

# final minutes

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## Michigan Law Revision Commission Meeting

Wednesday, June 24, 2009 ▪ 11:30 a.m.  
Legislative Council Conference Room ▪ 3 Boji Tower  
124 W. Allegan ▪ Lansing, Michigan

### Members Present:

Richard McLellan, Chair  
Anthony Derezinski, Vice-Chair  
Senator Ray Basham  
Representative Mark Meadows  
John Strand  
George Ward  
Judge William Whitbeck

### Members Absent:

Senator Ray Basham  
Representative Mark Meadows  
Senator Bruce Patterson  
Representative Tonya Schuitmaker

### Others Present:

Bob Ciaffone  
Gary Gulliver, MLRC Executive Secretary  
Susan Cavanagh, Office of the Legislative Council Administrator  
Courtney Flynn, Dykema Gossett  
Ryan Plecha  
Scott Shewcraft  
Chris Slavin, Dykema Gossett  
Professor Gina Torielli

### I. Convening of Meeting

Chairperson McLellan called the meeting to order at 11:30 a.m. The clerk took the roll as each member and guest introduced themselves. A quorum was present.

### II. Approval of March 24, 2009 Meeting Minutes

The Chair asked for a motion to approve the minutes of the last meeting. No corrections or amendments were offered.

**Mr. Ward moved, supported by Mr. Derezinski, to adopt the minutes of the March 24, 2009 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

### III. MLRC 41<sup>st</sup> Annual Report

The Chair called on Mr. Gulliver to take the members through the proposed annual report. Afterwards, the Chair suggested a resolution be prepared to honor Representative Edward Gaffney in recognition of his years of service to the Michigan Law Revision Commission and that the resolution be included in the 41<sup>st</sup> MLRC Annual Report.

**Mr. Derezinski moved, supported by Judge Whitbeck, that a resolution in honor of Representative Edward Gaffney be prepared and included in the 2008 Michigan Law Revision Commission Annual Report. There were no objections and the motion passed unanimously.**

**Mr. Strand moved, supported by Mr. Derezinski, to approve the 41<sup>st</sup> Annual Report of the Michigan Law Revision Commission as amended. There were no objections and the motion passed unanimously.**

### IV. Michigan Economic Development Codification Project

Chairperson McLellan called on Professor Gina Torielli to provide an update on the MEDC project. Professor Torielli proceeded with a review of the changes made since the last meeting (see attached documents.) She hopes to have Article VI and VIII by the next meeting. She also noted that Article IX may take some time to complete and Articles X, XIII, and XIV will be left for the next meeting as well. Professor Torielli's report will be added to the Commission's web page. A discussion of the steps needed to move forward in the legislative drafting of the Code followed. **Mr. Derezinski moved, supported by Mr. Ward, that the Commission begin the process of submitting the Torielli documents to the Legislative Service Bureau for the drafting of the Michigan Economic Development Code and work with the legislative members of the Law Revision Commission to either sponsor or find a sponsor(s) of the bill request. There was no objection and the motion passed unanimously.**

### V. Other Business

#### Update of Court Decisions

Mr. Gulliver began with a suggestion that the Commission adopt his report of court decisions on a timelier basis and have the adopted electronic reports posted on the Commission's web page as they occur. He noted that the information can also still be included in the Commission's Annual Report. There was no objection to his suggestion. He proceeded

with an explanation of the report of recent court decisions identifying statutes for legislative action and recommendations to the legislature (see attached.) Judge Whitbeck raised a process question about the legal status of a dissenting opinion and whether the Commission should consider these opinions as ambiguities or defects in the statute. A discussion followed and the Chair noted that the Commission is allowed to get ideas from anyone and make recommendations to the Legislature to clarify defects that have been brought to the Commission's attention regardless of the source. The posting of the court cases will begin with a case where the Supreme Court has declared a statute to be ambiguous and clarification is needed.

#### **Access to Government and Transparency Project**

Scott Shewcraft was called on by the Chair to provide an update on his research on the Access to Government and Transparency project. The Chair asked Mr. Shewcraft to submit a written report that can be circulated to the members.

#### **Stem Cell Research Law Analysis**

The Chair explained that Ms. Courtney Flynn is a summer associate with Dykema Gossett and is working on the stem cell issue raised by Senator Gretchen Whitmer (see attached request.) Ms. Flynn shared that she is currently examining the language adopted by the ballot proposal and focusing on its impact on current law.

#### **Bar Admission for In-House Corporate Counsel**

Chris Slavin is working on a project related to bar admission for in-house corporate counsel. He provided an update on his work and noted that he will write a draft report which he will submit to the Commission for consideration.

#### **Other Issues**

Judge Whitbeck mentioned that the State Bar is formulating a special committee to examine the future of the judiciary in the state and asked the Commission to think about how much it should assist in that effort.

Mr. Derezinski inquired if the Commission will have a future role if there is any movement toward a con-con. The Chair indicated that is something that warrants some thought.

#### **VI. Public Participation**

The Chair asked if there were any public comments. Mr. Bob Ciaffone offered two comments: 1) based upon his involvement in a previous stem cell research debate, he does not think the Commission would run into any problems with behavior if the Commission decides to hold a public hearing on the issue, and 2) if the Commission decides to take action on the crimes of torture issue, there may be another way to address this issue other than saying custody or physical control and using lawful authority in the same sentence.

#### **VII. Next Meeting**

The Chair announced that efforts will be made to set the next meeting in September. Members will be contacted with the details when the meeting is scheduled.

#### **VIII. Adjournment**

**Having no further business, Mr. McLellan moved, supported by Mr. Derezinski, to adjourn the meeting. Without objection, the motion was approved.** The meeting was adjourned at 1:32 p.m.

*(6/24/09 Minutes were approved at the March 31, 2010 MLRC meeting.)*

## M E M O R A N D U M

TO: Michigan Law Revision Commission  
 FROM: Professor Gina M. Torielli<sup>1</sup>  
 DATE: June 16, 2009  
 RE: Status of Michigan Economic Code Project

### Code Project Update

In late 2006, the Commission identified almost 60 current statutes as relating to Michigan state and local government “efforts to increase employment opportunities by getting new businesses to relocate in a community or existing businesses to expand.” Since then, the Michigan Legislature enacted 160 laws amending the identified statutes or creating new programs falling within the Commission’s definition of economic development. We evaluated each of these public acts and discussed a proposed structure and several draft articles for a Michigan Economic Development Code with the Commission on March 24, 2009. We have now incorporated the Commission’s comments in new drafts, which we submit today.

The Commission provided us with the following advice, which was adopted in the enclosed drafts:

1. The consensus of the Commission seemed to be for consolidating definitions somewhere in the Code. Given the scope and size of the Code, the Commission agreed that the best option was to include general definitions at the beginning of each article. The definitions division would include seriatim listings of definitions that applied to specific sections of the article, if there were different definitions for a single term. This would provide the Legislature an opportunity to easily review and harmonize definitions, and the public readers of the Code with easily accessible points of reference.
2. The Water Resource Improvement Tax Increment Authority Act and the Neighborhood Improvement Authority Act were excluded from the Code as too tangential to economic development.
3. The Commission recommended we remove tax code sections from the Code, but consider leaving in sections that describe processes and discretion for granting tax credits and exemptions, if already severed from existing tax statutes.
4. The Commission wanted to approve and refer to the Legislative Service Bureau (LSB) the structure and some proposed articles over the summer so that a framework is created. The Commission seemed in agreement that the project needs to proceed apace and could be introduced to the Legislature through the LSB incrementally, so that the Code does not strangle itself on its own weight.

A revised proposed structure for the Code is attached as Exhibit A. Other than removal of the tax credits article, no major structural changes were made since the draft submitted in March 2009.

### Code Drafting

In 2007-2009, faculty members and students from the Thomas M. Cooley Law School drafted, and the Commission reviewed, six articles proposed for inclusion in the Code.

<sup>1</sup> I have been ably assisted on this project by Ryan C. Plecha, a research assistant at the Commission and Mohammad Sohail, both former students.

Since the Commission's March meeting, four of the six have been revised and one more proposed article was drafted for inclusion in the Code. These are submitted to the Commissioner with this report as exhibits B-F. These include:

- Article I – General Provisions;
- Article III - Promoting the Michigan Agricultural Economy;
- Article V – State International Trade Development;
- Article VII - Encouraging Michigan as a Destination for Tourism, Conventions And the Film Industry; and,
- Article XII – Michigan Workforce Development;

The drafters continue to follow the Commission's overall principle that it would not recommend any changes in policy as reflected in current legislation. Rather, the Commission directed drafters to attempt to consolidate and harmonize existing law without making substantive changes. Where changes are made or recommended, drafters added notes to make this process transparent.

### **Next Steps**

It is our recommendation that the Commission transmits the presently drafted articles and proposed structure to the Legislative Service Bureau so work can begin on drafting bills, should the Legislature approve the Commission's work to date.

cc: Ryan Plecha  
Mohammad Sohail

**MICHIGAN ECONOMIC DEVELOPMENT (MEDC)**

**ARTICLE I – GENERAL PROVISIONS**

**Division I – Title**

**Division II – Legislative Findings**

**Division III –**

**Sec. 11301. Short Title.**

**Sec. 11302. Members of Predecessor Agencies; Powers.**

**Sec. 11303. Existing Rules; Effect.**

**Sec. 11304. Orders; Effect.**

**Sec. 11305. Editorial Changes; Effect; Intent.**

**Division IV – Definitions**

**[ Drafter’s comment: This definitions section contains definitions that are used in ARTICLE I and not for other ARTICLES within the code. Each article contains its own definitions section, as directed by the MLRC.**

**Division V – SUNSHINE PROVISIONS**

**[ Drafter’s comment: Some similar provisions were left in their respective articles, if it appeared they were idiosyncratic to the board or authority at issue. These provisions are intended to apply to all entities created within the code, unless a more specific and stringent provision applies. ]**

**Sec. 11501. Open Meetings.**

**Sec. 11502. Access to Information.**

**Sec. 11503. Oaths of Office.**

**Sec. 11504. Payment of Expenses.**

**Sec. 11505. Conduct of Business.**

**Sec. 11506. Avoidance of Personal Gain.**

**Sec. 11507. Duties of governor.**

**Sec. 11508. Conflicts of Interest.**

**Sec. 11503. Office of Chief Compliance Officer**

**ARTICLE II - STATE MICHIGAN STRATEGIC FUND TO PROMOTE ECONOMIC  
COMPETITIVENESS**

**Division I - Definitions**

**Division II - State Strategic Fund**

**Statutes:**

**1. PA 270 of 1984 - Michigan Strategic Fund Act, as revised in 2008**

## **ARTICLE III - PROMOTING THE MICHIGAN AGRICULTURAL ECONOMY**

### **Division I – Definitions**

### **Division II -- State Promotion of Agricultural Value Added Products**

#### **Statutes:**

1. PA 322 of 2000 – Julian-Stille Value-Added Act (as amended in 2006 by PAs 422-24 of 2006)
2. PA 451 of 1994 - Forest Finance Authority Act - Natural Resources and Environmental Protection Act (Excerpt – MCL 324.50501)

### **Division III - Other State Activities Promoting the Agricultural Economy**

**[Reserved for future legislation or cross-reference to existing law not part of the code.]**

## **ARTICLE IV - HOMELAND SECURITY AND DEFENSE INDUSTRY DEVELOPMENT**

### **Division I – Definitions.**

1. PA 317 of 2006 - Michigan Strategic Fund Centers
2. Portions of Statutes Included Elsewhere In The Code Involving Homeland Security and Defense Industry Development.

## **ARTICLE V – MICHIGAN INTERNATIONAL TRADE DEVELOPMENT**

### **Division I – Definitions**

### **Division II -- State Foreign Trade Infrastructure**

#### **Statutes:**

1. PA 157 of 1986 - Michigan Export Development Act
2. PA 24 of 1968 - Division of International Commerce
3. PA 154 of 1963 - Foreign Trade Zones
4. PA 639 of 1978 – Hertel Stopczyzyski Port Authority Act
5. Portions of Statutes Included Elsewhere In The Code Involving International Trade.

### **Division III – State Agricultural Export Development**

#### **Statutes:**

1. PA 23 of 1968 - Foreign Trade Branch of Department of Agriculture
2. PA 359 of 1990 – Michigan Farm Export Act

## **ARTICLE VI – ENERGY SOURCE DEVELOPMENT**

### **Division I – Definitions**

### **Division II -- State Encouragement of Alternative Energy Development**

#### **Statutes:**

1. PA 593 of 2002 - Michigan Next Energy Authority Act, as amended
2. PA 272 of 2006 - Renewable Fuels Commission Act (Sunset 1/1/2010)
3. PA 175 of 2008, amending 1984 PA 270 (Michigan Strategic Fund) by amending section 88b as added by PA 225 of 2005 (MCL 125.2088b) and adding section 88q (MCL 125.2088q) creating an energy excellence program
4. PA 295 of 2008 - “Clean, Renewable, and Efficient Energy Act”, only parts creating energy zones and credits only here
5. PA 451 of 1994 - Forest Finance Authority Act - Natural Resources and Environmental Protection Act (Excerpt – MCL 324.50501) - as amended in 2008
6. PA 330 of 2008 creates a new act Publication of Information Establishing Alternative Fuels Facilities (MCL 285.341 - 285.343)
7. PA’s 331 and 415 of 2008 amend Sales Tax Act (PA 167 of 1933) to provide a tax incentive certain agricultural equipment capable of harvesting grain and biomass

**Division III – State Encouragement For Development of Products Enhancing Energy Efficiency**

[Reserved for future legislation or cross-reference to existing law not part of the code.]

**ARTICLE VII – ENCOURAGING MICHIGAN AS A DESTINATION FOR TOURISM, CONVENTIONS AND THE FILM INDUSTRY**

**Division I – Definitions**

**Division II -- Promotion of Tourism**

**Part A: State Activities**

**Statutes:**

1. PA 106 of 1945 – Michigan Tourism Policy Act.
2. PA 98 of 2008 - Amend Michigan Strategic Fund, by adding MCL 125.2089b, 2089c, 2089d to promote Michigan and create jobs by promoting the MI tourism industry.
3. PA 100 of 2008 – Amend Michigan Strategic Fund, by adding MCL 125.2089, 2089a) The board shall establish a Michigan promotion program to promote tourism in Michigan and pay business development and marketing costs to promote business development in Michigan.

**Part B: Local Activities**

**Statutes:**

1. PA 244 of 1991 – Regional Tourism Marketing Act.
2. PA 25 of 2007- Convention and Promotion act of 2007 (MCL 141.1321-1328) AN ACT relating to the promotion of convention business and tourism in this state and certain metropolitan areas of this state.

**Division III – Promotion of Michigan as a Convention Destination**

**Part A: State Activities**

**Statutes:**

1. PA 106 of 1985 – State Convention Facility Development Act

**Part B: Local Activities**

**Statutes:**

1. PA 180 of 1991 – Stadia or Convention Facility Development Act, as amended in 2007
2. PA 395 of 1980 – Community Convention or Tourism Marketing Act
3. PA 383 of 1980 – Convention and Tourism Marketing Act
4. PA 203 of 1999 – Convention Facility Authority Act
5. PA 554 of 2008 – Regional Convention Facility Authority Act

**Division IV – State Activities Promoting Film Industry Activity in Michigan**

**Statutes:**

[Note: PA 63 of 2001 – History, Arts and Libraries Act Excerpt MCL 399.721-722 Repealed by PA 75 of 2008, effective May, 2008.]

1. PA 75 of 2008 Amending Strategic Fund Act to include Incentives for Film Production industries and Produce Office of Film by adding chapter 2A.

**Part B: Film Industry Tax Incentives**

**Statutes:**

1. PA 74 of 2008 (MCL 208.1459) Amending Michigan Business Tax Act (PA 36 of 2007, MCL 208.1101-1601) by adding MCL 208.1459).

2. PA 77 of 2008 (MCL 208.1455) Amending Michigan Business Tax Act (PA 36 of 2007, MCL 208.1101-1601) by adding MCL 208.1455).
3. PA 78 of 2008, Amending 1933 PA 167 (General Sales Tax Act), by amending sections MCL 205.54cc as added by 2006 PA 657. 205.54cc. This section is repealed by Act 78 OF 2008 effective December 31, 2009.
4. PA 79 of 2008- Amending PA 281 of 1967- Income Tax Act of 1967 (MCL 206.1-632) by adding MCL 206.367 which adds a tax credit for qualified production companies.
5. PA 80 of 2008- Amending PA 270 of 1984- Michigan Strategic Fund Act- by amending 125.2088d, as added by PA 225 of 2005.
6. PA 85 of 2008- Amending PA 63 of 2001- History, Arts, and Libraries Act, by amending section 2 (MCL 399.702) as added by 2002 PA 508.
7. PA 86 of 2008- Amending PA 36 of 2007 (Michigan Business Tax Act – MCL 208.1101-1601) by adding MCL 208.1457.
8. PA 87 of 2008- Amending PA 24 of 1995- (Michigan Economic Growth Authority Act), by amending MCL 207.803 as amended by 2007 PA 62.
9. PA 108 of 2008 – Amending PA 24 of 1995 (Michigan Economic Growth Act), to include film production as a qualified business.
10. PA 223 of 2008 – amend PA 270 of 1984 Michigan Strategic Fund Act – by amending section 88d (MCL 125.2088d) - specifically MCL 125.2088d(4) qualifies film production as eligible for loan enhancement program.

#### **Part C: Film Industry Location Incentives**

##### **Statutes:**

1. PA 76 of 2008- Amending PA 431 of 1984 – Managing and Budgeting Act – MCL 18.1101-1594, added section 18.1125.
2. PA 81 of 2008- Amending PA 150 of 1967- Michigan Military Act- MCL 32.501-851- by adding MCL 32.737.
3. PA 82 of 2008- Amending PA 451 of 1994 – Forest Finance Authority Act - Natural Resources and Environmental Protection Act(MCL 324.101-90106), by adding MCL 324.512.
4. PA 83 of 2008- Amending PA 286 of 1964- State Transportation Act- MCL 247.801-816, by adding MCL 247.806b.
5. PA 84 of 2008- Local Government Filming Location Act.

### **ARTICLE VIII – LIFE SCIENCE AND BIOLOGICAL TECHNOLOGY DEVELOPMENT**

#### **Division I – Definitions**

#### **Division II – Life Science Research and Industry**

1. PA 639 of 2007- Amend 1984 PA 270 (Michigan Strategic Fund) by amending section 88a (MCL 125.2088a) to include umbilical cord research in definition of life science.
2. Portions of Statutes Included Elsewhere In The Code Involving Life Science Industry Incentives.
  - a. MCL 125.2088p (Michigan Strategic Fund Act)

#### **Division III – Embryonic Stem Cell Research - RESERVED**

[Reserved for future legislation.]

