency from using an asset management process on its non-federal-aid eligible system. The council shall consist of 10 voting members appointed by the state transportation commission. The council shall include 2 members from the county road association of Michigan, 2 members from the Michigan municipal league, 2 members from the state planning and development regions, 1 member from the Michigan townships association, 1 member from the Michigan association of counties, and 2 members from the department. Nonvoting members shall include 1 person from the agency or office selected as the location for central data storage. Each agency with voting rights shall submit a list of 2 nominees to the state transportation commission from which the appointments shall be made. The Michigan townships association shall submit 1 name, and the Michigan association of counties shall submit 1 name. Names shall be submitted within 30 days after the effective date of the 2002 amendatory act that amended this section. The state transportation commission shall make the appointments within 30 days after receipt of the lists.

(3) The positions for the department shall be permanent. The position of the central data storage agency shall be nonvoting and shall be for as long as the agency continues to serve as the data storage repository. The member from the Michigan association of counties shall be initially appointed for 2 years. The member from the Michigan townships association shall be initially appointed for 3 years. Of the members first appointed from the county road association of Michigan, the Michigan municipal league, and the state planning and development regions, 1 member of each group shall be appointed for 2 years and 1 member of each group shall be appointed for 3 years. At the end of the initial appointment, all terms shall be for 3 years. The chairperson shall be selected from among the voting members of the council.

(4) The department shall provide qualified administrative staff and the state planning and development regions shall provide qualified technical assistance to the council.

(5) The council shall develop and present to the state transportation commission for approval within 90 days after the date of the first meeting such procedures and requirements as are necessary for the administration of the asset management process. This shall, at a minimum, include the areas of training, data storage and collection, reporting, development of a multiyear program, budgeting and funding, and other issues related to asset management that may arise from time to time. All quality control standards and protocols shall, at a minimum, be consistent with any existing federal requirements and regulations and existing government accounting standards.

(6) The council may appoint a technical advisory panel whose members shall be representatives from the transportation construction associations and related transportation road interests. The asset management council shall select members to the technical advisory panel from names submitted by the transportation construction associations and related transportation road interests. The technical advisory panel members shall be appointed for 3 years. The asset management council shall determine the research issues and assign projects to the technical advisory panel to assist in the development of statewide policies. The technical advisory panel's recommendations shall be advisory only and not binding on the asset management council.

(7) The department, each county road commission, and each city and village of this state shall annually submit a report to the transportation asset management council. This report shall include a multiyear program developed through the asset management process described in this section. Projects contained in the department's annual multiyear program shall be consistent with the department's asset management process and shall be reported consistent with categories established by the transportation asset management council. Projects contained in the annual multiyear program of each local road agency shall be consistent with the asset management process of each local road agency and shall be reported consistent with categories established by the transportation asset management council.

(8) Funding necessary to support the activities described in this section shall be provided by an annual appropriation from the Michigan transportation fund to the state transportation commission.

(9) The department and each local road agency shall keep accurate and uniform records on all road and bridge work performed and funds expended for the purposes of this section, according to the procedures developed by the council. Each local road agency and the department shall annually report to the council the mileage and condition of the road and bridge system under their jurisdiction and the receipts and disbursements of road and street funds in the manner prescribed by the council, which shall be consistent with any current accounting procedures. An annual report shall be prepared by the staff assigned to the council regarding the results of activities conducted during the preceding year and the expenditure of funds related to the processes and activities identified by the council. The report shall also include an overview of the activities identified for the succeeding year. The council shall submit this report to the state transportation commission, the legislature, and the transportation committees of the house and senate by May 2 of each year.

This act is ordered to take immediate effect.
Approved December 20, 2007.
Filed with Secretary of State December 21, 2007.

[No. 200]

(SB 455)

AN ACT to amend 1986 PA 281, entitled "An act to encourage local development to prevent conditions of unemployment and promote economic growth; to provide for the establishment of local development finance authorities and to prescribe their powers and duties; to provide for the creation of a board to govern an authority and to prescribe its powers and duties; to provide for the creation and implementation of development plans; to authorize the acquisition and disposal of interests in real and personal property; to permit the issuance of bonds and other evidences of indebtedness by an authority; to prescribe powers and duties of certain public entities and state officers and agencies; to reimburse authorities for certain losses of tax increment revenues; and to authorize and permit the use of tax increment financing," by amending section 2 (MCL 125.2152), as amended by 2004 PA 17.

The People of the State of Michigan enact:

125.2152 Definitions.

Sec. 2. 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 211.157.

(*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 local development finance authority created pursuant to this act.

(d) "Authority district" means an area or areas within which an authority exercises its powers.

(e) "Board" means the governing body of an authority.

(f) "Business development area" means an area designated as a certified industrial park under this act prior to the effective date of the amendatory act that added this subdivision, or an area designated in the tax increment financing plan that meets all of the following requirements:

(*i*) The area is zoned to allow its use for eligible property.

(*ii*) The area has a site plan or plat approved by the city, village, or township in which the area is located.

(g) "Business incubator" means real and personal property that meets all of the following requirements:

(*i*) Is located in a certified technology park.

(*ii*) Is subject to an agreement under section 12a.

(*iii*) Is developed for the primary purpose of attracting 1 or more owners or tenants who will engage in activities that would each separately qualify the property as eligible property under subdivision (p)(*iii*).

(h) "Captured assessed value" means the amount in any 1 year by which the current assessed value of the eligible property identified in the tax increment financing plan or, for a certified technology park, the real and personal property included in the tax increment financing plan, including the current assessed value of property for which specific local taxes are paid in lieu of property taxes as determined pursuant to subdivision (cc), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

(i) "Certified business park" means a business development area that has been designated by the Michigan economic development corporation as meeting criteria established by the Michigan economic development corporation. The criteria shall establish standards for business development areas including, but not limited to, use, types of building materials, landscaping, setbacks, parking, storage areas, and management.

(j) "Certified technology park" means that portion of the authority district designated by a written agreement entered into pursuant to section 12a between the authority, the municipality, and the Michigan economic development corporation.

(k) "Chief executive officer" means the mayor or city manager of a city, the president of a village, or, for other local units of government or school districts, the person charged by law with the supervision of the functions of the local unit of government or school district.

(*l*) "Development plan" means that information and those requirements for a development set forth in section 15.

(m) "Development program" means the implementation of a development plan.

(n) "Eligible advance" means an advance made before August 19, 1993.

(o) "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.

(p) "Eligible property" means land improvements, buildings, structures, and other real property, and machinery, equipment, furniture, and fixtures, or any part or accessory thereof whether completed or in the process of construction comprising an integrated whole, located within an authority district, of which the primary purpose and use is or will be 1 of the following:

(*i*) The manufacture of goods or materials or the processing of goods or materials by physical or chemical change.

(*ii*) Agricultural processing.

(*iii*) A high technology activity.

(*iv*) The production of energy by the processing of goods or materials by physical or chemical change by a small power production facility as defined by the federal energy regulatory commission pursuant to the public utility regulatory policies act of 1978, Public Law 95-617, which facility is fueled primarily by biomass or wood waste. This act does not affect a person's rights or liabilities under law with respect to groundwater contamination described in this subparagraph. This subparagraph applies only if all of the following requirements are met:

(A) Tax increment revenues captured from the eligible property will be used to finance, or will be pledged for debt service on tax increment bonds used to finance, a public facility in or near the authority district designed to reduce, eliminate, or prevent the spread of identified soil and groundwater contamination, pursuant to law.

(B) The board of the authority exercising powers within the authority district where the eligible property is located adopted an initial tax increment financing plan between January 1, 1991 and May 1, 1991.