### **ARTICLE IX - MICHIGAN LAND USE REVITALIZATION**

#### **Division I – Definitions**

#### **Division II- Land Rehabilitation and Blight Reduction**

##### **Statutes:**



1. PA 146 of 2000 - Obsolete Property Rehabilitation Act, as amended in 2006 and 2007
2. PA 381 of 1996 – Brownfield Redevelopment Financing Act, as amended in 2007 and 2008
3. PA 173 of 1992 - Land Reclamation and Improvement Authority Act
4. PA 147 of 1992 - Neighborhood Enterprise Zone Act, as amended in 2006 and 2008
5. Portions of Statutes Included Elsewhere In The Code Involving Rehabilitation and Blight Reduction.

#### **Division III - Land Assembly**

##### **Statutes:**

1. PA 258 of 2003 – Land Bank Fast Track Act
2. PA 260 of 2003 – Tax Reverted Clean Title Act
3. PA 171 of 1981 – Michigan Urban Land Assembly Act
4. Portions of Statutes Included Elsewhere In The Code Involving Land Assembly.

### **ARTICLE X – LOCAL ECONOMIC REVITALIZATION AUTHORITIES**

#### **Division I – Definitions**

#### **Division II – Local Economic Development Corporations**

##### **Statute:**

1. PA 338 of 1974 – Economic Development Corporations Act

#### **Division III - Local Commercial Development Authorities**

##### **Statutes:**

1. PA 197 of 1975 - Downtown Development Authority Act, as amended through 2008
2. PA 280 of 2005 - Corridor Improvement Authority Act, as amended in 2007 and 2008
3. PA 59 of 1986 - Resort District Rehabilitation Act
4. PA 120 of 1961 - Principal Shopping Districts and Business Development Districts Act
5. PA 451 of 1994 - Waterfront Revitalization - Natural Resources and Environmental Protection Act (Excerpt – MCL 324.79501)
6. PA 255 of 1978 - Commercial Redevelopment Act, as amended in 2008
7. PA 210 of 2005 - Commercial Rehabilitation Act, as amended in 2006 and 2008

#### **Division IV – Local Industrial Redevelopment Authorities**

##### **Statutes:**

1. PA 198 of 1974 - Plant Rehabilitation and Industrial Development Districts Act, as amended in 2006, 2007, and 2008

#### **Division V – Urban Redevelopment**

##### **Statutes:**

1. PA 250 of 1941 - Urban Redevelopment Corporations Law
2. PA 376 of 1996 - Michigan Renaissance Zone Act
3. PA 56 of 1980 - Neighborhood Assistance and Participation Act, as amended in 2006, 2007, 2008

## **ARTICLE XI – MICHIGAN INFRASTRUCTURE DEVELOPMENT FOR ECONOMIC GROWTH**

### **Division I – Definitions**

### **Division II --**

#### **Statutes:**

1. PA 385 of 1984 – Technology Park Development Act, as amended in 2007
2. PA 231 of 1987 – Transportation Economic Development Fund
3. PA 295 of 1976 - State Transportation Preservation Act of 1976 (Excerpt)
4. PA 49 of 2002 - Michigan Broadband Development Authority Act

## **ARTICLE XII – MICHIGAN WORKFORCE DEVELOPMENT**

### **Division I – Definitions**

### **Division II --**

#### **Statutes:**

1. PA 489 of 2000 - 21st Century Jobs Trust Fund Act
2. PA 48 of 1982 - Michigan Business and Industrial Training Act
3. PA 491 of 2006 - Michigan Works One-Stop Center.

## **ARTICLE XIII – PLANNING MICHIGAN ECONOMIC DEVELOPMENT**

### **Division I – Definitions**

### **Division II – County or Regional Development Commissions**

#### **Statutes:**

1. PA 46 of 1966 – County or Regional Development Commission.

### **Division III – Economic Expansion Department**

#### **Statutes:**

1. PA 116 of 1963 – Economic Expansion.

### **Division IV – Enterprise and Empowerment Zones**

#### **Statutes:**

1. PA 224 of 1985 – Enterprise Zone Act.
2. PA 123 of 1995 – Enterprise Community Development Corporation Act.
3. PA 75 of 1995 – Empowerment Zone Development Corporation Act.

### **Division V – Bidco Act**

#### **Statutes:**

1. PA 89 of 1986 – Michigan BIDCO Act.

## **ARTICLE XIV – FINANCING MICHIGAN ECONOMIC DEVELOPMENT**

### **Division I - Purposes and Definitions**

### **Division II – State Venture Capital**

#### **Statutes:**

3. PA 198 of 1984 - Michigan Business Incubation Act.
4. PA 24 of 1995 - Michigan Economic Growth Authority Act, including

5. PA 175 of 1982 - State Research Fund Act.
6. PA 296 of 2003 - Michigan Early Stage Investment Act of 2003, as amended in 2007.
7. PA 489 of 2000 - 21st Century Jobs Trust Fund Act, as amended through 2008.
8. Portions of Statutes Included Elsewhere In The Code Involving Venture Capital.

**Division III - Conduit Financing**

**Part A: State- and Municipal-Chartered Corporations**

**Statutes:**

1. Portions of Statutes Included Elsewhere In The Code Involving State-Level Conduit Bond Financing.

**Part B - Municipal-Chartered Corporations**

**Statutes:**

1. PA 450 of 1980 - The Tax Increment Finance Authority Act, as amended in 2008
2. PA 281 of 1986 - The Local Development Finance Act, as amended through 2008
3. PA 62 of 1963 - Industrial Development Revenue Bond Act of 1963
4. Portions of Statutes Included Elsewhere In The Code Involving Local Conduit Bond Financing.

**ARTICLE XV – MICHIGAN AND THE KNOWLEDGE ECONOMY – RESERVED**

**ARTICLE XVI – MICHIGAN FOREST ECONOMY – RESERVED**

**ARTICLE XVII – MICHIGAN AFFORDABLE HEALTH CARE – RESERVED**

**ARTICLE XVIII - REPEALER SECTION**

Draft 6/15/2009

**MICHIGAN ECONOMIC DEVELOPMENT CODE (MEDC)**

[Editor's note: the draft of ARTICLE V is included in this document. To assist in orienting the reader, remaining articles of the draft Michigan economic development code, including source statutes, are outlined in a separate document.]

**ARTICLE I – GENERAL PROVISIONS****DIVISION I – TITLE**

**Sec. 11101. Title.** AN ACT relating to the economic development of this state; to codify, revise, consolidate, and classify laws relating to the economic development activities of the state and political subdivisions of the state; and to repeal acts and parts of acts.

**DIVISION II - LEGISLATIVE FINDINGS**

**Sec. 11201. Legislative finding and declaration.** [Source, MSF Act 125.2001.]

The legislature hereby finds and declares the following problems and objectives:

- (a) Action is needed to encourage increased employment and business expansion in the State of Michigan.
- (b) The economy of the state of Michigan is undergoing a long-term transition requiring new and innovative policies from state government and greater coordination of existing policies and programs related to jobs and economic development.
- (c) It is necessary to provide a mechanism to foster greater coordination of state policies and to make available public and private development finance opportunities to agriculture, forestry, business, and industry, and to communities within the state, in order to expand the number of jobs in the state and to help agriculture, forestry, business, and industry prosper in the state.
- (d) There exists a need to leverage private sector investment in new and innovative products, in entrepreneurial activity, and in economic development finance; therefore, state assistance for development finance should reflect a leveraging investment strategy.
- (e) There is a statewide need for programs to alleviate and prevent conditions of unemployment; to preserve existing jobs and create new jobs to meet the employment demands of population growth and population shifts; to promote the development of existing business enterprises and to meet the growing competition among states and nations for business enterprises; to revitalize and diversify the Michigan economy in general to achieve the goals of long-term economic growth and full employment, and to provide a solid tax base for the state and its local units of government to provide funds for needed public services.
- (f) The goals of long-term economic growth and full employment can best be provided by the promotion, attraction, stimulation, retention, rehabilitation, and revitalization of business enterprises and worker-owned enterprises and by actions to lower the costs of business and production.
- (g) The retention, promotion, diversification, and development of business enterprises and the lowering of costs of business and production require means of financing, including economic development finance mechanisms that support private capital resources, to help existing business enterprises expand more rapidly, and to promote the location of additional business enterprises in Michigan.
- (h) It is necessary to provide means and methods for the encouragement and assistance of industrial and commercial development projects, including but not limited to providing aid to development enterprises utilizing new or experimental technologies in locating, purchasing, constructing, reconstructing,

modernizing, improving, maintaining, repairing, furnishing, equipping, and expanding in this state and its local units of government.

(i) The retention and expansion of existing business enterprise and the acquiring of new business enterprises to Michigan requires the availability of energy supplies and that, to this end, known sources of energy in Michigan should be developed to the fullest extent possible consistent with environmental protection and ecological preservation.

(j) To conserve the public benefits of nonrenewable oil, gas, and mineral resources which are now subject to increasing development and depletion it is necessary to apply the proceeds of such resources to the encouragement of capital growth and the financing of self-sustaining sources of economic activity.

(k) It is necessary to promote economic activity in the forestry and agricultural sectors by providing incentives to reduce energy consumption, to retain agricultural and forestry enterprises, to reduce the rate at which urban sprawl has been devouring productive farm and forestry lands, and to provide our farmers and foresters with a more favorable export market. It is also necessary to encourage the development of facilities designed to produce energy from renewable resources.

(l) For the preservation and betterment of the health, safety, and general welfare of the people of Michigan, it is necessary to promote and develop new and adequate water and air pollution control and solid waste disposal facilities for business enterprises and public utilities located in this state, which equipment or facilities need not be incidental to an industrial building, but may serve the general public.

(m) It is necessary for a sound economy of the state for the local units of government of the state to provide quality services and this requires an adequate and modern infrastructure in the local units of government which makes it necessary for such units to finance local improvements in an economical manner which in many cases can be best done through assistance by the state.

(n) The lending and investment of funds to develop and improve the economy of the state requires specialized and unique knowledge, skills, and experience.

### **DIVISION III**

#### **Sec. 11301. Short Title.**

This act shall be known and may be cited as the "Michigan economic development code".

#### **Sec. 11302. Members Of Predecessor Agencies; Powers.**

When a board, commission, committee, council, or other agency created by or pursuant to this act was preceded by an agency with the same or similar name and functions, members of the predecessor agency shall continue in office for the duration of the terms of office for which they were appointed and with the new members appointed shall constitute the new agency. Members shall be appointed under this act only as terms of the former members expire or vacancies occur. Members of the predecessor agency may be appointed to the new agency to succeed themselves subject to the limits for the total period of service set forth in this act.

#### **Sec. 11303. Existing Rules; Effect.**

When the department or other agency is directed to promulgate rules by this act and rules exist on the date the requirement to promulgate rules takes effect, which rules the department or agency believes adequately cover the matter, the department or agency may determine that new rules are not required or may delay the promulgation of new rules until the department or agency considers it advisable.

#### **Sec. 11304. Orders; Effect.**

Except as otherwise provided by law, this act does not repeal or alter the content or effect of orders that were issued pursuant to an act that is repealed by this act and codified as a part of this act.

**Sec. 11305. Editorial Changes; Effect; Intent.**

It is the intention of the legislature that editorial changes in the language of statutes codified as parts within this act not be construed as changes to the meanings of those statutes.

**Sec. 11306. Severability.** [Source: Sec. 93 of the Michigan Strategic Fund Act, 125.2095].

If any article, division, part, section, subsection, paragraph, clause, or provision of this code shall be adjudged unconstitutional or ineffective, no other article, division, part, section, subsection, paragraph, clause, or provision of this article shall on account thereof be deemed invalid or ineffective and the inapplicability or invalidity of any article, division, part, section, subsection, paragraph, clause, or provision of this code in any 1 or more instances or under any 1 or more circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance or under any other circumstance.

**DIVISION IV – DEFINITIONS****Sec. 11401. Definitions.**

- (1) As used in this article:
- (a) “Code” means the Michigan economic development code created by this act.
  - (b) “Strategic fund” means the Michigan Strategic Fund **described** by article II of this code, except where the context clearly requires a different definition.
  - (c) “Strategic fund board” means the board of directors of the strategic fund, except where the context clearly requires another definition.
  - (d) “Michigan economic development corporation” or “MEDC” means the Michigan economic development corporation, 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, and subsequently amended, between local participating economic development corporations formed under **article X, formerly** 1974 PA 338, MCL 125.1601 to 125.1536, and the strategic fund.

**[Drafter’s note: Need a consistent definition for “person” for this article. See three alternatives below. I believe the first would be the more modern and preferred version, and should not be substantive. However, there may be agency or court interpretation of component acts that hold otherwise.**

**(e) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.**

**(e) "Person" means a natural person, partnership, fiduciary, association, corporation, or other entity.**

**(e) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.]**

**DIVISION V – SUNSHINE PROVISIONS****Sec. 11501. Open Meetings.**

Except as otherwise specifically provided in this code, any authority, board, commission or committee created or authorized pursuant to this code shall:

- a. organize and adopt its own policies, procedures, schedule of regular meetings, and a regular meeting date, place, and time;
- b. conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275; and
- c. give public notice of the time, date, and place of each meeting in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

**Sec. 11502. Access to Information.**

Except as specifically exempted in this code, any writing prepared, owned, used, in the possession of, or retained by any authority, board, commission or committee created or authorized pursuant to this code, in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**Sec. 11503. Oaths of Office.**

Before beginning his or her duties, a member of any authority, board, committee or commission created or authorized pursuant to this code shall take and subscribe the constitutional oath of office. A record of each oath or affirmation shall be filed in the office of the secretary of state.

**Sec. 11504. Payment of Expenses.**

Except as specifically provided in this code, a member of any authority, board, committee or commission created or authorized pursuant to this code is not entitled to compensation for services as a member, but may be reimbursed for all actual and necessary expenses incurred in connection with the performance of duties as a member. **[Drafter's Note, the tourism commission is limited to 25 days of expenses and subject to DMB rules. Should this be made/is this already universal? If so, this provision should be modified to be consistent with Article VII, Division II, Part A provision.]**

**Sec. 11505. Conduct of Business.**

Except as otherwise specifically provided in this code, an authority, board, committee or commission created or authorized pursuant to this code may act only by resolution. A majority of the members of the authority, board, committee or commission then in office, or of any committee, shall constitute a quorum for the transaction of business. **[Drafter's Note: Quorum may not be a majority for all authorities, boards and commissions and commissions may be able to act without resolution. Perhaps someone from the AG's office could advise? Also, the tourism commission act states majority of those present and serving is required for action. Should this be made/is this already universal? If so, this provision should be modified to be consistent with Article VII, Division II, Part A provision.]**

**Sec. 11506. Avoidance of Personal Gain.**

Except as otherwise specifically provided in this code, a member of any authority, board, committee or commission created or authorized pursuant to this code shall not use for personal gain information obtained by the member while performing business of the authority, board, committee or commission, nor shall a member of any authority, board, committee or commission created or authorized pursuant to this code disclose confidential information obtained by the member while conducting authority, board, committee or commission business, except as necessary to perform official business.

**Sec. 11507. Duties of governor.**

Except as otherwise specifically provided in this code:

- (a) The governor shall inquire into the administration any state activities under this code.
- (b) The governor may remove or suspend any appointive public officer for violations of this code. The governor may request the MEDC to remove or suspend any MEDC corporate employee for violations of this code.
- (c) The governor may remove or suspend any elective public officer for violation of this code that constitutes gross neglect of duty, corrupt conduct in office, misfeasance, or malfeasance.
- (d) This section does not apply to any public officer of the legislative branch or the judicial branch of state government. **[Source: MCL 125.2094]**

**Sec. 11508. Conflicts of Interest.**

**[Note, this provision is currently limited to certain commissions, but might be made generally applicable to all commission, authority, boards and committees.]**

(1) Except as otherwise specifically provided in this code, and notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of any authority, board, commission or committee created or authorized pursuant to this code are subject to 1968 PA 317, MCL 15.321 to 15.330. As used in this subsection, "substantial conflict of interest" means that the pecuniary interest is of such importance as to either materially influence the judgment of the member in the actual performance of his or her duty under the act or to foreseeably and materially influence the judgment of a reasonable person with similar knowledge and experience acting under similar circumstances and in a like position as the member.

(2) Except as otherwise specifically provided in this code, a member of any authority, board, commission or committee, or an officer, employee, or agent of the strategic fund, shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, such member, officer, employee, or agent, when acting in good faith, may rely upon the opinion of counsel for the strategic fund, authority, board, commission or committee, upon the report of an independent appraiser selected with reasonable care by the authority, board, commission or committee, or upon financial statements of the strategic fund, authority, board, commission or committee represented to the member, officer, employee, or agent to be correct by the president or the officer of the strategic fund, authority, board, commission or committee having charge of its books or account, or stated in a written report by a certified public accountant or firm of certified public accountants fairly to reflect the financial condition of the strategic fund, authority, board, commission or committee.

(3) Except as otherwise specifically provided in this code, a member of an authority, board, commission or committee created or authorized pursuant to this code shall not make, participate in making, or in any way attempt to use his or her position as a member of the authority, board, commission or committee to influence a decision regarding a loan, grant, investment, or other expenditure under this code to his or her employer.

(4) Except as otherwise specifically provided in this code, a member, employee, or agent of the strategic fund, or any authority, board, commission or committee created or authorized pursuant to this code, shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the authority, board, commission or committee in writing of the details of any incident or circumstances that may present the existence of a conflict of interest with respect to the performance of the related work or duty of the member, employee, or agent of the strategic fund, authority, board, commission or committee.

(5) Except as otherwise specifically provided in this code, a member who has a conflict of interest related to any matter before the authority, board, commission or committee shall disclose the conflict of interest before the authority, board, commission or committee takes any action with respect to the matter, which disclosure shall become a part of the record of the official proceedings. The member with the conflict of interest shall refrain from doing all of the following with respect to the matter that is the basis of the conflict of interest:

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

(6) Failure of a member to comply with subsection (5) constitutes misconduct in office subject to removal.

(7) When authorizing expenditures and investments under this code, an authority, board, commission or committee created or authorized pursuant to this code shall not consider whether a recipient has made a contribution or expenditure under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

(8) Expenditures under this code shall not be used to finance or influence political activities.



**Sec. 11588i. Office of Chief Compliance Officer**

**[Drafter's comment: The concept of Chief Compliance Office is currently contained in the Michigan Strategic Fund Act (Sec.2088i) and does not apply to other agencies or levels of government. A policy decision regarding the extent to which the COO concept will apply must be made. At that point, references to the strategic fund below can be changed or the division moved. Note, there are many internal references to this section in the code, so do not change it without checking for them.]**

- (1) The office of the chief compliance officer is created within the strategic fund. The office shall exercise its powers and duties under this section independently of the strategic fund.
- (2) The office shall assist the strategic fund board with the creation, implementation, monitoring, and enforcement of policies and procedures to prevent illegal, unethical, or improper conduct on the part of fund board members, commercialization board members and employees, or agents of the strategic fund board and commercialization board in carrying out their duties under this code.
- (3) The principal executive officer of the office is the chief compliance officer. The state administrative board shall be the appointing authority of the chief compliance officer.
- (4) A person may not interfere with, prevent, or prohibit the chief compliance officer from carrying out his or her duties as established in this section and set by the state administrative board. The chief compliance officer is an employee for purposes of the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.
- (5) All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state, so far as is compatible with their duties, shall give the chief compliance officer any necessary assistance required by the chief compliance officer in the performance of the duties of the chief compliance officer. All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state shall provide the chief compliance officer free access to any book, record, or document in their custody, relating to the matters within the scope of the chief compliance officer in the performance of his or her duties.
- (6) The chief compliance officer shall do all of the following:
  - (a) Recommend policies and procedures, including, but not limited to, a conflict of interest policy, an investment policy, and an ethics policy to the strategic fund board and the commercialization board that shall protect the state's assets consistent with the requirements of this code and applicable state and federal law. The chief compliance officer shall also assist in the design of the policies and procedures that will prevent violations from occurring, detect violations that have occurred, and correct such violations promptly.
  - (b) Assist employees and agents of the board and the commercialization board to ensure that they are in compliance with internal policies and procedures and with applicable state and federal law.
  - (c) Provide guidance to the board, the commercialization board, and employees of the board and the commercialization board on matters related to compliance with internal policies and procedures and with applicable state and federal law.
  - (d) Make recommendations to the board, the commercialization board, and employees of the board and the commercialization board regarding the appropriate evaluation, investigation, and resolution of issues and concerns regarding compliance with internal policies and procedures and with applicable state and federal law.
  - (e) Review and evaluate compliance with internal policies and procedures and with applicable state and federal law.
  - (f) Cooperate with the office of the auditor general as the auditor general carries out his or her duties.
  - (g) Report quarterly to the strategic fund board and the state administrative board regarding compliance with internal policies and procedures and with applicable state and federal law.

(h) Contact persons receiving awards, investments, grants, and loans under this code to the extent necessary to carry out responsibilities under this chapter.

(i) Prepare a written annual report that evaluates compliance with internal policies and procedures and with applicable state and federal law, explains any compliance matters that arose during the previous year, and suggests revisions to agency policies and procedures. Copies of the report shall be provided to the governor, the clerk of the house of representatives, the secretary of the senate, the chairpersons of the senate and house of representatives committees on commerce, and the chairpersons of the senate and house of representatives committees on appropriations. The annual report shall also be published on the strategic fund's internet website.

(j) Do all other things necessary to carry out the chief compliance officer's responsibilities under this section.

(7) As used in this section, "office" means the office of the chief compliance officer.

**[Source: PA 270 OF 1984 MICHIGAN STRATEGIC FUND ACT – Sec. 88i]**

Draft 6/15/2009

**MICHIGAN ECONOMIC DEVELOPMENT CODE (MEDC)**

**[Drafter's note: the draft of ARTICLE III is included in this document. To assist in orienting the reader, remaining articles of the draft Michigan economic development code, including source statutes, are outlined in a separate document.]**

**ARTICLE III - PROMOTING THE MICHIGAN AGRICULTURAL ECONOMY****DIVISION I – DEFINITIONS****Sec. 13102 Definitions.** (1) As used in this article:

- (a) Except as otherwise provided, "agricultural processing" means 1 or more of the operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plant or plant products into goods that are used for the intermediate or final consumption including goods for nonfood use. As used in Part C of this article, "agricultural processing facility" means 1 or more facilities or operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plants or plant products, excluding forest products, into goods that are used for intermediate or final consumption including goods for nonfood use, and surrounding property.
- (b) "Commercialization" means the transition from research to the actions necessary to achieve market entry and general market competitiveness of new innovative technologies, processes, and products and the services that support, assist, equip, finance, or promote a person or an entity with that transition.
- (c) "Department of agriculture" means the Michigan department of agriculture.
- (d) "Eligible grantee" means a person able to receive a grant under this section and includes, but is not limited to, individuals, farmer owned cooperatives, partnerships, limited liability companies, private or public corporations, and local units of government.
- (e) "Agricultural development fund" means the agricultural development fund created in section 13202a.
- (f) "Joint evaluation committee" means a committee selected by the commission of agriculture with appropriate expertise to conduct an independent, unbiased, objective, and competitive evaluation of grant proposals. The committee shall include at least 3 producers, including 1 plant agricultural producer, 1 animal agricultural producer, and another producer at large, an individual with a scientific agriculture education, and an agricultural financial lender.
- (g) "Qualified agricultural loan" means a loan for projects designed to establish, retain, attract, or develop value-added agricultural processing and related agricultural production operations in this state.
- (h) "Specialty crops" means any agricultural commodity except wheat, feed grains, oil seeds, cotton, rice, peanuts, and tobacco, as well as products derived from these agricultural commodities.
- (i) "Value-added" means the enhancement or improvement of the overall value of an agricultural commodity or of an animal or plant product into a product of higher value. The enhancement or improvement includes, but is not limited to, marketing, agricultural processing, transforming, or packaging.

**Sec. 13112. Definitions.**

As used in part B of this article, being sections 13211 through 13232:

- (a) "Forest finance authority" means the Michigan forest finance authority created in section 13213.

(b) "Forest finance board" means the board of directors of the Michigan forest finance authority, except where the context clearly requires a different definition.

(c) "Forest finance bonds" means bonds of the forest finance authority issued as provided in this part.

(d) "Forest finance notes" means notes of the forest finance authority issued as provided in this part, including commercial paper.

(e) "Forester" means an employee of the department who has a 4-year degree in forest management from an accredited college or university and experience in forest management and who is designated as the state forester by the director of the department of natural resources.

(f) "Sustainable forestry" means that term as it is defined in section 52501 of Act 451 of 1994, MCL 324.52501.

**Sec. 13112. Definitions.**

(1) As used in part B of this article, being sections 13211 through 13232:

(b) "Board" means the state administrative board created in 1921 PA 2, MCL 17.1 to 17.3.

(j) "Renaissance zone" means a geographic area designated under division IV of article X of this code, formerly the Michigan Renaissance Zone Act, 376 public act of 1996.

(2) As used in section 13288c, "development agreement" means a written agreement between the Michigan strategic fund and the agricultural processing facility that includes, but is not limited to, all of the following:

(a) A requirement that the agricultural processing facility comply with all state and local laws.

(b) A requirement that the agricultural processing facility report annually to the Michigan strategic fund on all of the following:

(i) The amount of capital investment made at the facility.

(ii) The number of individuals employed at the facility at the beginning and end of the reporting period as well as the number of individuals transferred to the facility from another facility owned by the agricultural processing facility.

(iii) The percentage of raw materials purchased in this state.

(c) Any other conditions or requirements reasonably required by the Michigan strategic fund. [formerly MCL 125.2688c(6).]

**DIVISION II – STATE PROMOTION OF AGRICULTURAL VALUE ADDED PRODUCTS**

[Drafter's note, the following text comes from the JULIAN-STILLE VALUE-ADDED ACT and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]

**Part A. Agricultural Processing.**

**Sec. 13202 Agricultural value-added grant program; establishment and administration; grant awards; procedure; condition of receiving grant; establishment of low-interest loan program; fiduciary obligations upon grant recipient; "substantial conflict of interest" defined; grant application; form or format; rules; effect on prior grants.**

(2) The department of agriculture shall establish and administer an agricultural value-added grant program. The commission of agriculture shall award grants from the agricultural development fund created in section 13202a only for projects designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in this state. In approving a grant under this subsection, the commission of agriculture shall state the specific objective reasons supporting the selection of the applicant over competing applicants. The joint evaluation committee shall assist and provide recommendations to the commission of agriculture in identifying high-quality projects for funding based upon the selection criteria and scoring system approved by the commission of agriculture. The recommendations shall include all materials and decision documents used by the joint evaluation committee in making the recommendations.

(3) All scoring sheets, meetings, and other decisions made by the joint evaluation committee shall be open to the public and considered public documents. A record or portion of a record, material, or other data received, prepared, used, or retained by the department of agriculture in connection with an application to or with a project or product assisted by the department of agriculture or with an award, grant, loan, or investment relating to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the department of agriculture as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) Subject to subsection (2), the department of agriculture shall do all of the following:

(a) Establish a competitive process to award grants. The competitive process shall include, but is not limited to, the following:

(i) A provision that the applications must be reviewed by the joint evaluation committee. Scientific and technical merit, commercial merit, and the ability to leverage additional funding shall be given equal weight in the review and scoring process.

(ii) A preference for proposals that demonstrate a high level of innovation for value-added agricultural processing and related agricultural production ventures to benefit producers in this state.

(iii) A preference for proposals that are attempting to secure a license for agricultural-related intellectual property to be produced in Michigan.

(iv) A provision that the program will utilize contracts with measurable milestones, clear objectives, and provisions to revoke awards for breach of contract.

(v) Provide for a cash match of at least 10% of the grant by the applicant.

(vi) Limit overhead rates for recipients of grants to reflect actual overhead but not greater than 15% of the grant.

(vii) A preference for proposals whose business plan forecasts revenues within 2 years or that have outside investments from investors with experience and management teams with experience in the area targeted by the proposal, or both.

(b) Prepare a request for proposals on at least an annual basis for grants for eligible grantees from the agricultural development fund. Grants are contingent upon the availability of funds.

(5) Subject to subsection (4)(a)(i), an application for a grant submitted under this section shall be evaluated and ranked according to selection criteria and a scoring or point system approved by the director of the department of agriculture. The selection criteria and the scoring or point system shall be reviewed and approved by the commission of agriculture. In developing such a system, the department of agriculture shall seek the assistance of the Michigan economic development corporation, any institution of higher education, the United States department of agriculture-rural development agency, the rural development council of Michigan, agricultural producers, and other industry and professional organizations as determined by the director of the department of agriculture.

(6) The commission of agriculture shall ensure that a recipient of a grant under this section agrees that, as a condition of receiving the grant, that recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.

(7) The department of agriculture, in cooperation with the department of treasury and Michigan financial institutions, shall establish a low-interest loan program in a manner similar to the qualified agricultural loan program established in section 2a of 1855 PA 105, MCL 21.142a, or a loan guarantee program to provide qualified agricultural loans. The department of treasury shall give the department of agriculture any necessary assistance required to establish a low-interest loan or loan guarantee program. The department of agriculture shall work with Michigan financial institutions to establish a certification system to verify that loan applicants are requesting qualified agricultural loans. As part of the low-interest loan program, the department of agriculture shall do the following:

- (a) Work with the department of treasury to establish agreements with participating financial institutions.
- (b) Ensure that an investment or new investment utilizing the 21st century jobs fund in which a qualified agricultural loan is attributed is not made pursuant to this section after June 1, 2008.
- (c) Ensure that the terms of a qualified agricultural loan under this section are for a term of not more than 5 years and that the first payment made by the recipient occurs not later than 24 months after the date of the loan.
- (d) Ensure that the interest rate charged by participating financial institutions does not exceed 50% of the adjusted prime rate determined in section 23 of 1941 PA 122, MCL 205.23, plus 1 percentage point as determined by the department of treasury. [Drafter's Note: previous reference was just to "prime" rate, which reference has been replaced by the language used here in modern legislation.]
- (e) Ensure that participating financial institutions do not refinance prior debt.
- (f) Require a participating financial institution to certify compliance with the Sarbanes-Oxley act of 2002, Public Law 107-204, or prohibit an officer, director, or principal shareholder of a participating financial institution, or his or her immediate family members, from receiving an agricultural value-added low-interest loan from the financial institution.
- (g) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan, that the recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.

(8) As part of a loan guarantee program, the department of agriculture shall do the following:

- (a) Work with the department of treasury to establish agreements with participating financial institutions.
- (b) Ensure that participating financial institutions require adequate collateral and fully liquidate all collateral before calling on the loan guarantees.
- (c) Establish a loan guarantee of not more than 90% of the financial institution's loss after all alternatives to collect have been exhausted.
- (d) Ensure that participating financial institutions do not refinance prior debt.
- (e) Require a participating financial institution to certify compliance with the Sarbanes-Oxley act of 2002, Public Law 107-204, or prohibit an officer, director, or principal shareholder of a participating financial institution, or his or her immediate family members, from receiving an agricultural value-added loan guarantee from the financial institution.

(f) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan guarantee, that the recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.

(g) Maintain a list of financial institutions that will participate in the loan guarantee program.

(9) The director of the department of agriculture may impose fiduciary obligations upon a recipient of a grant, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money.

(10) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of the commission of agriculture and the joint evaluation committee are subject to 1968 PA 317, MCL 15.321 to 15.330. As used in this subsection, "substantial conflict of interest" means that the pecuniary interest is of such importance as to either materially influence the judgment of the member in the actual performance of his or her duty under the act or to foreseeably and materially influence the judgment of a reasonable person with similar knowledge and experience acting under similar circumstances and in a like position as the member. For purposes of this section, members of the commission of agriculture and the joint evaluation committee shall do the following:

(a) Discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. In discharging duties of the office, the commission of agriculture when acting in good faith may rely upon the report of the joint evaluation committee or upon financial statements of the department of agriculture represented to the commission of agriculture by the officer having charge of its books or accounts or stated in a written report by the auditor general.

(b) Not make or participate in making, or in any way attempt to use his or her position to influence a matter before the department of agriculture regarding, a loan, loan guarantee, grant, or other expenditure under this part.

(c) Not have any financial interest in a recipient of proceeds under this part and shall not engage in any conduct that constitutes a substantial conflict of interest.

(d) Immediately advise the commission of agriculture in writing of the details of any incident or circumstances that may present the existence of a substantial conflict of interest with respect to the performance of his or her duty under this part.

(e) Disclose a substantial conflict of interest related to any matter before the department of agriculture or the commission of agriculture takes any action with respect to the matter, which disclosure shall become a part of the record of the official proceedings.

(f) Refrain from doing all of the following with respect to the matter that is a basis of a substantial conflict of interest:

(i) Voting in the proceedings related to the matter.

(ii) Participating in the discussion or deliberation of the matter.

(iii) Being present at the meeting when the discussion, deliberation, and voting on the matter takes place.

(iv) Discussing the matter with any other member of the commission of agriculture or the joint evaluation committee.

(11) An application for a grant from the Agricultural Development Fund shall be made on a form or format prescribed by the department of agriculture. The department of agriculture may require the applicant to provide information reasonably necessary to allow the department of agriculture to make a determination required under this section.

(12) The department of agriculture shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

**Sec. 13202a Agricultural development fund; creation as revolving fund; administration; investment; lapse; money appropriated from 21st century jobs trust fund; manner of investment.**

(1) The agricultural development fund is created as a revolving fund within the department of treasury to be administered by the department of agriculture. The state treasurer shall direct the investment of the agricultural development fund. Money in the agricultural development fund at the close of the fiscal year shall remain in the agricultural development fund and shall not lapse to the general fund. The department of agriculture may utilize up to 4% of the agricultural development fund for administrative purposes. The state treasurer shall credit to the agricultural development fund money from the following sources:

(a) Appropriations.

(b) Money or other assets from any source for deposit into the agricultural development fund, including federal money, other state revenues, gifts, bequests, or donations, as well as money from any other source provided by law.

(c) Any money representing loan repayments and interest on the loans.

(2) Of the money appropriated under [2006 PA 153](#) from the 21st century jobs trust fund, not more than 10% shall be used for grants and the remaining shall be used for loans and loan guarantees. The maximum grant from the agricultural development fund shall not exceed \$250,000.00. The maximum low-interest loan supported by the agricultural development fund shall not exceed \$500,000.00.

(3) Upon request from the commission of agriculture, the state treasurer shall invest the money in the agricultural development fund in a manner similar to the qualified agricultural loan program established in section 2a of 1855 PA 105, MCL 21.142a, as provided in section 13202.

**[DRAFTER'S NOTE: THE FOLLOWING TWO SECTIONS ARE PART OF JULLIAN STILLE ACT, BUT SHOULD BE LEFT BEHIND IN A TRUNCATED ACT OR ADDED TO THE ENVIRONMENTAL CODE.]**

**[(1) As used in this section:**

**(a) "DEQ" means the department of environmental quality.**

**(b) "Clean Air Fund" means the Michigan clean air fund created in this section.**

**(2) The Michigan clean air fund is created within the department of treasury to be administered by DEQ. Money in the clean air fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The state treasurer shall credit to the fund the money from the uncollectibles allowance recovery funds established in section 4 as well as money from any other source provided by law.**

**(3) Money in the clean air fund shall be used by DEQ to provide grants and loans to individuals, private or public corporations, and local units of government for programs or projects established to reduce oxides of nitrogen and volatile organic compounds and for the administration of the grant and loan program.**

**(4) The director of DEQ shall have final approval of grants and loans made under this section. Grants and loans made under this section are contingent upon the availability of money in the clean air fund.**

**(5) The director of DEQ may impose fiduciary obligations upon a recipient of a grant, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money.**

**(6) An application for a grant or loan from the clean air fund shall be made on a form or in a format prescribed by DEQ. DEQ may require the applicant to provide any information reasonably necessary to allow DEQ to make a determination required under this section.**



(7) DEQ shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

**Definitions; uncollectibles allowance recovery fund; establishment and administration; deposit; recorded amounts; disbursement of money into Michigan clean air fund; allocation to customers of cooperative electric utility; rules.**

(1) As used in this section:

(a) "PSC" means the Michigan public service commission.

(b) "Cooperative electric utility" means an electric utility organized as a cooperative corporation under 1931 PA 327, MCL 450.1 to 450.192.

(c) "Recovery fund" means the uncollectibles allowance recovery fund created in subsection (2).