(C) The municipality that created the authority establishes a special assessment district whereby not less than 50% of the operating expenses of the public facility described in this subparagraph will be paid for by special assessments. Not less than 50% of the amount specially assessed against all parcels in the special assessment district shall be assessed against parcels owned by parties potentially responsible for the identified groundwater contamination pursuant to law.

(*v*) A business incubator.

(q) "Fiscal year" means the fiscal year of the authority.

(r) "Governing body" means the elected body having legislative powers of a municipality creating an authority under this act.

(s) "High technology activity" means that term as defined in section 3 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(t) "Initial assessed value" means the assessed value of the eligible property identified in the tax increment financing plan or, for a certified technology park, the assessed value of any real and personal property included in the tax increment financing plan, at the time the resolution establishing the tax increment financing plan is approved as shown by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted or, for property that becomes eligible property in other than a certified technology

park after the date the plan is approved, at the time the property becomes eligible property. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero. Property for which a specific local tax is paid in lieu of property tax shall not be considered exempt from taxation. The initial assessed value of property for which a specific local tax was paid in lieu of property tax shall be determined as provided in subdivision (cc).

(u) "Michigan economic development corporation" means the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999 between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund. If the Michigan economic development corporation is unable for any reason to perform its duties under this act, those duties may be exercised by the Michigan strategic fund.

(v) "Michigan strategic fund" means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(w) "Municipality" means a city, village, or urban township.

(x) "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.

(y) "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 a 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.

(z) "Other protected obligation" means:

(*i*) A qualified refunding obligation issued to refund an obligation described in subparagraph (*ii*) or (*iii*), 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 August 19, 1993, for which a contract for final design is entered into by the municipality or authority before March 1, 1994.

(*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 ongoing management or professional services contract with the governing body of a county that was entered into before March 1, 1994 and that 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.

(aa) "Public facility" means 1 or more of the following:

(*i*) A street, road, bridge, storm water or sanitary sewer, sewage treatment facility, facility designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, retention basin, pretreatment facility, waterway, waterline, water storage facility, rail line, electric, gas, telephone or other communications, or any other type of utility line or pipeline, or other similar or related structure or improvement, together with necessary easements for the structure or improvement. Except for rail lines, utility lines, or pipelines, the structures or improvements described in this subparagraph shall be either owned or used by a public agency, functionally connected to similar or supporting facilities owned or used by a public agency, or designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally, whether or not used by a single business entity. Any road, street, or bridge shall be continuously open to public access. A public facility shall be located on public property or in a public, utility, or transportation easement or right-of-way.

(*ii*) The acquisition and disposal of land that is proposed or intended to be used in the development of eligible property or an interest in that land, demolition of structures, site preparation, and relocation costs.

(*iii*) All administrative and real and personal property acquisition and disposal costs related to a public facility described in subparagraphs (*i*) and (*iv*), including, but not limited to, architect's, engineer's, legal, and accounting fees as permitted by the district's development plan.

(*iv*) An improvement to a facility used by the public or a public facility as those terms are defined in section 1 of 1966 PA 1, MCL 125.1351, which improvement is made to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(*v*) All of the following costs approved by the Michigan economic development corporation:

(A) Operational costs and the costs related to the acquisition, improvement, preparation, demolition, disposal, construction, reconstruction, remediation, rehabilitation, restoration,

preservation, maintenance, repair, furnishing, and equipping of land and other assets that are or may become eligible for depreciation under the internal revenue code of 1986 for a business incubator located in a certified technology park.

(B) Costs related to the acquisition, improvement, preparation, demolition, disposal, construction, reconstruction, remediation, rehabilitation, restoration, preservation, maintenance, repair, furnishing, and equipping of land and other assets that, if privately owned, would be eligible for depreciation under the internal revenue code of 1986 for laboratory facilities, research and development facilities, conference facilities, teleconference facilities, testing, training facilities, and quality control facilities that are or that support eligible property under subdivision (p)(*iii*), that are owned by a public entity, and that are located within a certified technology park.

(*vi*) Operating and planning costs included in a plan pursuant to section 12(1)(f), including costs of marketing property within the district and attracting development of eligible property within the district.

(bb) "Qualified refunding obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority to refund an obligation if the refunding obligation meets both of the following:

(*i*) The net present value of the principal and interest to be paid on the refunding obligation, including the cost of issuance, will be less than the net present value of the principal and interest to be paid on the obligation being refunded, as calculated using a method approved by the department of treasury.

(*ii*) The net present value of the sum of the tax increment revenues described in subdivision (ee)(*ii*) and the distributions under section 11a to repay the refunding obligation will not be greater than the net present value of the sum of the tax increment revenues described in subdivision (ee)(*ii*) and the distributions under section 11a to repay the obligation being refunded, as calculated using a method approved by the department of treasury.

(cc) "Specific local taxes" means a tax levied under 1974 PA 198, MCL 207.551 to 207.572, the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123, 1953 PA 189, MCL 211.181 to 211.182, and the technology park development act, 1984 PA 385, MCL 207.701 to 207.718. The initial assessed value or current assessed value of property subject to a specific local tax is the quotient of the specific local tax paid divided by the ad valorem millage rate. However, after 1993, the state tax commission shall prescribe the method for calculating the initial assessed value and current assessed value of property for which a specific local tax was paid in lieu of a property tax.

(dd) "State fiscal year" means the annual period commencing October 1 of each year.

(ee) "Tax increment revenues" means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of eligible property within the district or, for purposes of a certified technology park, real or personal property that is located within the certified technology park and included within the tax increment financing plan, subject to the following requirements:

(*i*) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions, other than the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts, upon the captured assessed value of real and personal property in the development area for any purpose authorized by this act.

(*ii*) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of the state pursuant to the state education tax

act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area in an amount equal to the amount necessary, without regard to subparagraph (*i*), for the following purposes:

(A) To repay eligible advances, eligible obligations, and other protected obligations.

(B) To fund or to repay an advance or obligation issued by or on behalf of an authority to fund the cost of public facilities related to or for the benefit of eligible property located within a certified technology park to the extent the public facilities have been included in an agreement under section 12a(3), not to exceed 50%, as determined by the state treasurer, of the amounts levied by the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local and intermediate school districts for a period not to exceed 15 years, as determined by the state treasurer, if the state treasurer determines that the capture under this subparagraph is necessary to reduce unemployment, promote economic growth, and increase capital investment in the municipality.

(*iii*) Tax increment revenues do not include any of the following:

(A) Ad valorem property taxes or specific local taxes that are excluded from and not made part of the tax increment financing plan.

(B) Ad valorem property taxes and specific local taxes attributable to ad valorem property taxes excluded by the tax increment financing plan of the authority from the determination of the amount of tax increment revenues to be transmitted to the authority.

(C) Ad valorem property taxes exempted from capture under section 4(3) or specific local taxes attributable to such ad valorem property taxes.

(D) Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit or specific local taxes attributable to such ad valorem property taxes.

(E) The amount of ad valorem property taxes or specific taxes captured by a downtown development authority under 1975 PA 197, MCL 125.1651 to 125.1681, tax increment financing authority under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or brownfield redevelopment authority under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, if those taxes were captured by these other authorities on the date that the initial assessed value of a parcel of property was established under this act.

(*iv*) The amount of tax increment revenues authorized to be included under subparagraph (*ii*), and required to be transmitted to the authority under section 13(1), from ad valorem property taxes and specific local taxes attributable to the application of the levy of the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, or a local school district or an intermediate school district upon the captured assessed value of real and personal property in a development area shall be determined separately for the levy by the state, each school district, and each intermediate school district as the product of sub-subparagraphs (A) and (B):

(A) The percentage that the total ad valorem taxes and specific local taxes available for distribution by law to the state, local school district, or intermediate school district, respectively, bears to the aggregate amount of ad valorem millage taxes and specific taxes available for distribution by law to the state, each local school district, and each intermediate school district.