(d) "Utility" means a person, firm, corporation, cooperative, association, or other agency that is subject to the jurisdiction of the PSC and that distributes and sells electricity or natural gas to the public for residential use.

(2) The PSC shall require a utility to establish and to administer an uncollectibles allowance recovery fund.

(3) A utility required by the PSC to establish and administer an uncollectibles allowance recovery fund shall annually deposit into its recovery fund the difference between the uncollectible provision as recorded in the utility's financial records for 1999 less the provision as recorded on the utility's financial records in each subsequent fiscal year.

(4) Not less than 30 days after the close of the utility's fiscal year, the utility shall inform the PSC of the amount of money that the utility recorded into its recovery fund for that year. A dispute regarding the reasonableness of an amount recorded on a utility's financial record as a provision for its uncollectible expenses or the accuracy of the amount deposited into a utility's recovery fund shall be resolved by the PSC after notice to the utility and an opportunity for the utility to submit comments.

(5) An investor owned utility shall annually disburse money from its recovery fund to the state treasurer for deposit into the Michigan clean air fund created in section 3 in accordance with the orders and rules of the PSC.

(6) A cooperative electric utility shall annually allocate all money from its recovery fund to its customers in proportionate amounts based on each customer's patronage with the cooperative. The money shall be paid to each customer in accordance with the cooperative's capital credit rotation policy.

(7) The PSC shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.]

**Source Statute: PA 322 OF 2000 – JULIAN-STILLE VALUE-ADDED ACT**

## **Part B. Forest Finance Authority.**

**[Drafter's note, the following text comes from the MICHIGAN FOREST FINANCE AUTHORITY ACT and section numbering (last digit) corresponds to same section in that Act, for ease of comparison.]**

**Sec. 13211. Purpose of part. [Drafter's Note: It made sense to violate our general rule on omitting purposes section for this part, especially in light of its specificity and the bonding requirements.]**

The purpose of this part and of the forest finance authority created by this part is to preserve existing jobs, create new jobs, and alleviate and prevent unemployment through the retention, promotion, and development of forestry and forest industries and to protect the health and vigor of forest resources by doing all of the following:

(a) Funding practices prescribed and approved by the department that intensify management of certain highly productive portions of this state's forest system.

- (b) Implementing a system of forest management that is investment-oriented, economically efficient, and environmentally sound.
- (c) Implementing a system of forest management that is consistent with principles of sustainable forestry and with part 525 of Act 451 of 1994, MCL 324.52501 – 324.52511.
- (d) Promoting a stable and continuing supply of timber for future economic expansion.
- (e) Providing dependable funding of scheduled forest management operations.
- (f) Promoting effective investment of revenues from timber sales for high future returns.
- (g) Facilitating timely performance of forest management operations.
- (h) Earning additional revenues for forest management from timber sales.
- (i) Improving existing timber stands and establishing new stands of trees.
- (j) Providing for reforestation, forest protection, and timber stand improvement.
- (k) Providing an additional funding source for the purposes described in this section from indebtedness secured with revenues generated from future sale of timber harvested from state tax reverted lands, from lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and from other lands as provided by law.

**Sec. 13213. Michigan forest finance authority; creation; exercise of powers, duties, and functions; handling of funds.**

The Michigan forest finance authority is created as a body corporate within the department of natural resources and shall be administered under the supervision of the department but shall exercise its prescribed statutory power, duties, and functions independently of the department. The budgeting, procurement, and related functions of the forest finance authority shall be performed under the direction and supervision of the department. Funds of the forest finance authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the forest finance authority authorizing the issuance of bonds and notes.

**Sec. 13214 Board of directors; appointment; terms; oath; vacancy; persons subject to §§15.321 to 15.330; discharge of duties; policies and procedures; conducting business at public meetings; notice; quorum; actions of board; representative as voting member; chairperson.**

(1) The forest finance authority shall be governed by a board of directors consisting of the director of the department of natural resources, the state treasurer, the director of the department of labor and economic growth, and 6 residents of the state, appointed by the governor with the advice and consent of the senate as follows:

- (a) One individual shall represent the forest products industry within the state.
- (b) One individual shall be a commercial logging contractor.
- (c) One individual shall be an owner of nonindustrial, private forestland.
- (d) One individual shall be from the wood products manufacturing industry.
- (e) One individual shall represent hunters, anglers, and other outdoor recreation interests.
- (f) One individual from a college or university in the state with knowledge and expertise in forest management.

(2) The 6 resident directors appointed under subsection (1)(a) to (f) shall serve terms of 3 years. In appointing the initial 6 resident members of the board, the governor shall designate 2 to serve for 3 years, 2 to serve for 2 years, and 2 to serve for 1 year.

(3) Upon appointment to the board under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the forest finance board shall enter the office and exercise the duties of the office.

(4) Regardless of the cause of a vacancy on the forest finance board, the governor shall fill a vacancy in the office of a member of the board by appointment with the advice and consent of the senate. A vacancy shall be filled for the balance of the unexpired term of the office. A member of the board shall hold office until a successor has been appointed and has qualified.

**[Drafter's note: Subsection (5) and (6) were eliminated from this part, as ethics provisions are consolidated at the beginning of the Code.]**

(5) Members of the forest finance board and officers and employees of the forest finance authority are subject to 1968 PA 317, MCL 15.321 to 15.330. A member of the board or an officer, employee, or agent of the forest finance authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board or an officer, employee, or agent of the forest finance authority, when acting in good faith, may rely upon the opinion of counsel for the forest finance authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the forest finance authority represented to the member of the board, officer, employee, or agent to be correct by the officer of the forest finance authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants fairly to reflect the financial condition of the forest finance authority.

(6) The board shall organize and make its own policies and procedures. The board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Five members of the board constitute a quorum for the transaction of business. An action of the board requires a concurring vote by 5 members of the board. A state officer who is a member of the board may designate a representative from his or her department to serve instead of that state officer as a voting member of the board for 1 or more meetings. The state treasurer shall serve as chairperson of the board.

**Sec. 13215. Election of chairperson and vice-chairperson; state forester as executive director; qualifications, duties, and compensation of employees; delegation of powers or duties; rights and interests of authority; annual report; audits; records.**

(1) The forest finance authority shall elect a chairperson and a vice-chairperson from among its members. The state forester shall serve as the executive director of the forest finance authority. The forest finance authority may employ legal and technical experts and other officers, agents, or employees, permanent or temporary, paid from the funds of the forest finance authority. The forest finance authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director of the department of natural resources. The forest finance authority may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper.

(2) The forest finance authority shall contract with the department of natural resources for the purpose of maintaining and improving the rights and interests of the forest finance authority.

(3) The forest finance authority shall annually file a written report on its activities of the last year with the legislature. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and a description of the forest management practices undertaken by the department of natural resources with proceeds of bonds sold under this part.

(4) The accounts of the forest finance authority shall be subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted auditing principles.

**Sec. 13216 Powers of board.**

Except as otherwise provided in this part, the board may do all things necessary or convenient to implement the purposes, objectives, and provisions of this part, and the purposes, objectives, and powers delegated to the board by other laws or executive orders, including, but not limited to, all of the following:

- (a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws at its pleasure.
- (b) Sue and be sued in its own name and plead and be impleaded.
- (c) Borrow money and issue negotiable revenue bonds and notes pursuant to this part.
- (d) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.
- (e) With the prior consent of the department of natural resources, solicit and accept gifts, grants, loans, and other aid from any person, or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.
- (f) Acquire standing timber, timber cutting rights, and the state's interest in contracts granting cutting rights, on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law, to be used for any of the purposes provided in this part subject to the restrictions of section 13219. However, the state shall not convey to the forest finance authority fee title to any state forest lands.
- (g) Procure insurance against loss in connection with the property, assets, or activities of the forest finance authority.
- (h) Invest money of the forest finance authority, at the board's discretion, in instruments, obligations, securities, or property determined proper by the board, and name and use depositories for its money.
- (i) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice payable out of any money of the forest finance authority, subject to the restrictions of section 13217.
- (j) Indemnify and procure insurance indemnifying members of the board from personal loss or accountability from liability asserted by a person on bonds or notes of the forest finance authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the forest finance authority.
- (k) Do all other things necessary or convenient to achieve the objectives and purposes of the forest finance authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the forest finance authority.

**Sec. 13217. Financing forest management operations and practices; guidelines, rules, and objectives; application of funds; interim procedure; annual list of activities and practices; projection of probable default; contracts for cutting and sale of timber; forest development fund; audit.**

(1) The forest finance authority shall finance only forest management operations and practices consistent with part 525 of Act 451 of 1994, MCL 324.52501-324.511, that follow the guidelines, rules, and objectives prescribed and approved by the department of natural resources as these guidelines, rules, and objectives are amended by the department.

(2) Funds managed by the forest finance authority shall be applied in a manner consistent with part 525 of Act 451 of 1994, MCL 324.52501-324.511, and the land management planning policies of the department of natural resources on lands that have been identified for forest management practices. In the absence of an approved state forest management plan covering a candidate area, an interim procedure, as adopted by the department, shall be used to assure that all forest values have been considered in selecting sites for investment with funds of the forest finance authority. The department shall annually submit a list of activities and practices allocated from the funds generated under this part for the board's review and determination of consistency with the purposes of this part.

(3) The executive director of the forest finance authority shall notify the department of natural resources if the forest finance authority projects a probable default on any bonds or notes issued by the forest finance authority, and within 1 year of receipt of the notification, or within less than 1 year, if the notification indicates a shorter time period is necessary to avoid a default, the department shall identify and convey to the forest finance authority sufficient timber on tax reverted lands to enable the forest finance authority to avoid the projected default and to provide for timely payment of principal of and interest on the forest finance authority's bonds or notes. The forest finance authority may only issue contracts for the cutting and sale of timber that has been conveyed to the forest finance authority under this section to avoid a default on any bonds or notes issued by the forest finance authority. The determination of the board as to the need to cut and sell timber is conclusive. Contracts for the cutting and sale of timber shall be consistent with part 525 of Act 451 of 1994, MCL 324.52501-324.52511, and with the guidelines, rules, and objectives prescribed by the department of natural resources.

(4) The forest finance authority shall establish a fund designated as the "forest development fund." Any money on hand or received in the future from bond proceeds and from contracts for the cutting and sale of timber on tax reverted lands shall be deposited in the forest development fund. In addition, this fund may receive revenues from any other source. The forest finance authority shall use money in the forest development fund for 1 or more of the following:

- (a) To provide for the payment of principal of and interest on any bonds or notes issued by the forest finance authority.
- (b) For reforestation, forest protection, and timber stand improvement.
- (c) To obtain and maintain certification of sustainable forestry standards in the state forest under section 52505 of Act 451 of 1994, MCL 324.52505.
- (d) For any other purposes authorized by this part.

(5) The auditor general shall audit the expenditures of the forest development fund at least once every 3 years.

**Sec. 13218. Department as agent for authority; conveyance of state's interest in contracts granting timber cutting rights; deposit of money received; conveyance of title to timber.**

(1) Except as provided in section 13217(3), the department of natural resources shall act as the agent for the forest finance authority in contracting for the cutting and sale of timber or other forest management operations and practices undertaken by the forest finance authority.

(2) The state's interest in all existing and future contracts granting timber cutting rights on state tax reverted lands are conveyed to the forest finance authority to be used for any of the purposes of this part subject to the restrictions of this part. The money received by the state from existing or future contracts for the cutting and sale of timber on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law shall be deposited in the forest development fund and utilized as provided in section 13217(4).

(3) In order to provide for additional security for indebtedness of the forest finance authority, the department of natural resources may convey to the forest finance authority title to timber on all or any portion of tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law. The form of conveyance shall be approved by the attorney general and by resolution of the state administrative board. If the forest finance authority receives title to any timber, it may release and reconvey timber on state tax reverted lands,

on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law if requested by the department of natural resources, and the reconveyance from the forest finance authority to the department will not cause the forest finance authority to default on any obligation or covenant contained in any resolution of the forest finance authority authorizing issuance of bonds or notes.

**Sec. 13219. Bonds and notes generally; expenses; expenditures.**

(1) The forest finance authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the forest finance authority. Bonds and notes of the forest finance authority are not a debt or liability of the state and do not create or constitute any indebtedness, liability, or obligations of the state or constitute a pledge of the faith and credit of the state. All authority bonds and notes shall be payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the forest finance authority is obligated to pay the principal of and the interest on the bond or note only from revenues or funds of the forest finance authority pledged for the payment of principal and interest and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in carrying out this part shall be payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the forest finance authority to incur any indebtedness or liability on behalf of or payable by the state.

(3) Any revenues or funds available to the forest finance authority that are not necessary to pay principal of or interest on any outstanding bonds or notes of the forest finance authority or which are not required to be deposited in a fund created to secure the bonds or notes of the forest finance authority or required to provide for the funding of any other matters required by a resolution authorizing the issuance of bonds or notes of the forest finance authority shall be expended to fund forest management programs in a manner prescribed by the department of natural resources. Any money derived from the proceeds of bonds or notes shall be expended by the forest finance authority in the manner prescribed in the part and the resolution authorizing such indebtedness.

**Sec. 13220. Forest financing bonds and notes; purposes; payment; requirements; signature of board member or office of authority; sale of bonds or notes; applicability of other laws; interest rate agreement.**

(1) The forest finance authority may issue from time to time bonds or notes in principal amounts the forest finance authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

- (a) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the forest finance authority whether the bonds or notes or interest to be funded or refunded have or have not become due.
- (b) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes.
- (c) The payment of interest on the bonds or notes for a period as the forest finance authority determines.
- (d) The payment of all other costs or expenses of the forest finance authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The bonds or notes of the forest finance authority shall not be a general obligation of the forest finance authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the forest finance authority:

**[Drafter's Note: Recommend revisiting this section and subsequent bonding sections after other bonding provisions in Article XIV are drafted to see if a reference will do here.]**

- (a) Shall be authorized by resolution of the forest finance authority.
  - (b) Shall bear the date or dates of issuance.
  - (c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.
  - (d) Shall be serial bonds, term bonds, or term and serial bonds.
  - (e) Shall mature at such time or times not exceeding 30 years from the date of issuance.
  - (f) May provide for sinking fund payments.
  - (g) May provide for redemption at the option of the forest finance authority for any reason or reasons.
  - (h) May provide for redemption at the option of the bondholder for any reason or reasons.
  - (i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.
  - (j) Shall be registered bonds, coupon bonds, or both.
  - (k) May contain a conversion feature.
  - (l) May be transferable.
  - (m) Shall be in the form, denomination or denominations, and with the other provisions and terms as is determined necessary or beneficial by the forest finance authority.
- (4) If a member of the board or any officer of the forest finance authority whose signature or facsimile of his or her signature appears on the forest financing note, bond, or coupon ceases to be a member or officer before the delivery of that note or bond, the signature shall continue to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.
- (5) Bonds or notes of the forest finance authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the forest finance authority determines. Bonds and notes of the forest finance authority are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the forest finance authority is not required to be filed under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.
- (6) The issuance of forest financing bonds and notes under this section is subject to the agency financing reporting act.
- (7) For the purpose of more effectively managing its debt service, the forest finance authority may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the forest finance authority.

#### **Sec. 13221 Refunding bonds or notes.**

**[Drafter's note: Subsections (1) and (2) of this section should be revisited after bonding sections of Article XIV are drafted, to see if a reference to Article XIV may be substituted here.]**

- (1) The forest finance authority may provide for the issuance of forest financing bonds or notes in the amounts the forest finance authority considers necessary for the purpose of refunding bonds or notes of the forest finance authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the forest finance authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and pending such applications, may be placed in escrow to be applied to the

purchase or retirement at maturity or redemption on the date or dates determined by the forest finance authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the forest finance authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the forest finance authority for use by the forest finance authority in any lawful manner.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the forest finance authority may provide that the bonds or notes to be refunded shall be considered paid when there has been deposited in escrow, money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the forest finance authority to the holders of the bonds or notes to be refunded shall be terminated except as to the rights to the money or investment obligations deposited in trust.

(3) The forest finance authority shall not have outstanding at any time bonds or notes in an aggregate principal amount exceeding \$20,000,000.00 excluding bonds or notes issued to refund outstanding bonds or notes.

**Sec. 13222. Security to assure timely payment of bond or note.**

(1) The forest finance authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, and any other transaction to provide security to assure timely payment of a forest financing bond or note.

(2) The forest finance authority may authorize payment from the proceeds of the forest financing notes or bonds, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of forest financing notes or bonds.

**Sec. 13223. Forest Financing bonds or notes; authority of board member, executive director, or other officer of authority.**

Within limitations that shall be contained in the issuance or authorization resolution of the forest finance authority, the forest finance authority may authorize a member of the board, the executive director, or other officer of the forest finance authority to do 1 or more of the following:

- (a) Sell and deliver, and receive payment for notes or bonds.
- (b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured or are subject to redemption.
- (c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purpose.
- (d) Buy notes or bonds so issued and resell those notes or bonds.
- (e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the forest finance authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.
- (f) Direct the investment of any and all funds of the forest finance authority.
- (g) Approve the terms of a contract, including, but not limited to, a contract for the sale or cutting of timber, and execute and deliver the contract subject to the restrictions of this part.



(h) Approve terms of any insurance contract, agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, an agreement to manage payment, revenue, or interest rate exposure, or any other transaction to provide security to assure timely payment of a bond or note.

(i) Perform any power, duty, function, or responsibility of the forest finance authority.

**Sec. 13224. Resolution authorizing bonds or notes; provisions.**

A resolution authorizing forest financing bonds or notes may provide for all of the following that shall be part of the contract with the holders of the bonds or notes:

(a) A pledge to any payment or purpose all or any part of authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders. The forest finance authority shall not mortgage or grant a security interest in or otherwise pledge its ownership rights in standing timber. This subdivision does not prohibit the forest finance authority from pledging any revenues derived from the sale of timber or any contracts for the cutting of timber.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the forest finance authority. Money of the forest finance authority and deposits of money may be secured in the manner determined by the forest finance authority. Banks and trust companies may give security for such deposits.

(g) Vest in a trustee, or a secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the forest finance authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the forest finance authority to appoint a trustee under this part or to limit the rights, powers, and duties of the trustee.

(h) Provide to a trustee or the noteholders or bondholders remedies that may be exercised if the forest finance authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(i) By mandamus or other suit, action, or proceeding at law or in equity, to enforce the rights of the bondholders or noteholders, and require the forest finance authority to carry out any other agreements with the holders of those notes or bonds and to perform the forest finance authority's duties under this part.

(ii) Bring suit upon the notes or bonds.

(iii) By action or suit, require the forest finance authority to account as if it were the trustee of an express trust for the holders of the notes or bonds.

(iv) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the notes or bonds.

(v) Declare the notes or bonds due and payable and, if all defaults shall be made good, then, as permitted by such resolution, annul that declaration and its consequences.

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes.

**Sec. 13225. Pledge.**

A pledge made by the forest finance authority shall be valid and binding from the time the pledge is made. The money or property pledged and then received by the forest finance authority immediately is subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the forest finance authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. The resolution, the trust agreement, or any other instrument by which a pledge is created need not be recorded in order to establish and perfect a lien or security interest in the property so pledged.

**Sec. 13226. Personal liability on forest financing bonds or notes.**

No member of the forest finance authority, or any person executing forest financing bonds or notes issued under this part, or any person executing any agreement on behalf of the forest finance authority is liable personally on the bonds or notes by reason of their issuance.

**Sec. 13227. Purchasing, holding, canceling, or reselling forest financing bonds or notes.**

The forest finance authority may purchase bonds or notes of the authority out of funds or money of the authority available for that purpose. The forest finance authority may hold, cancel, or resell authority bonds or notes subject to or in accordance with an agreement with holders of authority bonds or notes.

**Sec. 13228. Rights and remedies.**

The state pledges to and agrees with the holders of forest financing bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the forest finance authority by this part to fulfill the terms of an agreement made with the holders of forest financing bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the forest finance authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

**Sec. 13229. Forest Financing bonds or notes as legal investments; security.**

Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in forest financing bonds or notes issued under this part, and forest financing bonds or notes shall be authorized security for public deposits.

**Sec. 13230. Property and income of authority; exemption from taxes and special assessments; bonds or notes exempt from taxation.**

Property of the forest finance authority is public property devoted to an essential public and governmental function and purpose. Income of the forest finance authority is considered to be for a public purpose. The property of the forest finance authority and its income and operation are exempt from all taxes and special assessments of the state

or a political subdivision of the state. Bonds or notes issued by the forest finance authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

**Sec. 13231. Liberal construction; broad interpretation.**

This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

**Sec. 13232. Rules.**

The forest finance authority may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement this part.

**Part C. Renaissance Zones For Agricultural Processing Facilities**

**[Drafter's note, the following text comes from the MICHIGAN RENAISSANCE ZONE ACT, Act 376 of 1996 and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]**

**Sec. 13288c.**

(1) The board, upon recommendation of the board of the Michigan strategic fund defined in section \_\_\_\_\_ of this code, formerly section 4 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004, and upon recommendation of the commission of agriculture, may designate not more than 30 additional renaissance zones for agricultural processing facilities within this state in 1 or more cities, villages, or townships if that city, village, or township or combination of cities, villages, or townships consents to the creation of a renaissance zone for an agricultural processing facility within their boundaries.

(2) Each renaissance zone designated for an agricultural processing facility under this section shall be 1 continuous distinct geographic area.

(3) The board may revoke the designation of all or a portion of a renaissance zone for an agricultural processing facility if the board determines that the agricultural processing facility does 1 or more of the following in a renaissance zone designated under this section:

(a) Fails to commence operation.

(b) Ceases operation.

(c) Fails to commence construction or renovation within 1 year from the date the renaissance zone for the agricultural processing facility is designated.

(4) Beginning on the date of the amendatory act that added this subsection, the board shall consider all of the following when designating a renaissance zone for an agricultural processing facility:

(a) The economic impact on local suppliers who supply raw materials, goods, and services to the agricultural processing facility.

(b) The creation of jobs relative to the employment base of the community rather than the static number of jobs created.

(c) The viability of the project.

(d) The economic impact on the community in which the agricultural processing facility is located.

(e) All other things being equal, giving preference to a business entity already located in this state.

(5) Beginning on the date of the amendatory act that added this subsection, the board shall do all of the following:

- (a) Require a development agreement between the Michigan strategic fund and the agricultural processing facility.
- (b) Designate not less than 3 of the renaissance zones for agricultural processing facilities that have an initial capital investment of less than \$7,000,000.00.
- (c) Designate not less than 5 of the renaissance zones for agricultural processing facilities in rural areas.

**Source Statute: PA 451 OF 1994 - FOREST FINANCE AUTHORITY ACT - NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT – MCL §§324.50501-50521)**

**DIVISION III - OTHER STATE ACTIVITIES PROMOTING THE AGRICULTURAL ECONOMY**

**[Reserved for future legislation or cross-reference to existing law not part of the Code.]**

**MICHIGAN ECONOMIC DEVELOPMENT (MEDC)**

**[Editor's note: the draft of ARTICLE V is included in this document. To assist in orienting the reader, remaining articles of the draft Michigan economic development code, including source statutes, are outlined in a separate document.]**

**ARTICLE V - MICHIGAN INTERNATIONAL TRADE DEVELOPMENT**

**DIVISION I – DEFINITIONS**

**Sec. 15102: Definitions.**

As used in this article:

- (a) “Act of congress” means the act of congress approved June 18, 1934, entitled “An act to provide for the establishment, operation and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes”.
- (b) “Export development authority” means the Michigan export development authority created by section 15253.
- (c) “Export development board” means the board of directors of the authority established by section 15254.
- (d) “Constituent unit” means a city or county requesting the incorporation of a port authority.
- (e) “Eligible export loan” means a loan by a participating financial institution located within this state the proceeds of which are restricted to the financing of eligible export transactions.
- (f) “Eligible export transaction” means the sale of goods or services, or the development of goods or services for sale, outside of the United States by a person doing business in this state, which goods or services, in the judgment of the authority, have a substantial portion of their value created within this state and which sale or development, in the judgment of the authority, creates or maintains employment in this state.
- (g) “Export insurance” means insurance made available by the export development authority to protect an exporter against a foreign buyer's failure to pay for goods or services for political or commercial reasons. The amount of the loss covered for each transaction and particular risks shall be determined by the authority.
- (h) “Governing body of the city” means the city council or city commission of a city requesting incorporation of a port authority created under this code.
- (i) “Governing body of the county” means the county board of commissioners of a county participating in an authority created under this code.
- (j) “Grant” means an amount of money provided by the export development authority to a nonprofit organization.
- (k) “Guarantee” means a guarantee against loss, in whole or in part, of principal of and interest on an eligible export loan. The guarantee may include, without limitation, insurance against loss up to the guarantee amount. A single guarantee may encompass several individual eligible export loans or eligible export transactions.

(l) “Guarantee amount” means the maximum amount payable under a guarantee which amount shall be specifically set forth in writing at the time the guarantee is entered into by the export development authority.

(m) “Participating financial institution” means a bank as defined by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, an agency or branch of a foreign banking corporation licensed by the commissioner of the financial institutions bureau, or a national bank, state or federal savings and loan association, or savings bank or federal credit union located within this state that has been approved by the export development board to participate in guaranteed funding for eligible export loans and transactions within the purposes of this part.

(n) “Person” means an individual, corporation, association, partnership, governmental agency, or any other legal entity, **unless another meaning is obvious from the context in which the word appears. [Editor’s note, the highlighted language was added, because the word “person” appears to mean “natural person” in much of this article.]**

(o) “Port authority” means a port authority created pursuant to section 15504.

(p) “Port facilities” means those facilities owned by the port authority such as: seawall jetties; piers; wharves; docks; boat landings; marinas; warehouses; storehouses; elevators; grain bins; cold storage plants; terminal icing plants; bunkers; oil tanks; ferries; canals; locks; bridges; tunnels; seaways; conveyors; modern appliances for the economical handling, storage, and transportation of freight and handling of passenger traffic; transfer and terminal facilities required for the efficient operation and development of ports and harbors; other harbor

(q) “Private corporation” means any corporation organized pursuant to Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948, for the purpose of establishing, operating and maintaining foreign trade zones according to the provisions of this code.

(r) “Project” means the acquisition, purchase, construction, reconstruction, rehabilitation, remodeling, improvement, enlargement, repair, condemnation, maintenance, or operation of port facilities.

(s) “Public corporation” means the state, or any county, township, city or village within the state, or any state or municipal authority or similar organization financed in whole or in part by public funds.

(t) “Qualifying financial institution” means a state or national chartered bank, a state or federal chartered credit union, a state or federal chartered savings and loan association, or savings bank, or an institution under the farm credit act of 1971, Public Law 92-181, 85 Stat. 583.

## **DIVISION II: STATE FOREIGN TRADE INFRASTRUCTURE**

### **PART A: Export Development.**

**[Drafter’s note, the following text comes from the MI Export Development Act (PA 157 of 1986) corresponding to MCL 447.151-168, and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]**

**Sec. 15253: Michigan export development authority; creation; budgeting, procurement, and related functions; purpose of authority**

(1) The Michigan export development authority is created as a body politic and corporate within, but not as a part of, the department of agriculture. The authority shall exercise the authority's prescribed statutory powers, duties, and functions independently of the director of the department of agriculture and independently of the commission of agriculture. The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the director of the department of agriculture.

(2) The purpose of the export development authority is:

- (a) To assist, promote, encourage, develop, and advance economic prosperity and employment throughout this state by fostering the expansion of exports of goods and services to foreign purchasers.
- (b) To cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in this state.
- (c) To provide guarantees and grants and to locate sources and export insurance to support export development not otherwise available.
- (d) To provide information and referrals to, and to act as a clearinghouse for, potential and existing exporters.

**Sec. 15254: Board of directors; appointment, qualifications, and terms of members; vacancy; oath or affirmation; reimbursement for expenses; election of chairperson, vice-chairperson, secretary, and other officers; quorum; majority vote sufficient for action; vote necessary for bonds.**

(1) The governing and administrative powers of the export development authority are vested in a board of directors consisting of 12 members. Three members shall be the director of the department of commerce, the director of the department of agriculture, and the state treasurer. The director of commerce, the director of the department of agriculture, and the state treasurer shall serve as full voting members of the export development board and may appoint a representative to serve as a voting member in their absence. Nine members shall be appointed by the governor with the advice and consent of the senate.

(2) At least 6 of the members shall be from the private sector. An appointed member of the authority shall be a resident of this state. An appointment to fill a vacancy of an appointed member shall be made in the same manner as the original appointment. Of the 9 members appointed by the governor for a fixed term, 1 shall be appointed from 1 or more nominees of the speaker of the house of representatives and 1 shall be appointed from 1 or more nominees of the senate majority leader.

(3) At least 1 of the appointed members of the export development board shall be a person of recognized ability and experience in each of the following areas:

- (a) Finance.
- (b) International trade.
- (c) Business management.
- (d) Economics.
- (e) Agriculture.

(4) Of the original 9 appointed members, 3 members shall be appointed for terms expiring on the third Monday in June, 1986; 3 members shall be appointed for terms expiring on the third Monday in June, 1987; and 3 members shall be appointed for terms expiring on the third Monday in June, 1988. Their respective successors shall be appointed for terms of 3 years from the third Monday in June of the year of appointment. A member shall serve until his or her successor is appointed and qualified.

(5) Before beginning his or her duties, a member of the export development board shall take and subscribe the constitutional oath of office. A record of each oath or affirmation shall be filed in the office of the secretary of state.

(6) A member of the export development board is not entitled to compensation for services as a member, but may be reimbursed for all actual and necessary expenses incurred in connection with the performance of duties as a member.

(7) The export development board annually shall elect 1 of its members as chairperson, 1 of its members as vice-chairperson, and 1 member as secretary. The export development board may elect other officers as it considers proper. Six members of the export development board constitute a quorum, and the affirmative vote of the majority of members present at a meeting of the export development board is necessary and sufficient for an action taken by the board. The affirmative votes of not less than 6 members are necessary for the approval of a resolution authorizing the issuance of bonds under this part.

**Sec. 15255: Effect of vacancy in membership of export development board; authorization and effective date of action by board; delegation of powers and duties; liability or accountability on contract, commitment, or agreement; liability for damage or injury; indemnification of board members and staff officers; appointment of employees to unclassified positions; terms.**

(1) A vacancy in the membership of the export development board shall not impair the right of a quorum to exercise all rights and perform all the duties of the board. An action taken by the export development board may be authorized by resolution at a regular or special meeting and shall take effect upon the date the resolution is approved by the board unless some other date is provided in the resolution.

(2) The export development board may delegate to 1 or more of its members or to an official, agent, or employee of the authority the powers and duties as the board considers proper.

(3) A member of the export development board or a person acting on behalf of the export development authority executing a contract, commitment, or agreement issued under this part shall not be personally liable or accountable on the contract, commitment, or agreement.

(4) A member of the export development board or a person acting on behalf of the export development authority shall not be liable personally for damage or injury resulting from the performance of his or her duties arising under this part. The authority shall indemnify and procure insurance indemnifying the members of the export development board and staff officers appointed by a resolution of the board from personal loss or accountability from liability asserted by a person on the bonds or notes of the fund or from any personal liability or accountability by reason of the issuance of the bonds, notes, insurance, or guarantees; or by reason of any other action taken or the failure to act by the authority.

(5) The export development board may appoint up to 2 employees to unclassified positions not included in the state civil service to serve for terms at the pleasure of the board.

**Sec. 15256: Conducting business at public meeting; notice; availability of writings to public; confidentiality.**

(1) The business which the export development authority may perform shall be conducted at a public meeting of the authority held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) Except as provided in subsection (3), all writing prepared, owned, used, in the possession of, or retained by the export development authority in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) Information submitted to or compiled by the authority in connection with the authority's responsibilities with respect to the identity, background, finance, marketing plans, trade secrets, or any other commercially



sensitive information of persons, firms, associations, partnerships, agencies, corporations, or other entities is confidential, except to the extent that the person or entity which provided the information consents to disclosure.

**Sec. 15257: Powers of authority generally.**

The export development authority shall possess all the powers of a body politic and corporate necessary and convenient to accomplish the purposes of this part including, but not limited to, all of the following powers:

- (a) To borrow money and otherwise incur indebtedness for any of its purposes including the issuance of bonds, debentures, notes, or other evidence of indebtedness, whether secured or unsecured.
- (b) To purchase, discount, sell, or negotiate, with or without guaranty notes, other evidences of indebtedness, and to sell and guarantee securities.
- (c) To lend money to a financial institution in the form of an eligible export loan which is used to finance eligible export transactions.
- (d) To procure or locate sources of export insurance. To provide guarantees to guarantee, insure, coinsure, or reinsure against risk of loss, and other insurance or guarantees as the authority may consider necessary.
- (e) To provide financial counseling services to businesses of this state.
- (f) To procure insurance to secure the payment of principal and interest on bonds, notes, or other obligations of the authority.
- (g) To accept gifts, grants, or loans from, and enter into contracts or other transactions with, a federal or state agency, a municipality, a private organization, or any other source. To charge and collect fees for its services. To enter into contracts or other agreements with the export-import bank of the United States, the foreign credit insurance association, or other federal agencies or instrumentalities.
- (h) To adopt, and from time to time to amend or rescind a bylaw or rule of the authority as may be necessary or convenient for the performance of its functions, powers, and duties under this part.
- (i) To sue and be sued.
- (j) To purchase; receive; take by grant, gift, devise, bequest, or otherwise; lease; or acquire, own, hold, improve, employ, use, or deal in and with real or personal property, or any interest in real or personal property, wherever situated.
- (k) To sell, convey, lease, exchange, transfer, or otherwise dispose of property or an interest in property, wherever situated.
- (l) To promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.
- (m) To lead, participate in, support, or otherwise cooperate in trade missions, trade shows, and related efforts to encourage the export of Michigan goods and services.
- (n) To sponsor or foster a foreign sales corporation as defined in section 922 of the internal revenue code of 1986, 26 U.S.C. 922. To establish, participate, and secure federal approval for an export trading company under the export trading company act of 1982, Public Law 97-290, 96 Stat. 1233, or equivalent entities under similar federal legislation. The authority may in connection with any entities created under this subdivision acquire and transfer title to goods and corporate or partnership ownership interest, and may enter into joint ventures with other export trading companies.

(o) To exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in this part.

**Sec. 15258: Guarantee or export insurance for eligible export transaction; requirements; fees; determinations; condition to provision of guarantee or export insurance.**

(1) The export development authority may provide a guarantee or export insurance for an eligible export transaction. Any guarantee or export insurance entered into by the authority under this part shall not constitute a general obligation of this state. Guarantees or export insurance provided by the authority under this part shall not be terminated, canceled, or otherwise revoked except in accordance with the terms of the guarantee or export insurance; shall be conclusive evidence that the guarantee or export insurance complies fully with the provisions of this part; and shall be valid and incontestable in the hands of a holder in due course of a guaranteed eligible export loan.

(2) The authority may charge reasonable fees for providing guarantee or export insurance pursuant to this section to a participating financial institution.

(3) Before providing financing for an eligible export transaction, a participating financial institution shall determine the exporter's viability, the economic benefits to be derived from the eligible export transaction, the prospects for repayment, and any other facts that it considers necessary in order to determine that the guarantee or export insurance is consistent with the purposes of this part.

(4) The authority shall provide the guarantee only if, and to the extent that, the authority determines in its sole discretion that at least 1 of the following is true:

(a) The guarantee is reasonably necessary in order to stimulate or facilitate the making of an eligible export transaction including, without limitation, the making of the eligible export transaction upon terms that will enable the transaction to be reasonably competitive with transactions in other states or in foreign countries.

(b) The guarantee is reasonably necessary in order to stimulate or facilitate the resale of an eligible export loan to a holder in due course that otherwise would not purchase the eligible export loan and documentation is provided by the financial institution indicating refusal to provide a loan sufficient for the eligible export transaction.

(5) The authority may condition the provision of guarantee or export insurance under this section upon such other terms and conditions as the authority considers desirable to carry out the purposes of this part.

**Sec. 15258a. Grant to non-profit organization; purposes.**

The export development authority may provide a grant to a non-profit organization for 1 or more of the following purposes:

(a) To encourage establishment or expansion of business operations related to exports which will create or maintain employment in this state.

(b) To research industrial and commercial innovations which are likely to increase exports from this state.

(c) To conduct market research to determine the potential for increasing goods and services from this state

**Sec. 15259: Bonds generally**

The export development authority may issue, sell, and provide for the retirement of bonds in the amount of \$50,000,000.00 to provide funds for the creation and operation of the authority. These bonds shall be limited obligations of the authority, the principal of and interest on which shall be payable solely out of the revenues derived by the authority. Bonds issued under this part shall not constitute an indebtedness of the

state or the authority within the meaning of any state constitutional provision or statutory limitation, but the bonds shall be indebtedness payable solely from bond revenues and fees, interest on the revenues and fees, and funds established for the payment of the bonds, and shall not constitute nor give rise to a pecuniary liability of the state or the authority, to a charge against the general credit of the authority or the state, or to a charge against the taxing powers of the state, and that fact shall be plainly stated on the face of each bond.