(B) The maximum amount of ad valorem property taxes and specific local taxes considered tax increment revenues under subparagraph (*ii*).

(ff) "Urban township" means a township that meets 1 or more of the following:

(*i*) Meets all of the following requirements:

(A) Has a population of 20,000 or more, or has a population of 10,000 or more but is located in a county with a population of 400,000 or more.

(B) Adopted a master zoning plan before February 1, 1987.

(C) Provides sewer, water, and other public services to all or a part of the township.

(*ii*) Meets all of the following requirements:

(A) Has a population of less than 20,000.

(B) Is located in a county with a population of 250,000 or more but less than 400,000, and that county is located in a metropolitan statistical area.

(C) Has within its boundaries a parcel of property under common ownership that is 800 acres or larger and is capable of being served by a railroad, and located within 3 miles of a limited access highway.

(D) Establishes an authority before December 31, 1998.

(*iii*) Meets all of the following requirements:

(A) Has a population of less than 20,000.

(B) Has a state equalized valuation for all real and personal property located in the township of more than $200,000,000.00.

(C) Adopted a master zoning plan before February 1, 1987.

(D) Is a charter township under the charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(E) Has within its boundaries a combination of parcels under common ownership that is 800 acres or larger, is immediately adjacent to a limited access highway, is capable of being served by a railroad, and is immediately adjacent to an existing sewer line.

(F) Establishes an authority before March 1, 1999.

(*iv*) Meets all of the following requirements:

(A) Has a population of 13,000 or more.

(B) Is located in a county with a population of 150,000 or more.

(C) Adopted a master zoning plan before February 1, 1987.

(*v*) Meets all of the following requirements:

(A) Is located in a county with a population of 1,000,000 or more.

(B) Has a written agreement with an adjoining township to develop 1 or more public facilities on contiguous property located in both townships.

(C) Has a master plan in effect.

(*vi*) Meets all of the following requirements:

(A) Has a population of less than 10,000.

(B) Has a state equalized valuation for all real and personal property located in the township of more than $280,000,000.00.

(C) Adopted a master zoning plan before February 1, 1987.

(D) Has within its boundaries a combination of parcels under common ownership that is 199 acres or larger, is located within 1 mile of a limited access highway, and is located within 1 mile of an existing sewer line.

(E) Has rail service.

(F) Establishes an authority before May 7, 2009.

This act is ordered to take immediate effect.
Approved December 27, 2007.
Filed with Secretary of State December 27, 2007.

[No. 201]

(HB 4711)

AN ACT to amend 1996 PA 381, entitled "An act to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing," by amending section 15 (MCL 125.2665), as amended by 2006 PA 32.

The People of the State of Michigan enact:

125.2665 Prohibited conduct; work plan; documents to be submitted for approval; written request pertaining to baseline environmental assessment activities or due care activities; additional response activities; denial of work plan as final decision; appeal; reimbursement of costs to review work plan; report; distribution of remaining funds; use of school operating taxes; extension of review period.

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

(a) For eligible activities not described in section 13(15), use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the eligible property are eligible activities under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan approved by the department after July 24, 1996 and before January 1, 2013. However, except as provided in subdivision (e), an authority may use taxes levied for school operating purposes captured from eligible property without the approval of a work plan by the department for the reasonable costs of 1 or more of the following:

(*i*) Site investigation activities required to conduct a baseline environmental assessment and to evaluate compliance with section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a.

(*ii*) Completing a baseline environmental assessment report.

(*iii*) Preparing a plan for compliance with section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a.

(b) For eligible activities not described in section 13(15), other than activities that are exempt from the work plan approval process under subsection (1)(a), use funds from a local site remediation revolving fund that are derived from taxes levied for school operating purposes unless the eligible activities to be conducted are eligible activities under part 201

of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan that has been approved by the department after July 24, 1996.

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

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

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

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

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

(a) A copy of the brownfield plan.

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

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

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

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

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

(3) Upon receipt of a request for approval of a work plan under subsection (2) or a portion of a work plan that pertains to only baseline environmental assessment activities or due care activities, or both, the department shall review the work plan according to subsection (4) and provide 1 of the following written responses to the requesting authority within 60 days:

(a) An unconditional approval.

(b) A conditional approval that delineates specific necessary modifications to the work plan to meet the criteria of subsection (4), including, but not limited to, individual activities to be added or deleted from the work plan and revision of costs.

(c) If the work plan lacks sufficient information for the department to respond under subdivision (a), (b), or (d) for any specific activity, a letter stating with specificity the necessary additions or changes to the work plan to be submitted before that activity will be considered by the department. The department shall respond under subdivision (a), (b), or (d) according to this section for the other activities in the work plan.

(d) A denial if the property is not an eligible property under this act, if the work plan contemplates the use of taxes levied for school operating purposes prohibited by subsection (1)(e),

or for any specific activity if the activity is prohibited by subsection (1)(d). The department may also deny any activity in a work plan that does not meet the conditions in subsection (4) only if the department cannot respond under subdivision (b) or (c). The department shall accompany the denial with a letter that states with specificity the reason for the denial. The department shall respond under subdivision (a), (b), or (c) according to this section for any activities in the work plan that are not denied under this subdivision. If the department denies all or a portion of a work plan under this subdivision, the authority may subsequently resubmit the work plan.

(4) The department may approve a work plan if the following conditions have been met:

(a) Whether some or all of the activities constitute due care activities or additional response activities other than activities that are exempt from the work plan approval process under subsection (1)(a).

(b) The due care activities and response activities, other than the activities that are exempt from the work plan approval process under subsection (1)(a), are protective of the public health, safety, and welfare and the environment. The department may approve additional response activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a, if those activities provide public health or environmental benefit. In review of a work plan that includes activities that are more protective of the public health, safety, and welfare and the environment, the department's considerations may include, but are not limited to, all of the following:

(*i*) Proposed new land use and reliability of restrictions to prevent exposure to contamination.

(*ii*) Cost of implementation activities minimally necessary to achieve due care compliance, the incremental cost of all additional response activities relative to the cost of all response activities, and the total cost of all response activities.

(*iii*) Long-term obligations associated with leaving contamination in place and the value of reducing or eliminating these obligations.

(c) The estimated costs for the activities as a whole are reasonable for the stated purpose. Except as provided in subdivision (b), the department shall make the determination in this subdivision only after the department determines that the conditions in subdivisions (a) and (b) have been met.

(5) If the department fails to provide a written response under subsection (3) within 60 days after receipt of a request for approval of a work plan, the authority may proceed with the activities as outlined in the work plan as submitted for approval. Except as provided in subsection (6), activities conducted pursuant to a work plan that was submitted to the department for approval but for which the department failed to provide a written response under subsection (3) shall be considered approved for the purposes of subsection (1). Within 45 days after receiving additional information requested from the authority under subsection (3)(c), the department shall review the additional information according to subsection (4) and provide 1 of the responses described in subsection (3) to the requesting authority for the specific activity. If the department does not provide a response to the requesting authority within 45 days after receiving the additional information requested under subsection (3)(c), the activity is approved under subsection (1).

(6) The department may issue a written response to a work plan more than 60 days but less than 6 months after receipt of a request for approval. If the department issues a written response under this subsection, the authority is not required to conduct individual activities that are in addition to the individual activities included in the work plan as it was submitted for approval and failure to conduct these additional activities shall not affect the authority's

ability to capture taxes under subsection (1) for the eligible activities described in the work plan initially submitted under subsection (5). In addition, at the option of the authority, these additional individual activities shall be considered part of the work plan of the authority and approved for purposes of subsection (1). However, any response by the department under this subsection that identifies additional individual activities that must be carried out to satisfy part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, must be satisfactorily completed for the activities to be considered acceptable for the purposes of compliance with part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

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

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

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

(8) It shall be in the sole discretion of an authority to propose to undertake additional response activities at an eligible property under a brownfield plan. The department shall not require a work plan to include additional response activities.

(9) The department shall review the portion of a work plan that includes additional response activities in accordance with subsection (4).

(10) The department's approval or denial of a work plan submitted under this section constitutes a final decision in regard to the use of taxes levied for school operating purposes but does not restrict an authority's use of tax increment revenues attributable to local taxes to pay for eligible activities under a brownfield plan. If a person is aggrieved by the final decision, the person may appeal under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

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

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

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

(b) The amount of tax increment revenues approved by the department in the immediately preceding calendar year, including taxes levied for school operating purposes, to conduct eligible activities.

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

(a) A copy of the brownfield plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The overall benefit to the public.

(e) The extent of reuse of vacant buildings and redevelopment of blighted property.

(f) Creation of jobs.

(g) Whether the eligible property is in an area of high unemployment.

(h) The level and extent of contamination alleviated by or in connection with the eligible activities.

(i) The level of private sector contribution.

(j) The cost gap that exists between the site and a similar greenfield site as determined by the Michigan economic growth authority.

(k) If the developer or projected occupant of the new development is moving from another location in this state, whether the move will create a brownfield.

(*l*) Whether the project of the developer, landowner, or corporate entity that is included in the work plan is financially and economically sound.

(m) Other state and local incentives available to the developer, landowner, or corporate entity for the project of the developer, landowner, or corporate entity that is included in the work plan.

(n) Any other criteria that the Michigan economic growth authority considers appropriate for the determination of eligibility or for approval of the work plan.

(16) If the Michigan economic growth authority fails to provide a written response under subsection (14) within 65 days after receipt of a request for approval of a work plan, the eligible activities shall be considered approved and the authority may proceed with the eligible activities described in section 13(15) as outlined in the work plan as submitted for approval.

(17) The Michigan economic growth authority's approval of a work plan under section 13(15) is final.

(18) The authority shall reimburse the Michigan economic growth authority for the actual cost incurred by the Michigan economic growth authority or a contractor of the Michigan economic growth authority to review a work plan under this section.

(19) The Michigan economic growth authority shall submit a report each year on or before March 1 to each member of the legislature that contains all of the following:

(a) A compilation and summary of all the information submitted under subsection (13).

(b) The amount of tax increment revenues approved by the Michigan economic growth authority in the immediately preceding calendar year, including taxes levied for school operating purposes, to conduct eligible activities.

(20) All taxes levied for school operating purposes that are not used for eligible activities consistent with a work plan approved by the department or the Michigan economic growth authority or for the payment of interest under section 13 and that are not deposited in a local site remediation revolving fund shall be distributed proportionately between the local school district and the school aid fund.

(21) An authority shall not use taxes levied for school operating purposes captured from eligible property for eligible activities for a qualified facility or for eligible activities for property located in an economic opportunity zone.

(22) The department's approval of a work plan under subsection (3)(a) or (b) does not imply an entitlement to reimbursement of the costs of the eligible activities if the work plan is not implemented as approved.

(23) The applicant and the department can, by mutual agreement, extend the time period for any review described in this section. An agreement described in this subsection shall be documented in writing.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 534.

(b) Senate Bill No. 539.

(c) House Bill No. 4712.

This act is ordered to take immediate effect.
Approved December 27, 2007.
Filed with Secretary of State December 27, 2007.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 534 was filed with the Secretary of State December 27, 2007, and became 2007 PA 204, Imd. Eff. Dec. 27, 2007.
Senate Bill No. 539 was filed with the Secretary of State December 27, 2007, and became 2007 PA 203, Imd. Eff. Dec. 27, 2007.
House Bill No. 4712 was filed with the Secretary of State December 27, 2007, and became 2007 PA 202, Imd. Eff. Dec. 27, 2007.

[No. 202]

(HB 4712)

AN ACT to amend 1996 PA 381, entitled "An act to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing," by amending section 13 (MCL 125.2663), as amended by 2006 PA 467.

The People of the State of Michigan enact:

125.2663 Brownfield plan; provisions.

Sec. 13. (1) Subject to section 15, the board may implement a brownfield plan. The brownfield plan may apply to 1 or more parcels of eligible property whether or not those parcels of eligible property are contiguous and may be amended to apply to additional parcels of eligible property. Except as otherwise authorized by this act, if more than 1 eligible property is included within the plan, the tax increment revenues under the plan shall be determined individually for each eligible property. Each plan or an amendment to a plan shall be approved by the governing body of the municipality and shall contain all of the following:

(a) A description of the costs of the plan intended to be paid for with the tax increment revenues or, for a plan for eligible properties qualified on the basis that the property is owned or under the control of a land bank fast track authority, a listing of all eligible activities that may be conducted for 1 or more of the eligible properties subject to the plan.

(b) A brief summary of the eligible activities that are proposed for each eligible property or, for a plan for eligible properties qualified on the basis that the property is owned or under the control of a land bank fast track authority, a brief summary of eligible activities conducted for 1 or more of the eligible properties subject to the plan.

(c) An estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property. The plan may provide for the use of part or all of the captured taxable value, including deposits in the local site remediation revolving fund, but the portion intended to be used shall be clearly stated in the plan. The plan shall not provide either for an exclusion from captured taxable value of a portion of the captured taxable value or for an exclusion of the tax levy of 1 or more taxing jurisdictions unless the tax levy is excluded from tax increment revenues in section 2(dd), or unless the tax levy is excluded from capture under section 15.

(d) The method by which the costs of the plan will be financed, including a description of any advances made or anticipated to be made for the costs of the plan from the municipality.

(e) The maximum amount of note or bonded indebtedness to be incurred, if any.

(f) The duration of the brownfield plan for eligible activities on eligible property which shall not exceed 35 years following the date of the resolution approving the plan amendment related to a particular eligible property. Each plan amendment shall also contain the duration of capture of tax increment revenues including the beginning date of the capture of tax increment revenues, which beginning date shall be identified in the brownfield plan and which beginning date shall not be later than 5 years following the date of the resolution

approving the plan amendment related to a particular eligible property and which duration shall not exceed the lesser of the period authorized under subsections (4) and (5) or 30 years from the beginning date of the capture of tax increment revenues. The date for the beginning of capture of tax increment revenues may be amended by the authority but not to a date later than 5 years after the date of the resolution adopting the plan. The authority may not amend the date for the beginning of capture of tax increment revenues if the authority has begun to reimburse eligible activities from the capture of tax increment revenues. The authority may not amend the date for the beginning of capture if that amendment would lead to the duration of capture of tax increment revenues being longer than 30 years or the period authorized under subsections (4) and (5). If the date for the beginning of capture of tax increment revenues is amended by the authority and that plan includes the capture of tax increment revenues for school operating purposes, then the authority that amended that plan shall notify the department and the Michigan economic growth authority within 30 days of the approval of the amendment.

(g) An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property is located.

(h) A legal description of the eligible property to which the plan applies, a map showing the location and dimensions of each eligible property, a statement of the characteristics that qualify the property as eligible property, and a statement of whether personal property is included as part of the eligible property. If the project is on property that is functionally obsolete, the taxpayer shall include, with the application, an affidavit signed by a level 3 or level 4 assessor, that states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.

(i) Estimates of the number of persons residing on each eligible property to which the plan applies and the number of families and individuals to be displaced. If occupied residences are designated for acquisition and clearance by the authority, the plan shall include a demographic survey of the persons to be displaced, a statistical description of the housing supply in the community, including the number of private and public units in existence or under construction, the condition of those in existence, the number of owner-occupied and renter-occupied units, the annual rate of turnover of the various types of housing and the range of rents and sale prices, an estimate of the total demand for housing in the community, and the estimated capacity of private and public housing available to displaced families and individuals.