**Sec. 15260: Bonds and notes generally**

(1) Bonds issued under this part may be executed and delivered at any time, may be issued as a single issue or from time to time as several issues, may be in the form and denominations, may be in coupon or registered form, may be payable in installments and at such time or times not exceeding 30 years from their date, may be subject to the terms of redemption, may be payable at such place or places, may bear interest at the rate or rates as may be set, reset, or calculated from time to time, or may bear no interest and may contain provisions not inconsistent with this part, all of which shall be provided in the resolution of the authority authorizing the bonds.

(2) Bonds issued under the authority of this part may be sold at public or private sale at the price and in the manner and from time to time as may be determined by the authority to be most advantageous. The authority may pay all expenses, premiums, insurance premiums, and commissions that the authority considers necessary or advantageous in connection with the authorization, sale, and issuance of the bonds from proceeds of the bonds.

(3) Bonds or notes issued by the authority are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bonds issued by the authority are not required to be registered. A filing of a bond of the authority is not required under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

**Sec. 15261: Bonds or security agreement; resolution; trustee or depository.**

(1) The resolution under which the bonds are authorized to be issued or any security agreement, including an indenture or trust indenture to be entered into in connection with the bonds, may contain any agreements and provisions customarily contained in instruments securing bonds including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of obligations, the creation and maintenance of special funds, and the rights and remedies available, in the event of default, to the bondholders or to the trustee under the security agreement, all as the authority considers advisable and as is not in conflict with this part. However, in making an agreement or provisions, the authority may not obligate itself, except with respect to eligible export loans and transactions, and may not incur a pecuniary liability or a charge upon the general credit of the authority or of the state, or against the taxing powers of the state.

(2) The resolution of the export development authority authorizing bonds under this part and security agreement securing the bonds may provide that, in the event of default in payment of the principal of or the interest on the bonds or in the performance of an agreement contained in the proceedings or security agreement, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect any obligations and to apply any revenues pledged in accordance with the proceedings or the provisions of the security agreement. A security agreement also may provide that, in the event of default in payment or the violation of an agreement contained in the security agreement, the agreement may be foreclosed by proceedings at law or in equity, and may provide that a trustee under the security agreement or the holder of any of the bonds secured by the security agreement may become the purchaser at any foreclosure sale, if he or she is the highest bidder. A breach of any such agreement shall not impose pecuniary liability upon this state or the authority or a charge upon the general credit of the authority or of the state or against the taxing power of the state.

(3) A trustee under a security agreement, or a depository specified by a security agreement, may be a person or corporation the authority designates, notwithstanding that the person or corporation may be a nonresident of the state or incorporated under the laws of the United States or any state of the United States.

**Sec. 15262: Bonds; refunding**

(1) Bonds issued under this part and at any time outstanding, at any time and from time to time, may be refunded by the export development authority by the issuance of its refunding bonds in an amount as the authority considers necessary, but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest on the bonds and any premiums, expenses, and commissions necessary to be paid in connection with the bonds. Refunding may be effected whether the bonds to be refunded have matured or will mature in the future, either by sale of the refunding bonds to be refunded or by exchange of the refunding bonds for the bonds to be refunded by the refunding bonds.

(2) The holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange before the date on which the bonds are payable, or, if the bonds are called for redemption, before the date on which the bonds are by their terms subject to redemption. All refunding bonds issued under the authority of this section shall be payable in the same manner and under the same terms and conditions as are provided in this part for the issuance of bonds.

**Sec. 15263: Proceeds from sale of bonds; application; export development bond fund as separate fund; investments and earnings**

(1) The proceeds from the sale of any bonds issued under this part shall be applied only for the purpose for which the bonds were issued. However, any premium or secured interest received in a sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason a portion of the proceeds shall not be needed for the purpose for which the bonds were issued, the unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.

(2) The proceeds of bonds issued under this part shall be kept in a separate fund to be known as the export development bond fund, which separate fund is created in the state treasury. All other money received by the authority also shall be deposited in this fund. With the approval of the export development board, the state treasurer may invest and reinvest all money in the fund from time to time in such obligations of the United States or of such other governmental or corporate issuers as the state treasurer, with the approval of the export development board, considers appropriate. All earnings upon the investments shall be added to the fund.

**Sec. 15266: Insurance fund; insurance pledged as security.**

(1) The export development authority may create an insurance fund consisting solely of funds from the export development bond fund. The insurance fund shall be held in the custody of 1 or more financial institutions having a principal place of business in this state. The insurance fund shall be held as security for the holders of bonds issued under this part.

(2) An insurance fund authorized by this section shall be governed by a trust agreement entered into by the authority with the trustees. The trust agreement may contain such provisions and limitations as to the investment and disbursement of money in the insurance fund; the payment of expenses of the insurance fund; the appointment, resignation, and discharge of trustees; the delegation of enforcement and collection powers under the insurance agreements to the trustee; the duties of the trustees; amendments of the trust agreement; and such other lawful provisions and limitations as the authority considers appropriate. The trust agreement may pledge premiums and other money that may be deposited in the insurance fund. The pledge shall be valid and binding from the time when the pledge is made. The premiums and other money so pledged and thereafter received by the insurance fund or by the trustees in its behalf immediately shall

be subject to the lien of the pledge and shall be valid and binding as against all parties having claims of any kind against the insurance fund, irrespective of whether the parties have notice of the lien.

(3) The export development authority also may use export development bond funds to purchase insurance that shall be pledged for the security of the holders of any bonds issued under this part. In any case in which insurance is pledged as security, whether obtained through the insurance funds authorized to be created under this section or purchased with export development bond funds, any description of the insurance shall expressly indicate the limitation of the liability of the authority and that neither the credit nor taxing power of this state or of any political subdivision of this state shall be available to satisfy any obligations with respect to the insurance.

**Sec. 15267: Bonds, debentures, notes, or other evidence of indebtedness as securities; investment; deposit**

(1) The bonds, debentures, notes, or other evidence of indebtedness of the export development authority are made securities in which all public officers and bodies of this state and all municipal subdivisions of this state; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or who later may be authorized to invest in bonds or other obligations of this state may properly and legally invest funds, including capital, in their control or belonging to them.

(2) The bonds, debentures, notes, or other evidence of indebtedness of the authority also are made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipal subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state are now or later may be authorized.

**Sec. 15268: Annual report; contents; examination; audit.**

(1) On January 1 of each year the export development authority shall report on its operations for the preceding fiscal year to the governor and the legislature. The report shall include a summary of the activities of the authority and a complete operating and financial statement. The report shall include, but not be limited to, information on the number, value, type of product, and destination of export transactions assisted, the type of assistance rendered for each by the authority, grants made pursuant to section 15258a and the results of those activities, trade shows attended, trade missions led, and any other information considered necessary for a competent evaluation or the authority's effectiveness.

(2) The authority shall be subject to examination by the state treasurer. The accounts of the authority shall be audited by the state auditor general or a certified public accountant appointed by the auditor general.

**PART B: Division of International Commerce.**

**[Drafter's note, the following text comes from the Division of International Commerce Act (Act 24 of 1958), corresponding to MCL 447.101 to 447.103, and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]**

**Sec. 15301: International commerce division; creation, director.**

There is created in the department of commerce a division of international commerce. The head of the division of international commerce shall be the director who shall be directly responsible to the director of the department of commerce.

**Compiler's Notes:** For transfer of authority, powers, duties, functions, and responsibilities of the division of international commerce and foreign trade branch to the department of commerce and the authority, powers, duties,

functions, and responsibilities of the Michigan international office, Michigan department of commerce, to the Michigan international trade authority, see E.R.O. No. 1994-3, compiled at MCL 447.212 of the Michigan Compiled Laws.

**Sec. 15302: International commerce division; performance of duties within appropriations.**

The division of international commerce within available appropriations shall accomplish the duties of the division prescribed by section 15216.

**Sec: 15303: International commerce division; powers and duties**

The division of international commerce shall serve as the focal point of the state for international activity and shall:

- (a) Conduct its own research and contract for outside research, when necessary, on such subjects as United States and foreign tariffs, United States and foreign nontariff barriers and business practices, trade statistics, individual country and industry markets, identification of the assets of this state in product offerings and investment opportunities, advances in international transport technology, and seaway and port service improvements.
- (b) Maintain a basic foreign trade library where the products of its research would be readily available.
- (c) Serve as the clearing house for the interchange of market and product information between industry of this state and foreign interests.
- (d) Prepare brochures, in foreign languages as required, which attractively and persuasively identify the international assets of this state in trade and investment.
- (e) Conduct specialized advertising programs in conjunction with specific promotional campaigns.
- (f) Collect and distribute to commercial libraries overseas directories, catalogues, brochures and other information of value to foreign businessmen.
- (g) Prepare articles for publication in state, national and foreign media.
- (h) Publish a series of specialized newsletters.
- (i) Prepare news releases on matters of timely interest.
- (j) Provide speakers bureau services for civic organizations and other private groups in this state.
- (k) Maintain continuing contacts with business of this state to encourage and, when appropriate, assist them in selling abroad.
- (l) Inform industrialists of this state of the advantages of overseas arrangements for local manufacturing through joint ventures and licensing.
- (m) Develop programs of mutual assistance with banks, shipping agents, combination export managers, freight forwarders, international consultants, and other trade intermediaries of this state.
- (n) Encourage and assist the expansion of international trade activities of the chambers of commerce, development commissions, trade associations and similar organizations in this state.

- (o) Maintain continuing contacts with federal agencies, the Congress, international organizations, foreign embassies, consulates and trade promotion offices in the United States, regional organizations, and colleges and universities.
- (p) Promote visits to this state by, and cooperate with, foreign businessmen and trade association representatives, to be coordinated where desirable with invitations to visit this state to the appropriate country's economic and commercial representatives in the United States.
- (q) Coordinate state activities when appropriate for state presentation before the United States trade commission, interstate commerce commission, trade information committee, federal maritime administration, congressional committees, and other similar bodies when the international interests of the state can thus be advanced.
- (r) Advertise and promote port utilization, including the mounting of missions to key shipping areas abroad.
- (s) Publish and distribute shipping schedules.
- (t) Serve as a central information and intelligence center for ports matters.
- (u) Coordinate intervention in Great Lakes rate and service cases.
- (v) Spearhead state activities to encourage improvements in the St. Lawrence seaway.
- (w) Coordinate more active and effective state participation in assisting local groups applying for foreign trade zones.

#### **PART C. FOREIGN TRADE ZONES.**

[Drafter's note, the following text comes from the Foreign Trade Zones Act 154 of 1963, corresponding to MCL 447.1- 447.3, and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]

##### **Sec. 15402: Foreign trade zones; application for establishment.**

Any public or private corporation may make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with the act of congress.

##### **Sec. 15403: Foreign trade zones; rules and regulations.**

Any public or private corporation, whose application is granted pursuant to the act of congress, may establish, operate and maintain a foreign trade zone subject to the conditions and restrictions of the act of congress and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by the act of congress to carry out the provisions of this part.

#### **PART D: Port Authorities.**

[Drafter's note, the following text comes from the Hertel-Law-T. Stopczynski Port Authority Act (PA 639 of 1978), corresponding to MCL 120.101-.130, and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]

##### **Sec. 15503: Port authority; exercise of powers and duties; jurisdiction**

A port authority may exercise and apply any or all of its powers and duties as prescribed and set forth in this part, within the respective boundaries of the county or counties creating a port authority under this part, including jurisdiction over commercially navigable water lying therein.

**Sec. 15504: Port authority; incorporation; recommendations; articles of incorporation; body corporate and politic; public purpose.**

- (1) A city and county, a combination of counties or a combination consisting of at least 1 city and 1 county, by joint resolution of their respective governing bodies, may request the governor to authorize the incorporation of a port authority. The governor shall consider the recommendations of the state transportation department and the department of commerce in authorizing the port authority. The initial articles of incorporation shall be approved by the governor and may thereafter be amended by resolution of the authority, subject to approval by the governor. After approval by the governor, the articles of incorporation and any amendments to those articles shall be effective upon filing with the secretary of state.
- (2) A port authority created under this part shall be a body corporate and politic.
- (3) The exercise by a port authority of the powers conferred by this part shall be considered and held to be an essential governmental function and a benefit to, and a legitimate public purpose of the state, the authority, and the constituent units.

**Sec. 15505: Port authority; appointment and terms of members; vacancy; reappointment; chairperson, vice-chairperson, and secretary-treasurer; quorum; voting; expenses; liability.**

- (1) Except as provided in subsection (5), a port authority shall consist of 5 or 7 members as follows:
  - (a) One member shall be appointed by the governor.
  - (b) The remaining members shall be appointed by the governing body of each city and the governing body of each county that requested the incorporation of the authority. The representation on, and the number of members of, the authority shall be determined by agreement among the incorporating units and included within the joint resolution requesting incorporation of the authority.
- (2) The members first appointed shall serve staggered terms. After the first appointment, each member shall serve a term of 4 years, except that a person appointed to fill a vacancy shall be appointed for the balance of the unexpired term. A member shall be eligible for reappointment.
- (3) The members shall elect 1 of their membership as chairperson and another as vice-chairperson, shall designate the terms of office of those officers, and shall appoint a secretary-treasurer who need not be a member. A majority of the members of the authority shall constitute a quorum. The affirmative vote of a majority of the members shall be necessary for any action taken by the authority.
- (4) The members shall serve without compensation but shall be reimbursed for all necessary travel and other expenses incurred in the discharge of their duties.
- (5) An authority that is established in a county having a population of 1,500,000 or more shall consist of 5 members as follows:
  - (a) One member shall be appointed by the governor.
  - (b) Two members shall be appointed by a majority of all the members of the county board of commissioners of the county. The members appointed shall be nominated by the commissioners on the board who do not reside within the political boundaries of a city having a population of 750,000 or more.
  - (c) Two members shall be appointed by the mayor of a city having a population of 750,000 or more that is located in the county.



(6) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, a member of the port authority appointed under this section who exercises the powers contained in this part in good faith is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

**Sec. 15506: Bond of secretary-treasurer**

Before the issuance of any bonds, notes, or other evidences of indebtedness under this part, the secretary-treasurer of a port authority shall execute a bond in the penal sum of \$100,000.00, conditioned upon the faithful performance of the duties of the office and executed by a surety company authorized to transact business in this state as surety. The bond shall be filed in the office of the secretary of state. The premium of the bond shall be a current expense of the authority.

**Sec. 15507: Advisory committees and councils**

A port authority may organize and create advisory committees and councils to serve at the pleasure of the authority for terms and purposes considered to be in the best interest of furthering the intent and purpose of this part. The committees and councils shall be made up of persons especially skilled, knowledgeable, or experienced in international trade, finance, commerce, transportation, or labor. Members of the committees or councils shall serve without compensation but shall be entitled to reasonable and necessary expenses incurred in the discharge of their duties.

**Sec. 15508: Port authority; powers generally.**

A port authority may:

- (a) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.
- (b) Sue and be sued on the same basis as the state; and adopt and register with the secretary of state an official seal and alter that seal at its pleasure.
- (c) Maintain offices at a place or places, either within or without its jurisdiction as it may determine.
- (d) Acquire, construct, reconstruct, rehabilitate, improve, maintain, lease as lessor or as lessee, repair, or operate port facilities within its territorial jurisdiction, including the dredging of ship channels and turning basins and the filling and grading of land therefor. An authority may operate a leased facility, owned by the authority, if the lessee defaults and a new lease is negotiated or competitively bid.
- (e) Designate the location and character of the port facilities which the authority may hold or own or over which it is authorized to act and regulate all matters related to the location and character of those port facilities.
- (f) Acquire, hold, and dispose of real and personal property.
- (g) Make directly, or through the hiring of expert consultants, investigations and surveys of whatever nature, including studies of business conditions, freight rates, port services, physical surveys of the conditions of channels and structures, and the necessity for additional port facilities for the development and improvement of commerce and recreation and for the more expeditious handling of that commerce and recreation, and make studies, surveys, and estimates, as necessary for the execution of its powers under this part.
- (h) Promulgate all necessary rules to fulfill the purposes of this part.
- (i) Issue its bonds, notes, or other evidences of indebtedness as provided in this part.

- (j) Fix and revise from time to time and charge and collect rates, fees, rentals, or other charges for the use of a facility owned by the authority.

**Sec. 15509: Port authority; additional powers.**

A port authority may:

- (a) Appear in its own behalf before boards, commissions, departments, or other agencies of the federal government or of any state or international conferences and before committees of the congress of the United States and the state legislature in all matters relating to the design, establishment, construction, extension, operation, improvement, repair, or maintenance of a project operated and maintained by the authority under this part, and appear before any federal or state agencies in matters relating to transportation rates, port services and charges, demurrage, switching, wharfage, towage, pilotage, differentials, discriminations, labor relations, trade practices, river and harbor improvements, aids to navigation, permits for structures in navigable waters, and all other matters affecting the physical development of, and the business interest of, the authority and those it serves.
- (b) Make application for, receive and accept from any federal, state, or municipal agency, foundation, public or private agency, or individual, a grant or loan for, or in aid of, the planning, construction, operation, or financing of a port facility; and receive and accept contributions from any source of money, property, labor, or other things of value, to be held, used, and applied for the purposes for which the grant or contribution may be made.
- (c) Appoint an executive director who shall be the chief administrative officer of the authority, and to whom the authority may delegate any of its administrative powers and authorizations. During employment the executive director shall not have a financial interest in port facilities or projects over which the authority has jurisdiction or power or authorization to act.
- (d) Employ personnel as is necessary and employ the services of private consultants and engineers, legal counsel, accountants, construction and financial experts, and other agents for rendering professional and technical assistance and advice as may be necessary, and whose compensation, including the executive director, shall be determined by the authority.