(j) A plan for establishing priority for the relocation of persons displaced by implementation of the plan.

(k) Provision for the costs of relocating persons displaced by implementation of the plan, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incident to the transfer of title, in accordance with the standards and provisions of the uniform relocation assistance and real property acquisition policies act of 1970, Public Law 91-646.

(*l*) A strategy for compliance with 1972 PA 227, MCL 213.321 to 213.332.

(m) A description of proposed use of the local site remediation revolving fund.

(n) Other material that the authority or governing body considers pertinent.

(2) The percentage of all taxes levied on a parcel of eligible property for school operating expenses that is captured and used under a brownfield plan and all tax increment finance plans under 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174, shall not be greater than the combination of the plans' percentage capture and use of all local taxes levied for purposes other than for the payment

of principal of and interest on either obligations approved by the electors or obligations pledging the unlimited taxing power of the local unit of government. This subsection shall apply only when taxes levied for school operating purposes are subject to capture under section 15.

(3) Except as provided in this subsection and subsections (5), (15), and (16), tax increment revenues related to a brownfield plan shall be used only for costs of eligible activities attributable to the eligible property, the captured taxable value of which produces the tax increment revenues, including the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities attributable to the eligible property, and the reasonable costs of preparing a brownfield plan or a work plan for the eligible property, including the actual cost of the review of the work plan under section 15. For property owned or under the control of a land bank fast track authority, tax increment revenues related to a brownfield plan may be used for eligible activities attributable to any eligible property owned or under the control of the land bank fast track authority, the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities, the reasonable costs of preparing a work plan, and the actual cost of the review of the work plan under section 15. Except as provided in subsection (18), tax increment revenues captured from taxes levied by this state under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes levied by a local school district shall not be used for eligible activities described in section 2(m)(*iv*)(E).

(4) Except as provided in subsection (5), a brownfield plan shall not authorize the capture of tax increment revenue from eligible property after the year in which the total amount of tax increment revenues captured is equal to the sum of the costs permitted to be funded with tax increment revenues under this act.

(5) A brownfield plan may authorize the capture of additional tax increment revenue from an eligible property in excess of the amount authorized under subsection (4) during the time of capture for the purpose of paying the costs permitted under subsection (3), or for not more than 5 years after the time that capture is required for the purpose of paying the costs permitted under subsection (3), or both. Excess revenues captured under this subsection shall be deposited in the local site remediation revolving fund created under section 8 and used for the purposes authorized in section 8. If tax increment revenues attributable to taxes levied for school operating purposes from eligible property are captured by the authority for purposes authorized under subsection (3), the tax increment revenues captured for deposit in the local site remediation revolving fund also may include tax increment revenues attributable to taxes levied for school operating purposes in an amount not greater than the tax increment revenues levied for school operating purposes captured from the eligible property by the authority for the purposes authorized under subsection (3). Excess tax increment revenues from taxes levied for school operating purposes for eligible activities authorized under subsection (15) by the Michigan economic growth authority shall not be captured for deposit in the local site remediation revolving fund.

(6) An authority shall not expend tax increment revenues to acquire or prepare eligible property, unless the acquisition or preparation is an eligible activity.

(7) Costs of eligible activities attributable to eligible property include all costs that are necessary or related to a release from the eligible property, including eligible activities on properties affected by a release from the eligible property. For purposes of this subsection, "release" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(8) Costs of a response activity paid with tax increment revenues that are captured pursuant to subsection (3) may be recovered from a person who is liable for the costs of eligible activities at an eligible property. This state or an authority may undertake cost recovery

for tax increment revenue captured. Before an authority or this state may institute a cost recovery action, it must provide the other with 120 days' notice. This state or an authority that recovers costs under this subsection shall apply those recovered costs to the following, in the following order of priority:

(a) The reasonable attorney fees and costs incurred by this state or an authority in obtaining the cost recovery.

(b) One of the following:

(*i*) If an authority undertakes the cost recovery action, the authority shall deposit the remaining recovered funds into the local site remediation fund created pursuant to section 8, if such a fund has been established by the authority. If a local site remediation fund has not been established, the authority shall disburse the remaining recovered funds to the local taxing jurisdictions in the proportion that the local taxing jurisdictions' taxes were captured.

(*ii*) If this state undertakes a cost recovery action, this state shall deposit the remaining recovered funds into the revitalization revolving loan fund established under section 20108a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20108a.

(*iii*) If this state and an authority each undertake a cost recovery action, undertake a cost recovery action jointly, or 1 on behalf of the other, the amount of any remaining recovered funds shall be deposited pursuant to subparagraphs (*i*) and (*ii*) in the proportion that the tax increment revenues being recovered represent local taxes and taxes levied for school operating purposes, respectively.

(9) Approval of the brownfield plan or an amendment to a brownfield plan shall be in accordance with the notice and approval provisions of this section and section 14.

(10) Before approving a brownfield plan for an eligible property, the governing body shall hold a public hearing on the brownfield plan. By resolution, the governing body may delegate the public hearing process to the authority or to a subcommittee of the governing body subject to final approval by the governing body. Notice of the time and place of the hearing shall be given by publication twice in a newspaper of general circulation designated by the municipality, not less than 10 or more than 40 days before the date set for the hearing.

(11) Notice of the time and place of the hearing on a brownfield plan shall contain all of the following:

(a) A description of the property to which the plan applies in relation to existing or proposed highways, streets, streams, or otherwise.

(b) A statement that maps, plats, and a description of the brownfield plan are available for public inspection at a place designated in the notice and that all aspects of the brownfield plan are open for discussion at the public hearing required by this section.

(c) Any other information that the governing body considers appropriate.

(12) At the time set for the hearing on the brownfield plan required under subsection (10), the governing body shall ensure that interested persons have an opportunity to be heard and that written communications with reference to the brownfield plan are received and considered. The governing body shall ensure that a record of the public hearing is made and preserved, including all data presented at the hearing.

(13) Not less than 10 days before the hearing on the brownfield plan, the governing body shall provide notice of the hearing to the taxing jurisdictions that levy taxes subject to capture under this act. The authority shall fully inform the taxing jurisdictions about the fiscal and economic implications of the proposed brownfield plan. At that hearing, an official from a taxing jurisdiction with millage that would be subject to capture under this act has the right to be heard in regard to the adoption of the brownfield plan. Not less than 10 days before the hearing on the brownfield plan, the governing body shall provide notice of the hearing to the department if the brownfield plan involves the use of taxes levied for school

operating purposes to pay for eligible activities that require the approval of a work plan by the department under section 15(1)(a) and the Michigan economic growth authority, or its designee, if the brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities subject to subsection (15) or (18).

(14) The authority shall not enter into agreements with the taxing jurisdictions and the governing body of the municipality to share a portion of the captured taxable value of an eligible property. Upon adoption of the plan, the collection and transmission of the amount of tax increment revenues as specified in this act shall be binding on all taxing units levying ad valorem property taxes or specific taxes against property located in the zone.

(15) Except as provided by subsection (18), if a brownfield plan includes the capture of taxes levied for school operating purposes approval of a work plan by the Michigan economic growth authority before January 1, 2013 to use taxes levied for school operating purposes and a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of eligible property are required if the taxes levied for school operating purposes will be used for infrastructure improvements that directly benefit eligible property, demolition of structures that is not response activity under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, lead or asbestos abatement, site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101, relocation of public buildings or operations for economic development purposes, or acquisition of property by a land bank fast track authority if acquisition of the property is for economic development purposes. The eligible activities to be conducted described in this subsection shall be consistent with the work plan submitted by the authority to the Michigan economic growth authority. The department's approval is not required for the capture of taxes levied for school operating purposes for eligible activities described in this subsection.

(16) The limitations of section 15(1) upon use of tax increment revenues by an authority shall not apply to the following costs and expenses:

(a) In each fiscal year of the authority, the amount described in subsection (19) for the following purposes for tax increment revenues attributable to local taxes:

(*i*) Reasonable and actual administrative and operating expenses of the authority.

(*ii*) Baseline environmental assessments, due care activities, and additional response activities conducted by or on behalf of the authority related directly to work conducted on prospective eligible properties prior to approval of the brownfield plan.

(b) Reasonable costs of preparing a work plan or the cost of the review of a work plan for which tax increment revenues may be used under section 13(3).

(c) For tax increment revenues attributable to local taxes, reasonable costs of site investigations described in section 15(1)(a)(*i*), baseline environmental assessments, and due care activities incurred by a person other than the authority related directly to work conducted on eligible property or prospective eligible properties prior to approval of the brownfield plan, if those costs and the eligible property are included in a brownfield plan approved by the authority.

(17) A brownfield authority may reimburse advances, with or without interest, made by a municipality under section 7(3), a land bank fast track authority, or any other person or entity for costs of eligible activities with any source of revenue available for use of the brownfield authority under this act. If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities and interest thereon, the authority may capture local taxes for the payment of that interest. If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of baseline environmental assessments, due care, and additional

response activities and interest thereon included in a work plan approved by the department, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest. If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities that are not baseline environmental assessments, due care, and additional response activities and interest thereon included in a work plan approved by the Michigan economic growth authority, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest provided that the Michigan economic growth authority grants an approval for the capture of taxes levied for school operating purposes to pay such interest. An authority may enter into agreements related to these reimbursements and payments. A reimbursement agreement for these purposes and the obligations under that reimbursement agreement shall not be subject to section 12 or the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(18) If a brownfield plan includes the capture of taxes levied for school operating purposes, approval of a work plan by the Michigan economic growth authority in the manner required under section 15(14) to (16) is required in order to use tax increment revenues attributable to taxes levied for school operating purposes for purposes of eligible activities described in section 2(m)(*iv*)(E) for 1 or more parcels of eligible property. The work plan to be submitted to the Michigan economic growth authority under this subsection shall be in a form prescribed by the Michigan economic growth authority. The eligible activities to be conducted and described in this subsection shall be consistent with the work plan submitted by the authority to the Michigan economic growth authority. The department's approval is not required for the capture of taxes levied for school operating purposes for eligible activities described in this section.

(19) In each fiscal year of the authority, the amount of tax increment revenues attributable to local taxes that an authority can use for the purposes described in subsection (16)(a) shall be determined as follows:

(a) For authorities that have 5 or fewer active projects, $100,000.00.

(b) For authorities that have 6 or more but fewer than 11 active projects, $125,000.00.

(c) For authorities that have 11 or more but fewer than 16 active projects, $150,000.00.

(d) For authorities that have 16 or more but fewer than 21 active projects, $175,000.00.

(e) For authorities that have 21 or more but fewer than 26 active projects, $200,000.00.

(f) For authorities that have 26 or more active projects, $300,000.00.

(20) As used in subsection (19), "active project" means a project in which the authority is currently capturing taxes under this act.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 534.

(b) Senate Bill No. 539.

(c) House Bill No. 4711.

This act is ordered to take immediate effect.
Approved December 27, 2007.
Filed with Secretary of State December 27, 2007.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 534 was filed with the Secretary of State December 27, 2007, and became 2007 PA 204, Imd. Eff. Dec. 27, 2007.
Senate Bill No. 539 was filed with the Secretary of State December 27, 2007, and became 2007 PA 203, Imd. Eff. Dec. 27, 2007.
House Bill No. 4711 was filed with the Secretary of State December 27, 2007, and became 2007 PA 201, Imd. Eff. Dec. 27, 2007.

[No. 203]

(SB 539)

AN ACT to amend 1996 PA 381, entitled "An act to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing," by amending section 16 (MCL 125.2666), as amended by 2000 PA 145.

The People of the State of Michigan enact:

125.2666 Tax increment revenues; transmission to authority; expenditure; reversion of surplus funds; abolishment of plan; financial status report; collection of financial reports by state tax commission; performance postaudit report by auditor general.

Sec. 16. (1) The municipal and county treasurers shall transmit tax increment revenues to the authority not more than 30 days after tax increment revenues are collected.

(2) The authority shall expend the tax increment revenues received only in accordance with the brownfield plan. All surplus funds not deposited in the local site remediation revolving fund of the authority under section 13(5) shall revert proportionately to the respective taxing bodies, except as provided in section 15(20). The governing body may abolish the plan when it finds that the purposes for which the plan was established are accomplished. However, the plan shall not be abolished until the principal and interest on bonds issued under section 17 and all other obligations to which the tax increment revenues are pledged have been paid or funds sufficient to make the payment have been segregated.

(3) The authority shall submit annually to the governing body and the state tax commission a financial report on the status of the activities of the authority. The report shall include all of the following:

(a) The amount and source of tax increment revenues received.

(b) The amount and purpose of expenditures of tax increment revenues.

(c) The amount of principal and interest on all outstanding indebtedness.

(d) The initial taxable value of all eligible property subject to the brownfield plan.

(e) The captured taxable value realized by the authority.

(f) Information concerning any transfer of ownership of or interest in each eligible property.

(g) The amount of tax increment revenues attributable to taxes levied for school operating purposes used for activities described in section 15(1)(a) and section 2(m)(*vii*).

(h) All additional information that the governing body or the state tax commission considers necessary.

(4) The state tax commission shall collect the financial reports submitted under subsection (3), compile and analyze the information contained in those reports, and submit annually

a report based on that information to all of the following standing committees of the legislature:

(a) In the house of representatives, the committees responsible for natural resource management, conservation, environmental protection, commerce, economic development, and taxation.

(b) In the senate, the committees responsible for natural resource management, conservation, environmental protection, economic development, and taxation.

(5) In addition to any other requirements under this act, not less than once every 3 years beginning not later than June 30, 2008, the auditor general shall conduct and report a performance postaudit on the effectiveness, efficiency, and economy of the program established under this act. As part of the performance postaudit, the auditor general shall assess the extent to which the implementation of the program by the department and the Michigan economic growth authority facilitate and affect the redevelopment or reuse of eligible property and identify any factors that inhibit the program's effectiveness. The performance postaudit shall also assess the extent to which the interpretation of statutory language, the development of guidance or administrative rules, and the implementation of the program by the department and the Michigan economic growth authority is consistent with the fundamental objective of facilitating and supporting timely and efficient brownfield redevelopment of eligible properties. Copies of the performance postaudits shall be provided to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on commerce and economic development.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 534.

(b) House Bill No. 4711.

(c) House Bill No. 4712.

This act is ordered to take immediate effect.
Approved December 27, 2007.
Filed with Secretary of State December 27, 2007.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 534 was filed with the Secretary of State December 27, 2007, and became 2007 PA 204, Imd. Eff. Dec. 27, 2007.
House Bill No. 4711 was filed with the Secretary of State December 27, 2007, and became 2007 PA 201, Imd. Eff. Dec. 27, 2007.
House Bill No. 4712 was filed with the Secretary of State December 27, 2007, and became 2007 PA 202, Imd. Eff. Dec. 27, 2007.

[No. 204]

(SB 534)

AN ACT to amend 1996 PA 381, entitled "An act to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain

funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing," by amending section 2 (MCL 125.2652), as amended by 2006 PA 32.

The People of the State of Michigan enact:

125.2652 Definitions.

Sec. 2. As used in this act:

(a) "Additional response activities" means response activities identified as part of a brownfield plan that are in addition to baseline environmental assessment activities and due care activities for an eligible property.

(b) "Authority" means a brownfield redevelopment authority created under this act.