**Sec. 15510: Port authority; additional powers.**

A port authority may:

- (a) Subject to the authority of the federal government and the state and with the agreement of the constituent units, provide for the preservation of navigation within its territorial jurisdiction, including the establishment by regulation of lines beyond which piers, bulkheads, wharves, pilings, structures, obstructions, or extensions of any character may not be built, erected, constructed, or extended; provide by regulation for the stationing, anchoring, and movement of vessels or other watercraft; adopt rules to prevent material, refuse, or matter of any kind from being thrown into, deposited, or placed where it may fall, or be washed, into navigable waters under its jurisdiction; ascertain the depth and course of the channels of those navigable waters; erect and maintain, authorize the erection and maintenance of, and make rules respecting wharves, bulkheads, piers, and piling, and the keeping of the same in repair, to prevent injury to navigation or health; regulate the use of wharves, docks, piers, bulkheads, or pilings owned by it; lease or rent the same, and impose and collect dockage from vessels and watercraft lying at, or using the same; and collect wharfage and other charges upon goods, wares, merchandise or other articles landed at, shipped from, stored on, or passed over the same.
- (b) Make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this part.

(c) Lay out, construct, acquire, operate, lease, sell, and convey planned industrial districts as a part of port facilities within its jurisdiction, subject to the restrictions contained in this part upon operation and ownership of port facilities.

(d) Do all acts and things necessary or convenient to promote and increase commerce and recreation within its territorial jurisdiction and carry out the powers expressly granted and any powers implied or necessary for the exercise of the powers expressly granted in this part.

**Sec. 15511: Port authority; liability**

Except with respect to docks or wharves owned, controlled, or operated by, the port authority, this part shall not be construed to impose a duty upon an authority to a person using its waters in regard to the safety thereof, or to render an authority liable for loss of life or injury or damage to person or property, by reason of an obstruction in, or unsafe condition of, any part of its waters, nor shall this part be construed to render the authority liable in damages or otherwise for an omission to pass or enforce a rule or resolution made under this part.

**Sec. 15512: Acquisition of property by purchase, lease, or condemnation; sale or removal of structures; sale or lease of property.**

(1) A port authority may acquire by purchase or lease, when it considers the purchase or lease expedient, lands, structures, property, rights, rights of way, franchises, easements, and other interests in lands as it considers necessary or convenient for the construction or operation of a project, upon terms and at a price as considered reasonable and agreed upon between the authority and the owner thereof.

(2) A port authority may acquire by condemnation lands, property rights, rights of way, franchises, easements, and other property, or parts thereof or rights therein, of a person, partnership, association, or corporation considered by the authority to be necessary for the construction or efficient operation of a project. However, a facility currently operated as a port facility by a terminal operator or a facility owned or operated by and for the exclusive use of the owner or operator and a facility owned or operated by a common carrier or public utility shall be exempt from this subsection. The condemnation shall be made in the manner provided by Act No. 295 of the Public Acts of 1966, as amended, being sections 213.361 to 213.391 of the Michigan Compiled Laws, except where that procedure may be inconsistent with this part.

(3) A port authority may sell or remove the buildings or other structures upon lands taken by the authority, and may sell or lease lands or rights or interest in lands or other property taken or purchased for the purposes of this part.

**Sec. 15513: Contracts for acquisition, improvement, enlargement, or extension of port facilities; payment of cost; pledge of full faith and credit; tax levy; methods of raising funds; assessment of costs.**

(1) A port authority and 1 or more constituent units may enter into a contract or contracts for the acquisition, improvement, enlargement, or extension of port facilities and for the payment of the cost thereof by the contracting constituent units, with interest, over a period of not more than 40 years.

(2) Each contracting constituent unit shall pledge its full faith and credit for the payment of its obligations under the contract. If the constituent unit has taxing power, each year it shall levy a tax upon all real and personal property within the constituent unit, which may be imposed without limitation as to rate or amount, to the extent necessary for the prompt payment of that part of the contract obligations as shall fall due before the following year's tax collection. The tax shall be in addition to any tax which the contracting constituent unit may otherwise be authorized to levy and may be imposed without limitation as to rate or amount, but shall not be in excess of the rate or amount necessary to pay the contract obligation. If any contracting constituent unit at the time of its annual tax levy has on hand in cash any amount pledged to the

payment of the current obligations for which the tax levy is to be made, then the annual tax levy may be reduced by that amount. For the purpose of obtaining the credit, funds may be raised by a contracting constituent unit in 1 or more of the following methods:

- (a) By service charge to users of the facilities owned by the port authority.
- (b) By setting aside state collected funds disbursed to the contracting constituent unit.
- (c) By special assessment upon lands benefited.
- (d) By setting aside any other available money.

(3) A contracting constituent unit may agree to raise all or any part of its contract obligation by 1 or more of the methods enumerated in subsection (2) which may be available. The various powers granted in this part to a constituent unit shall be exercised by its governing body.

(4) If a constituent unit, other than a county, operating under this part elects to raise money to pay all or a portion of its share of the cost of a project by assessing the costs upon benefited lands, its governing body shall so determine by resolution and fix the district therefor. The governing body shall then cause a special assessment roll to be prepared and thereafter the proceedings in respect to the special assessment roll and the making and collection of the special assessments on the roll, shall be in accordance with the provisions of the statute or charter governing special assessments in the constituent unit, except that the total assessment may be divided into any number of installments not exceeding 30, and any person assessed shall have the right at the hearing upon the special assessment roll to object to the special assessment district previously established.

**Sec. 15514: Revenue bonds; applicability of revenue bond act; revenue bonds payable solely from revenues or income.**

(1) A port authority may provide by resolution for the issuance of revenue bonds of the authority for the purpose of providing funds for paying the cost of port facilities, or for paying the cost of an extension, enlargement, or improvement of a project then under the control of the authority. The bonds issued under this section shall mature at a time or times, not exceeding 40 years after their date of issuance, as the authority may provide.

(2) Revenue bonds issued under this section are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(3) Revenue bonds issued pursuant to this section shall not be considered to constitute a debt of this state, a political subdivision of this state, the authority, or any constituent unit, or a pledge of the faith and credit of this state or a political subdivision of this state or of the authority or any constituent unit, but shall be payable solely from the revenues or income to be derived from the projects. The revenue bonds shall contain on their face a statement to the effect that the bonds and attached coupons are payable solely from revenues and are not a general obligation of this state, a political subdivision of this state, the authority, or a constituent unit, and neither the faith and credit nor the taxing power of this state, a political subdivision of this state, the authority, or a constituent unit, is pledged to the payment of the principal of or the interest on the bonds.

**Sec. 15515: Revenue bonds; form; date; denomination; place of payment; redemption; validity of signature or facsimile; issuance in coupon or registered form; registration, reconversion, and interchange of bonds.**

A port authority shall determine the form of the bonds of each series issued pursuant to section 14, including any interest coupons to be attached thereto, the date of the bonds, the denomination of the bonds,

and the place of payment of principal and interest, which may be at any bank or trust company within or without the state. The bonds of each series may be made redeemable before their maturity or maturities at the option of the authority, at a price and under the terms and conditions as may be fixed by the authority before issuance of the bonds. If an officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be an officer before delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of coupon and registered bonds.

**Sec. 15516: Revenue bonds; trust agreement**

Revenue bonds issued pursuant to this part shall be secured by a trust agreement by and between the port authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company, within or without the state. The trust agreement may pledge or assign the rentals and other revenues of the authority, but shall not convey or mortgage part or all of a project. The trust agreement shall contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition or construction of a project and the extension, enlargement, improvement, maintenance, operation, repair, and insurance of a project and the custody, safeguarding, and application of all money and may contain provisions for the employment of consulting engineers in connection with the construction and operation of a project. The trust agreement shall set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by the bondholders and may contain any other provisions the authority may consider reasonable and proper for the security of the bondholders.

**Sec. 15517: Bonds as securities; investment; deposit.**

(1) Bonds issued under this part are securities in which all public officers and public agencies of the state and its political subdivisions and all banks, trust companies, savings and loan associations, investment companies, and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them.

(2) Bonds issued under this part are securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or other obligations of the state is authorized by law.

**Sec. 15518: Additional bonds for acquisition of port facilities; authorization; resolution; issuance and execution of bonds; seal; negotiable instruments; maturities; payment; tax exemption; issuance of bonds or notes subject to revised municipal finance act.**

(1) In addition to the bonds authorized in section 15514, bonds may be issued for the purpose of acquiring port facilities, as follows:

(a) By the issuance of bonds in anticipation of payments to become due under contracts by which 1 or more constituent units agree to pay to an authority operating under this part certain sums toward the cost of the acquisition, improvement, enlargement, or extension of a project that may

be made under this part. Contracts are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(b) By money advanced by an authority operating under this part under agreements with a constituent unit or other municipality for the repayment of the money.

(c) By money advanced, from time to time, before or during construction of a project, by a public corporation, for which an authority operating under this part shall reimburse the corporation with interest not to exceed 8% per annum or without interest as may be agreed, when funds are available for reimbursement. The obligation of an authority to make the reimbursement may be evidenced by a contract or note, which contract or note may be made payable out of the payments to be made by constituent units under contracts made pursuant to subdivision (b), or out of the proceeds of bonds issued pursuant to this part by the county or out of any other available funds.

(2) Bonds issued under this section shall be authorized by a resolution adopted by the port authority. The bonds shall be issued in the name of the authority and shall be executed by the chairperson and secretary-treasurer of the authority, who shall also cause their facsimile signatures to be affixed to the interest coupons to be attached to the bonds. The authority shall adopt a seal that shall be affixed to the bonds. Bonds issued under this section shall be negotiable instruments and shall mature not more than 40 years after the date of issuance. The bonds and coupons shall be made payable in lawful money of the United States and shall be exempt from all taxation whatsoever by this state or by any taxing authority within this state.

(3) Bonds or notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**Sec. 15519: Validation of bonds or notes; contesting validity**

Bonds or notes issued under this part by a port authority are validated. An authority acting under this part or any constituent unit, including the county, shall not contest the validity of bonds or notes issued under this part or any contract which provides the security therefor, after the bonds are sold and delivered and the authority has received the consideration therefor.

**Sec. 15520: Contract for use of port facilities; increase in charges; duration of contract.**

Any 1 or more municipalities or other public corporations, either within or without an authority, may contract for the use of port facilities from a port authority operating under this part. The charges specified in a contract shall be subject to increase by the authority at any time in order to provide funds to meet the obligations of the project involved. A contract authorized pursuant to this section shall be for a period of not more than 50 years.

**Sec. 15521: Dock, waterfront, or riparian property; transfer, possession, or control.**

The governing bodies of constituent units may, by majority vote, and with or without consideration, transfer or cause to be transferred to the port authority or may place in its possession and control, by lease, or other contract or agreement, either for a limited period or in fee, any dock, waterfront, or riparian property owned or controlled by a constituent unit.

**Sec. 15523: Plan for future development, construction, and improvement of port and facilities; notice; comments; hearing; adoption; modification, amendment, or extension; plans for specific projects.**

(1) An authority created on or after May 1, 1984 shall within 2 years after its creation prepare or cause to be prepared a plan for the future development, construction, and improvement of the port and its facilities, including the maps, profiles, and other data and descriptions necessary to set forth the location and character of the work to be undertaken by the authority. An authority in existence before May 1, 1984 shall

prepare or cause to be prepared the plan provided for in this subsection not later than September 30, 1985. The authority shall notify the legislature on April 15, 1985, as to the progress of the plan. The authority shall cause notice by publication to be given upon the completion of the plan in a daily newspaper of general circulation in the area under the jurisdiction of the authority. The notice shall fix the time and place for hearing on the plan, which shall be not less than 30 nor more than 60 days after publication of the notice. Any interested person may file written comments to the plan, if those comments are filed with the secretary-treasurer of the authority not less than 5 days before the date fixed for the hearing. After the hearing, the authority may adopt the plan, with any modifications or amendments, as the official plan of the authority. The authority, after adoption of the plan, may modify, amend, or extend the plan after notice and hearing in the manner prescribed in this subsection.

(2) The plan and any modification, amendment, or extension, when adopted by the authority after notice and hearing, shall be conclusive except that plans for specific projects, to be undertaken in execution of the official plan, shall not be adopted by the authority without prior individual approval by the governing bodies of its constituent units, the state transportation department, and the department of commerce.

**Sec. 15524: Operating budget.**

(1) The port authority shall submit in writing a detailed estimate of the budget required for the business and conduct of an authority's affairs, initially, for a 2-year period, and annually thereafter to the governing bodies of its constituent units, the department of commerce, and the state transportation department for approval. The state shall provide 50% of the operating budget of the authority, to be included in the state transportation department budget which shall be subject to legislative approval. Fifty percent of the operating budget of an authority in which not more than 1 county and not more than 1 city participate shall be funded equally by the participating county and city.

(2) A city or county creating or participating in a port authority may appropriate for the use of the authority, and include in its levy for general fund purposes, an amount considered proper. However, the total amount permitted by law to be levied by a city or county for general fund purposes shall not be considered increased by this section.

(3) As used in this section, "operating budget" means solely operation and maintenance expenses of an authority not included in the cost of a specific project, and interest on notes, but excludes amounts for debt service on bonds and amounts for acquisition, construction, enlargement, improvement, or extension of port facilities.

**Sec. 15525: Surplus of unencumbered funds; disposition.**

If at the end of a fiscal year a surplus of unencumbered funds remains after providing for the operating expenses of a port authority, the authority may pay that surplus into the general funds of the state and of its constituent units in the same proportion which the appropriations made by each to the authority bear to each other.

**Sec. 15526: Entry on lands, waters, and premises; purpose; reimbursement for actual damages.**

For the purpose of making surveys, soundings, drillings, examinations, and investigations as it considers necessary or convenient for the purposes of this part, a port authority and its authorized agents and employees may enter upon the lands, waters, and premises in the authority and that entry shall not be considered a trespass; nor shall an entry for these purposes be considered an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for actual damages resulting to the lands, waters, or premises as a result of these activities.

**Sec. 15527: Employees of port authority; transfer and payment of sick leave and annual leave; salary rate; job seniority and pension rights.**

(1) The employees of a port authority, existing on the effective date of this part, of a city or county which creates or participates in an authority created under this part shall become the employees of that succeeding authority.

(2) Each employee at his or her option may transfer all or part of accumulated sick leave and shall be paid 1/2 of all unused accumulated sick leave not transferred. The employee also may transfer all or part of accumulated annual leave not to exceed more than 27 days and shall be paid for all unused accumulated annual leave not transferred.

(3) The transferred employee shall continue at his or her present salary rate, and if greater than that paid in the constituent unit for similar work, shall remain at the current level until matched by that constituent unit.

(4) Job seniority and pension rights shall be credited as if first employed by the constituent unit.

**Sec. 15528: Annual report; audit.**

A port authority shall make an annual report of its activities within 3 months after the close of its fiscal year to the governor and to the governing body of each constituent unit. The report shall include a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once each year by a certified public accountant, with the cost to be treated as an operation expense.

### **DIVISION III: STATE AGRICULTURAL EXPORT DEVELOPMENT**

**PART A: Foreign Trade Branch of the Department of Agriculture.**

[Drafter's note, the following text comes from the Foreign Trade Branch of Department of Agriculture PA 23 of 1968, corresponding to MCL 447.121-.123, and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]

**Sec. 15621: Foreign trade branch of department of agriculture marketing section; creation.**

There is created a foreign trade branch of the marketing section in the department of agriculture.

**Sec. 15622: Foreign trade branch; performance of duties within appropriations.**

The foreign trade branch within available appropriations shall perform the duties of the branch prescribed by section 15623.

**Compiler's Notes:** For transfer of powers and duties of the Foreign Trade Branch of the Marketing Section and the World Trade Services Division from the Department of Agriculture to the Department of Commerce, see E.R.O. No. 1991-11 compiled at MCL 447.211 of the Michigan Compiled Laws. For transfer of authority, powers, duties, functions, and responsibilities of the division of international commerce and foreign trade branch to the department of commerce and the authority, powers, duties, functions, and responsibilities of the Michigan international office, Michigan department of commerce, to the Michigan international trade authority, see E.R.O. No. 1994-3, compiled at MCL 447.212 of the Michigan Compiled Laws.

**Sec. 15623: Foreign trade branch; powers and duties**

The foreign trade branch shall:



- (a) Conduct research on foreign laws and regulations affecting sales of agricultural products of this state abroad.
- (b) Identify foreign markets for agricultural commodities.
- (c) Identify products of this state for promotion abroad.
- (d) Design and execute commodity programs for individual country markets.
- (e) Conduct programs to encourage greater awareness and participation of the farm community of this state in export sales.
- (f) Encourage and assist the expansion of international activities by the various commodity commissions.
- (g) Encourage and assist the expansion of international activities by farm organizations.
- (h) Coordinate relationships and communications with the foreign agriculture service, national commodity groups, United States bureau of commerce, national trade associations and other national agencies in requests for agriculture trade leads either for Michigan suppliers or in cooperation with suppliers in other states.
- (i) Encourage Michigan agricultural industry participation in F.A.S. and bureau of commerce sponsored trade fairs and missions.
- (j) Organize, correlate and implement state, industry and commodity groups on foreign visits and trade missions; selecting potential market areas; developing and publishing market surveys for potential penetration by Michigan suppliers.
- (k) Conduct foreign market research to determine areas where promotion of Michigan products should be concentrated.
- (l) Develop or cause to be developed, multilingual promotional materials for foreign distribution. Develop English versions of foreign promotional presentations for domestic markets and be responsible for appropriate distribution of all trade material developed to aid Michigan shippers and foreign buyers.

#### **PART B: Farm Export Loans and Sales.**

**[Drafter's note, the following text comes from the Michigan Farm Export Act PA 359 of 1990 corresponding to MCL 447.201-.207, and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]**

##### **Sec. 15703: Michigan farm export loan program; creation; administration; purpose.**

The Michigan farm export loan program is created and shall be administered by the department of agriculture for the purpose of enhancing and promoting the export sale of agricultural commodities and products of the state by making it possible for buyers to purchase on credit terms.

##### **Sec. 15704: Duties of director.**

- (1) The director of the department of agriculture shall promote, identify, and facilitate, either directly or through any of the persons listed in section 15706, export sale opportunities of agricultural commodities and products of the state.
- (2) If the director finds that a proposed export sale meets the requirements of this part and the buyer is eligible for a loan from a qualifying financial institution, the director shall notify the state treasurer of the proposed export sale and the state treasurer may invest surplus funds of the state in the lending financial institution to participate in such a loan.

**Sec. 15705: Loan requirements.**

A loan which the director of the department of agriculture may recommend to the state treasurer to invest shall meet the following requirements:

- (a) The agricultural commodities or other products purchased through the loan were produced or processed, in whole or in part, within the state.
- (b) The terms of the loan would assist in making the sale competitive with the sale of agricultural commodities or other products of other states or foreign countries.