(c) "Baseline environmental assessment" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(d) "Baseline environmental assessment activities" means those response activities identified as part of a brownfield plan that are necessary to complete a baseline environmental assessment for an eligible property in the brownfield plan.

(e) "Blighted" means property that meets any of the following criteria as determined by the governing body:

(*i*) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(*ii*) Is an attractive nuisance to children because of physical condition, use, or occupancy.

(*iii*) Is a fire hazard or is otherwise dangerous to the safety of persons or property.

(*iv*) Has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.

(*v*) Is tax reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or this state after the property's inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.

(*vi*) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, whether or not located within a qualified local governmental unit. Property included within a brownfield plan prior to the date it meets the requirements of this subdivision to be eligible property shall be considered to become eligible property as of the date the property is determined to have been or becomes qualified as, or is combined with, other eligible property. The sale, lease, or transfer of the property by a land bank fast track authority after the property's inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.

(*vii*) Has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.

(f) "Board" means the governing body of an authority.

(g) "Brownfield plan" means a plan that meets the requirements of section 13 and is adopted under section 14.

(h) "Captured taxable value" means the amount in 1 year by which the current taxable value of an eligible property subject to a brownfield plan, including the taxable value or assessed value, as appropriate, of the property for which specific taxes are paid in lieu of

property taxes, exceeds the initial taxable value of that eligible property. The state tax commission shall prescribe the method for calculating captured taxable value.

(i) "Chief executive officer" means the mayor of a city, the village manager of a village, the township supervisor of a township, or the county executive of a county or, if the county does not have an elected county executive, the chairperson of the county board of commissioners.

(j) "Department" means the department of environmental quality.

(k) "Due care activities" means those response activities identified as part of a brownfield plan that are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a.

(*l*) "Economic opportunity zone" means 1 or more parcels of property that meet all of the following:

(*i*) That together are 40 or more acres in size.

(*ii*) That contain a manufacturing facility that consists of 500,000 or more square feet.

(*iii*) That are located in a municipality that has a population of 30,000 or less and that is contiguous to a qualified local governmental unit.

(m) "Eligible activities" or "eligible activity" means 1 or more of the following:

(*i*) Baseline environmental assessment activities.

(*ii*) Due care activities.

(*iii*) Additional response activities.

(*iv*) For eligible activities on eligible property that was used or is currently used for commercial, industrial, or residential purposes that is in a qualified local governmental unit, that is owned or under the control of a land bank fast track authority, or that is located in an economic opportunity zone, and is a facility, functionally obsolete, or blighted, and except for purposes of former section 38d of the single business tax act, 1975 PA 228, the following additional activities:

(A) Infrastructure improvements that directly benefit eligible property.

(B) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(C) Lead or asbestos abatement.

(D) Site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(E) Assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority or the acquisition of property by the land bank fast track authority if the acquisition of the property is for economic development purposes.

(*v*) Relocation of public buildings or operations for economic development purposes.

(*vi*) For eligible activities on eligible property that is a qualified facility that is not located in a qualified local governmental unit and that is a facility, functionally obsolete, or blighted, the following additional activities:

(A) Infrastructure improvements that directly benefit eligible property.

(B) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(C) Lead or asbestos abatement.

(D) Site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(*vii*) For eligible activities on eligible property that is not located in a qualified local governmental unit and that is a facility, functionally obsolete, or blighted, the following additional activities:

(A) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(B) Lead or asbestos abatement.

(*viii*) Reasonable costs of developing and preparing brownfield plans and work plans.

(*ix*) For property that is not located in a qualified local governmental unit and that is a facility, functionally obsolete, or blighted, that is a former mill that has not been used for industrial purposes for the immediately preceding 2 years, that is located along a river that is a federal superfund site listed under the comprehensive environmental response, compensation, and liability act of 1980, 42 USC 9601 to 9675, and that is located in a city with a population of less than 10,000 persons, the following additional activities:

(A) Infrastructure improvements that directly benefit the property.

(B) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(C) Lead or asbestos abatement.

(D) Site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(*x*) For eligible activities on eligible property that is located north of the 45th parallel, that is a facility, functionally obsolete, or blighted, and the owner or operator of which makes new capital investment of $250,000,000.00 or more in this state, the following additional activities:

(A) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(B) Lead or asbestos abatement.

(*xi*) Reasonable costs of environmental insurance.

(n) Except as otherwise provided in this subdivision, "eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is 1 or more of the following:

(*i*) Is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(*ii*) Is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(*iii*) Is tax reverted property owned or under the control of a land bank fast track authority.

(*iv*) Is not in a qualified local governmental unit, is a qualified facility, and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to the eligible activities identified in subdivision (m)(*vi*).

(*v*) Is not in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to the eligible activities identified in subdivision (m)(*vii*).

(*vi*) Is not in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to the eligible activities identified in subdivision (m)(*ix*).

(*vii*) Is located north of the 45th parallel, is a facility, functionally obsolete, or blighted, and the owner or operator makes new capital investment of $250,000,000.00 or more in this state. Eligible property does not include qualified agricultural property exempt under section 7ee of the general property tax act, 1893 PA 206, MCL 211.7ee, from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

(o) "Environmental insurance" means liability insurance for environmental contamination and cleanup that is not otherwise required by state or federal law.

(p) "Facility" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(q) "Fiscal year" means the fiscal year of the authority.

(r) "Functionally obsolete" means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property.

(s) "Governing body" means the elected body having legislative powers of a municipality creating an authority under this act.

(t) "Infrastructure improvements" means a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, or other similar or related structure or improvement, together with necessary easements for the structure or improvement, owned or used by a public agency or functionally connected to similar or supporting property owned or used by a public agency, or designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally, whether or not used by a single business entity, provided that any road, street, or bridge shall be continuously open to public access and that other property shall be located in public easements or rights-of-way and sized to accommodate reasonably foreseeable development of eligible property in adjoining areas.

(u) "Initial taxable value" means the taxable value of an eligible property identified in and subject to a brownfield plan at the time the resolution adding that eligible property in the brownfield plan is adopted, as shown either by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted or, if provided by the brownfield plan, by the next assessment roll for which equalization will be completed following the date the resolution adding that eligible property in the brownfield plan is adopted. Property exempt from taxation at the time the initial taxable value is determined shall be included with the initial taxable value of zero. Property for which a specific tax is paid in lieu of property tax shall not be considered exempt from taxation. The state tax commission shall prescribe the method for calculating the initial taxable value of property for which a specific tax was paid in lieu of property tax.

(v) "Land bank fast track authority" means an authority created under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774.

(w) "Local taxes" means all taxes levied other than taxes levied for school operating purposes.

(x) "Municipality" means all of the following:

(*i*) A city.

(*ii*) A village.

(*iii*) A township in those areas of the township that are outside of a village.

(*iv*) A township in those areas of the township that are in a village upon the concurrence by resolution of the village in which the zone would be located.

(*v*) A county.

(y) "Owned or under the control of" means that a land bank fast track authority has 1 or more of the following:

(*i*) An ownership interest in the property.

(*ii*) A tax lien on the property.

(*iii*) A tax deed to the property.

(*iv*) A contract with this state or a political subdivision of this state to enforce a lien on the property.

(*v*) A right to collect delinquent taxes, penalties, or interest on the property.

(*vi*) The ability to exercise its authority over the property.

(z) "Qualified facility" means a landfill facility area of 140 or more contiguous acres that is located in a city and that contains a landfill, a material recycling facility, and an asphalt plant that are no longer in operation.

(aa) "Qualified local governmental unit" means that term as defined in the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(bb) "Qualified taxpayer" means that term as defined in former sections 38d and 38g of the single business tax act, 1975 PA 228, or section 437 of the Michigan business tax act, 2007 PA 36, MCL 208.1437.

(cc) "Response activity" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(dd) "Specific taxes" means a tax levied under 1974 PA 198, MCL 207.551 to 207.572; the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668; the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123; 1953 PA 189, MCL 211.181 to 211.182; the technology park development act, 1984 PA 385, MCL 207.701 to 207.718; the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797; the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786; the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856; or that portion of the tax levied under the tax reverted clean title act, 2003 PA 260, MCL 211.1021 to 211.1026, that is not required to be distributed to a land bank fast track authority.

(ee) "Tax increment revenues" means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions upon the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property. Tax increment revenues exclude ad valorem property taxes specifically levied for the payment of principal of and interest on either obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit, and specific taxes attributable to those ad valorem property taxes. Tax increment revenues attributable to eligible property also exclude the amount of ad valorem property taxes or specific taxes captured by a downtown development authority, tax increment finance authority, or local development finance authority if those taxes were captured

by these other authorities on the date that eligible property became subject to a brownfield plan under this act.

(ff) "Taxable value" means the value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(gg) "Taxes levied for school operating purposes" means all of the following:

(*i*) The taxes levied by a local school district for operating purposes.

(*ii*) The taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

(*iii*) That portion of specific taxes attributable to taxes described under subparagraphs (*i*) and (*ii*).

(hh) "Work plan" means a plan that describes each individual activity to be conducted to complete eligible activities and the associated costs of each individual activity.

(ii) "Zone" means, for an authority established before June 6, 2000, a brownfield redevelopment zone designated under this act.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 539.

(b) House Bill No. 4711.

(c) House Bill No. 4712.

This act is ordered to take immediate effect.
Approved December 27, 2007.
Filed with Secretary of State December 27, 2007.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 539 was filed with the Secretary of State December 27, 2007, and became 2007 PA 203, Imd. Eff. Dec. 27, 2007.
House Bill No. 4711 was filed with the Secretary of State December 27, 2007, and became 2007 PA 201, Imd. Eff. Dec. 27, 2007.
House Bill No. 4712 was filed with the Secretary of State December 27, 2007, and became 2007 PA 202, Imd. Eff. Dec. 27, 2007.

[No. 205]

(HB 5460)

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 305 (MCL 208.1305).

The People of the State of Michigan enact:

208.1305 Taxpayer; determination of sales.

Sec. 305. (1) Sales of the taxpayer in this state are determined as follows:

(a) Sales of tangible personal property are in this state if the property is shipped or delivered, or, in the case of electricity and gas, the contract requires the property to be shipped

or delivered, to any purchaser within this state based on the ultimate destination at the point that the property comes to rest regardless of the free on board point or other conditions of the sales.

(b) Receipts from the sale, lease, rental, or licensing of real property are in this state if that property is located in this state.

(c) Receipts from the lease or rental of tangible personal property are sales in this state to the extent that the property is utilized in this state. The extent of utilization of tangible personal property in this state is determined by multiplying the receipts by a fraction, the numerator of which is the number of days of physical location of the property in this state during the lease or rental period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all lease or rental periods in the tax year. If the physical location of the property during the lease or rental period is unknown or cannot be determined, the tangible personal property is utilized in the state in which the property was located at the time the lease or rental payer obtained possession.

(d) Receipts from the lease or rental of mobile transportation property owned by the taxpayer are in this state to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's sales factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of the fraction is the number of landings of the aircraft in this state and the denominator of the fraction is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the receipts are in this state if the property has its principal base of operations in this state.

(e) Royalties and other income received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, computer software, or similar items, are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income shall be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.

(2) Sales from the performance of services are in this state and attributable to this state as follows:

(a) Except as otherwise provided in this section, all receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in proportion to the extent that the recipient receives benefit of the services in this state.

(b) Sales derived from securities brokerage services attributable to this state are determined by multiplying the total dollar amount of receipts from securities brokerage services by a fraction, the numerator of which is the sales of securities brokerage services to customers within this state, and the denominator of which is the sales of securities brokerage services to all customers. Receipts from securities brokerage services include commissions on transactions, the spread earned on principal transactions in which the broker buys or sells from its account, total margin interest paid on behalf of brokerage accounts owned by

the broker's customers, and fees and receipts of all kinds from the underwriting of securities. If receipts from brokerage services can be associated with a particular customer, but it is impractical to associate the receipts with the address of the customer, then the address of the customer shall be presumed to be the address of the branch office that generates the transactions for the customer.

(c) Sales of services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerage services to, or on behalf of, a regulated investment company or its beneficial owners, including receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a regulated investment company, shall be attributable to this state to the extent that the shareholders of the regulated investment company are domiciled within this state. For purposes of this subdivision, "domicile" means the shareholder's mailing address on the records of the regulated investment company. If the regulated investment company or the person providing management services to the regulated investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the shareholder's primary residence or principal place of business is the shareholder's domicile. A separate computation shall be made with respect to the receipts derived from each regulated investment company. The total amount of sales attributable to this state shall be equal to the total receipts received by each regulated investment company multiplied by a fraction determined as follows:

(*i*) The numerator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by the regulated investment company shareholders who have their domicile in this state.

(*ii*) The denominator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by all shareholders.

(*iii*) For purposes of the fraction, the year shall be the tax year of the regulated investment company that ends with or within the tax year of the taxpayer.

(3) Receipts from the origination of a loan or gains from the sale of a loan secured by residential real property is deemed a sale in this state only if 1 or more of the following apply:

(a) The real property is located in this state.

(b) The real property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located within this state.

(c) More than 50% of the real property is not located in any 1 state and the borrower is located in this state.

(4) Interest from loans secured by real property is in this state if the property is located within this state or if the property is located both within this state and 1 or more other states, if more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located within any 1 state, if the borrower is located in this state. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) Interest from a loan not secured by real property is in this state if the borrower is located in this state.

(6) Gains from the sale of a loan not secured by real property, including income recorded under the coupon stripping rules of section 1286 of the internal revenue code, are in this state if the borrower is in this state.

(7) Receipts from credit card receivables, including interest, fees, and penalties from credit card receivables and receipts from fees charged to cardholders, such as annual fees, are in this state if the billing address of the cardholder is in this state.

(8) Receipts from the sale of credit card or other receivables is in this state if the billing address of the customer is in this state. Credit card issuer's reimbursements fees are in this state if the billing address of the cardholder is in this state. Receipts from merchant discounts, computed net of any cardholder chargebacks, but not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders, are in this state if the commercial domicile of the merchant is in this state.

(9) Loan servicing fees derived from loans of another secured by real property are in this state if the real property is located in this state, or the real property is located both within and outside of this state and 1 or more states if more than 50% of the fair market value of the real property is located in this state, or more than 50% of the fair market value of the real property is not located in any 1 state, and the borrower is located in this state. Loan servicing fees derived from loans of another not secured by real property are in this state if the borrower is located in this state. If the location of the security cannot be determined, then loan servicing fees for servicing either the secured or the unsecured loans of another are in this state if the lender to whom the loan servicing service is provided is located in this state.

(10) Receipts from the sale of securities and other assets from investment and trading activities, including, but not limited to, interest, dividends, and gains are in this state in either of the following circumstances:

(a) The person's customer is in this state.

(b) If the location of the person's customer cannot be determined, both of the following:

(*i*) Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.

(*ii*) The amount of receipts from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts otherwise sourced in this section, are in this state if the assets are assigned to a regular place of business of the taxpayer within this state.

(11) Receipts from transportation services rendered by a person subject to tax in another state are in this state and shall be attributable to this state as follows:

(a) Except as otherwise provided in subdivisions (b) through (e), receipts shall be proportioned based on the ratio that revenue miles of the person in this state bear to the revenue miles of the person everywhere.

(b) Receipts from maritime transportation services shall be attributable to this state as follows:

(*i*) 50% of those receipts that either originate or terminate in this state.