**Sec. 15706: Export sale**

An export sale under this part may be identified, proposed, developed, originated, or administered by or through an exporter, importer, agricultural trade association, the United States department of agriculture, a world trade center, the department, a qualifying financial institution, a statutorily created agricultural commodity commission, the Michigan export development authority created by section 15253 of this code, **formerly the Michigan export development authority act, Act No. 157 of the Public Acts of 1986, formerly section 447.153 of the Michigan Compiled Laws**, or any other person.

**MICHIGAN ECONOMIC DEVELOPMENT (MEDC)**

**[Editor's note: the draft of ARTICLE VII is included in this document. To assist in orienting the reader, remaining articles of the draft Michigan economic development code, including source statutes, are outlined in a separate document.]**

**ARTICLE VII – ENCOURAGING MICHIGAN AS A DESTINATION FOR TOURISM, CONVENTIONS  
AND THE FILM INDUSTRY**

**DIVISION I – DEFINITIONS**

(1) As used in this article,

(a) “Accommodations”

Except as otherwise provided, "accommodations" means the room or other space provided to transient guests for dwelling, lodging, or sleeping, including furnishings and other accessories, in a facility that is not a campground, hospital, nursing home, emergency shelter, or community mental health or community substance abuse treatment facility. Accommodations do not include food or beverages. [Sections 17322-17340 of this Code, formerly of PA 106 of 1985 – State Convention Facility Development Act.]

As used in sections 17352 – 17359 of this code, "accommodations" means the room or other space provided for sleeping, including furnishings and other accessories in the room but not including the provision of food, beverages, telephone services, television or movie services, or other similar services, in a facility that is not a hospital, nursing home, emergency shelter, community mental health or community substance abuse treatment facility, or campground. [Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act.]

(b) “Assessment”

Except as otherwise provided, “assessment” means the amount levied against an owner of a transient facility within an assessment district, computed by application of the applicable percentage against aggregate room charges with respect to that transient facility during the applicable assessment period. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act”. (MCL 141.1321-1328); sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80; sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

As used in sections 17223 through 17230 of this Code, “assessment” means the amount levied against an owner under those sections. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.]

(c) “Assessment district”

Except as otherwise provided, “assessment district” means a municipality or a combination of municipalities as described in a marketing program. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act” (MCL 141.1321-1328.)

As used in sections 17373 through 17378 of this code, “assessment district” means a county having a population of more than 1,500,000 and, if so designated by the bureau in the marketing program notice, any county

or counties contiguous with it. [Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws]

As used in sections 17363 through 17370 of this code, “assessment district” means a municipality or combination of municipalities as described in a marketing program. A combination of municipalities is not required to be contiguous. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

(d) “Assessment revenues”

Except as otherwise provided, “assessment revenues” means the money derived from the assessment, including any interest and penalties on the assessment, imposed by sections 17233 through 17238, 17363 through 17370, and 17373 through 17378 of this code. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act”.(MCL 141.1321-1328); Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80; and sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

As used in sections 17223 through 17230 of this code, “assessment revenues” means the money collected by a regional marketing organization from the assessment, including any interest and penalties on the assessment, imposed under sections 17223 through 17230 of this code. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.]

(e) "Base investment" means the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets expended by a person in the development of a qualified film and digital media infrastructure project. Base investment does not include a direct production expenditure or qualified personnel expenditure eligible for a credit under section 17451 of this Code. [Section 17453 of this Code, formerly, PA 86 of 2008, MCL 208.1457]

(f) "Below the line crew" means persons employed by an eligible production company for state certified qualified production expenditures made after production begins and before production is completed, including, but not limited to, a best boy, boom operator, camera loader, camera operator, assistant camera operator, compositor, dialogue editor, film editor, assistant film editor, focus puller, Foley operator, Foley editor, gaffer, grip, key grip, lighting crew, lighting board operator, lighting technician, music editor, sound editor, sound effects editor, sound mixer, steadicam operator, first assistant camera operator, second assistant camera operator, digital imaging technician, camera operator working with a director of photography, electric best boy, grip best boy, dolly grip, rigging grip, assistant key for makeup, assistant key for hair, assistant script supervisor, set construction foreperson, lead set dresser, assistant key for wardrobe, scenic foreperson, assistant propmaster, assistant audio mixer, assistant boom person, assistant key for special effects, and other similar personnel. Below the line crew does not include a producer, director, writer, actor, or other similar personnel.

(g) “Bureau”

Except as otherwise provided, "bureau" means a nonprofit corporation incorporated under the laws of this state existing solely to promote convention business and tourism within this state or a portion of this state and that complies with all of the following:

(i) Has not less than 200 dues-paying members, of which not fewer than 25 are owners of transient facilities.

(ii) Has been actively engaged in promoting convention business and tourism for not less than 10 years.

- (iii) Has a board of directors elected by its members.
- (iv) Has a full-time chief executive officer and not fewer than 14 full-time equivalent employees.
- (v) Is a member of 1 or more nationally recognized associations of travel and convention bureaus.
- (vi) Regularly books conventions at the community's largest convention center, which generate hotel room nights throughout the surrounding area. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act”(MCL 141.1321-1328)]

As used in sections 17363 through 17370 of this code, “bureau” means a nonprofit corporation existing to promote convention business or tourism within this state or a portion of this state. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

As used in sections 17452 through 17359 of this code, “bureau” means a nonprofit corporation incorporated under the laws of this state existing solely to promote convention business and tourism within this state or a portion of this state, and which complies with all of the following:

- (i) Has not less than 400 dues paying members, of which not less than 50 are owners of transient facilities.
- (ii) Has been actively engaged in promoting convention business and tourism for not less than 10 years.
- (iii) Has a board of directors elected by its members.
- (iv) Has a full-time chief operating officer and not less than 10 full-time employees.
- (v) Is a member of 1 or more nationally recognized associations of travel and convention bureaus. [Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

(h) Except as otherwise provided, “chief executive officer” means for a county 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 and for a city, the mayor. [Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act.]

(i) “Community Convention Board” means the board of directors elected by the members of a bureau. A majority of the members of a board shall be owners of transient facilities. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

(j) “Convention and Tourism Marketing Board” means the board of directors of a bureau. [Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

(k) “Convention Authority” means a convention facility authority created under section 17381. [Sections 17381 through 17391 of this Code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 *et seq.*]

(l) “Convention Facility”

Except as otherwise provided, “convention facility” means 1 or more facilities owned or leased by a local governmental unit that are any combination of a convention hall, auditorium, meeting rooms, and exhibition areas that are separate and distinct and contiguous to each other, and related adjacent public areas generally available to members of the public for lease on a short-term basis for holding conventions, meetings, exhibits, and similar events

and the necessary site or sites, together with appurtenant properties necessary and convenient for use in connection with the facility. [Sections 17322-17340 of this Code, formerly PA 106 of 1985 – State Convention Facility Development Act]

As used in sections 17352 through 17359 of this code, "convention facility" means a convention exhibition facility, including meeting rooms and necessary sites, related parking lots or structures, and appurtenant properties and facilities, if the facility itself contains not less than 50,000 square feet of exhibition space and if the eligible municipality is a county, the facility is located within the boundaries of the most populous city in the county. [Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act]

As used in sections 17381 through 17391 of this code, "convention facility" means all or any part of, or any combination of, a convention hall, auditorium, arena, meeting rooms, exhibition area, and related adjacent public areas that are generally available to the public for lease on a short-term basis for holding conventions, meetings, exhibits, and similar events, together with appurtenant property, including parking lots or structures, necessary and convenient for use in connection with the convention facility. [Sections 17381 through 17391 of this Code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 *et seq.*]

As used in sections 17393 through 17399e of this code, "convention facility" means all or any part of, or any combination of, a convention hall, auditorium, arena, meeting rooms, exhibition area, and related adjacent public areas that are generally available to the public for lease on a short-term basis for holding conventions, meetings, exhibits, and similar events, together with real or personal property, and easements above, on, or under the surface of real or personal property, used or intended to be used for holding conventions, meetings, exhibits, and similar events, together with appurtenant property, including covered walkways, parking lots, or structures, necessary and convenient for use in connection with the convention facility. Convention facility includes an adjacent arena with a seating capacity not exceeding 10,000. Convention facility does not include an adjacent arena with a seating capacity exceeding 10,000. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(m) "Convention facility board" means the board of directors of a convention authority. [Sections 17381 through 17391 of this Code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 *et seq.*]

(n) "Convention hotel" means a facility used in the business of providing accommodations that has more than 80 rooms for providing accommodations to transient guests and that complies with all of the following:

(i) Located within a county having a population according to the most recent decennial census of 700,000 or more.

(ii) Located within a county that is 1 or more of the following:

(A) A county that has a convention facility with 350,000 square feet or more of total exhibit space.

(B) A county that has 2,000 or more rooms to provide accommodations for transient guests. [Sections 17322-17340 of this Code, formerly State Convention Facility Development Act]

(o) "Core community" means a qualified local governmental unit as defined under section 17451 of this Code (formerly section 2 of the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2782).

(p) "Develop"

Except as otherwise provided, "develop", unless the context clearly indicates a different meaning, means to acquire, market, promote, construct, improve, enlarge, renew, renovate, replace, lease, equip, furnish, or operate. [Sections 17381 through 17391 of this Code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 *et seq.*]

As used in Sections 17393 through 17399e of this code, "develop" means to plan, acquire, construct, improve, enlarge, maintain, renew, renovate, repair, replace, lease, equip, furnish, market, promote, manage, or operate. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(q) "Direct production expenditure" means a development, preproduction, production, or postproduction expenditure made in this state that is not a qualified personnel expenditure directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in this state, including, but not limited to, all of the following:

(i) Payments to vendors doing business in this state to purchase or use tangible personal property in producing or distributing the qualified production or to purchase services relating to the production or distribution of the qualified production, including all of the following:

(A) Expenditures for optioning or purchasing intellectual property including, but not limited to, books, scripts, music, or trademarks relating to the development or purchase of a script, story, scenario, screenplay, or format, including all expenditures generally associated with the optioning or purchase of intellectual property, including option money, agent fees, and attorney fees relating to the transaction, but not including deferrals, deferments, royalties, profit participation, or recourse or nonrecourse loans negotiated by the eligible production company to obtain the rights to the intellectual property.

(B) Production work, production equipment, production software, development work, postproduction work, postproduction equipment, postproduction software, set design, set construction, set operations, props, lighting, wardrobe, makeup, makeup accessories, photography, sound synchronization, special effects, visual effects, audio effects, film processing, music, sound mixing, editing, and related services and materials.

(C) Use of facilities or equipment, use of soundstages or studios, location fees, and related services and materials.

(D) Catering, food, lodging, and related services and materials.

(E) Use of vehicles, which may include chartered aircraft based in this state used for transportation in this state directly attributable to production of a qualified production, but may not include the chartering of aircraft for transportation outside of this state.

(F) Commercial airfare if purchased through a travel agency or travel company based in this state for travel to and from this state or within this state directly attributable to production or distribution of a qualified production.

(G) Insurance coverage or bonding if purchased from an insurance agent based in this state.

(H) Expenditures for distribution, including, but not limited to, both of the following:

(I) Preproduction, production, or postproduction costs relating to the creation of trailers, marketing videos, commercials, point-of-purchase videos, and content created on film or digital media, including, but not limited to, the duplication of films, videos, compact discs, digital video discs, and digital files or other digital media created for consumer consumption.

(II) Purchase of equipment relating to the duplication or market distribution of any content created or produced in this state.



(I) Other expenditures for production of a qualified production in accordance with generally accepted entertainment industry practices.

(ii) Payments and compensation, not to exceed \$2,000,000.00 for any 1 employee or contractual or salaried employee who performs services in this state for the production or distribution of a qualified production, including all of the following:

(A) Payment of wages, benefits, or fees for talent, management, or labor.

(B) Payment to a personal services corporation or professional employer organization for the services of a performing artist or crew member if the personal services corporation or professional employer organization is subject to the tax levied under section 17451 of this code on the portion of the payment qualifying for the tax credit under this section and the payments received by the performing artist or crew member that are subject to taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and paid to this state in the amount provided under section 351 of the income tax act of 1967, 1967 PA 281, MCL 206.351.

(r) "Director"

Except as otherwise provided, "director" means the director of commerce. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act; Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80; Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws].

(s) "Eligible county" means a county with a population of 1,500,000 or more persons that adopts or has adopted a charter under 1966 PA 293, MCL 45.501 to 45.521, and that intends to impose the tax authorized by sections 17352 through 17359 of this code for purposes related to a stadium as defined under subdivision (i)(i). [Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act]

(t) "Eligible municipality" means any of the following:

(i) An eligible county that intends to impose a tax under sections 17352 through 17359 of this code for purposes related to a stadium as defined under subdivision (i)(i).

(ii) A county that is not a charter county that has a population of more than 500,000 and contains a city with a population of 180,000 or more persons, or the most populous city in that county if either intends to impose a tax under sections 17352 through 17359 of this code for purposes related to a stadium as defined under subdivision (i)(ii) or a convention facility.

(iii) A county with a population of less than 200,000 that contains a city with a population of more than 40,000 but less than 50,000, or the most populous city in that county if either intends to impose a tax under sections 17352 through 17359 of this code for purposes related to a stadium as defined under subdivision (i)(ii) or a convention facility.

(iv) A county with a population of less than 300,000 with a city with a population of more than 100,000 persons, or the most populous city within that county if either intends to impose a tax under sections 17352 through 17359 of this code for purposes related to a stadium as defined under subdivision (i)(ii) or a convention facility.

(v) A county with a population of more than 250,000 with an optional unified form of government or a city within that county that levies a city income tax if either intends to impose a tax under sections 17352 through 17359 of this code for purposes related to a stadium as defined under subdivision (i)(ii) or a convention facility.



(vi) A county with a population of less than 300,000 with a city with a population of more than 70,000 persons, or the most populous city within that county if either intends to impose a tax under [sections 17352 through 17359 of this code](#) for purposes related to a stadium as defined under subdivision (i)(ii). [[Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act](#)]

(u) "Eligible production company" or "production company" means an entity in the business of producing qualified productions, but does not include an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in default on a loan made by this state, a loan guaranteed by this state, or a loan made or guaranteed by any other state.

(v) "Film" means single media or multimedia entertainment content for distribution or exhibition to the general public by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website.

(w) "Film Commissioner" means the Michigan film commissioner created in section 17429b.

(x) "Film Council" means the Michigan film office advisory council created in section 17429c.

(y) "Film and digital media private equity fund" means any limited partnership, limited liability company, or corporation organized and operating in the United States that satisfies all of the following:

(i) Has as its primary business activity the investment of funds in return for equity in qualified productions.

(ii) Holds out the prospect for capital appreciation from the investments.

(iii) Accepts investments only from accredited investors as that term is defined in section 2 of the federal securities act of 1963 and rules promulgated under that act.

(z) "Fiscal year" means an annual period that begins on July 1 and ends on June 30 or the fiscal year for a regional convention authority established by the regional convention facility board of the authority. [[Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.](#)]

(aa) "Fund" means the convention facility authority fund created for each convention authority as provided in section 17387 of this code. [[Sections 17381 through 17391 of this Code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 et seq.](#)]

(bb) "Gross receipts" means that term as defined in former section 7 of 1975 PA 228, or section 111 of the Michigan business tax act, 2007 PA 36, MCL 208.1111. Gross receipts do not include any amount received as reimbursement of sales tax or as charges for use tax. [[Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act.](#)]

(cc) "Interactive website" means a website, the production costs of which exceed \$500,000.00 in an annual period and primarily includes interactive games, end user applications, animation, simulation, sound, graphics, story lines, or video created or repurposed for distribution over the internet. Interactive website does not include a website primarily used for institutional, private, industrial, retail, or wholesale marketing or promotional purposes, or which contains obscene matter or an obscene performance. [section 17451 of this Code.](#) [[Formerly PA 77 of 2008, added MCL 208.1455.](#)]

(dd) "Investment advisory committee" means the committee created within the department of treasury under section 91 of the executive organization act of 1965, 1965 PA 380, MCL 16.191.

(ee) "Legislative body" means the elected body of a local government possessing the legislative power of the local government. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(ff) "Local chief executive officer" means the mayor or city manager of a city or the county executive of a county or, if a county does not have a county executive, the chairperson of the county board of commissioners. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(gg) "Local film office" means an office, agency, bureau, or department of a political subdivision of this state that seeks to promote film production within the political subdivision and that is funded principally by the political subdivision.

(hh) "Local governmental unit" means a county, township, city, village, or a metropolitan authority formed under sections 17393 through 17399e of this Code, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379. sections 17322-17340 of this Code, formerly PA 106 of 1985 – State Convention Facility Development Act

(ii) "Local government"

Except as otherwise provided, "local government" means any county, township, city, village, or intergovernmental entity in this state. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

As used in sections 17393 through 17399e of this code, "local government" means a county or city. For purposes of sections 17398(1)(t) and 17399 other than section 17399(1)(f), local government includes a building authority or downtown development authority created by a county or city under 1975 PA 197, MCL 125.1651 to 125.1681. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(jj) "Marketing Program"

Except as otherwise provided, "marketing program" means a program established by a bureau to develop, encourage, solicit, and promote convention business and tourism within this state or a portion of this state within which the bureau operates. The encouragement and promotion of convention business and tourism shall include any service, function, or activity, whether or not performed, sponsored, or advertised by a bureau, that intends to attract transient guests to the assessment district. [Sections 17233 through 17238 of this Code, formerly the "convention and tourism promotion act"(MCL 141.1321-1328); Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

As used in sections 17363 through 17370 of this code, "marketing program" means a program established by a bureau to develop, encourage, solicit, and promote convention business or tourism within this state or a portion of this state within which the bureau operates. The encouragement and promotion of convention business or tourism includes any service, function, or activity, whether or not performed, sponsored, or advertised by a bureau, that intends to attract transient guests to the assessment district. For a bureau described in section 17363(8), a marketing program includes a contract with a nonprofit organization formed to promote convention business or tourism that receives funding from a tax levied under Act No. 263 of the Public Acts of 1974, being sections 141.861 to 141.867 of the Michigan Compiled Laws, in a contiguous county to provide for the promotion of convention business or tourism. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

(kk) "Marketing program notice"

As used in sections 17233 through 17238 of this code, “marketing program notice” means the notice described in section 17233 of this code. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act” MCL 141.1321-1328)].

As used in sections 17363 through 17370 of this code, “marketing program notice” means the notice described in section 17363 of this code. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

As used in sections 17373 through 17378 of this code, “marketing program notice” means the notice described in section 17373 of this code. [Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

(ll) “Michigan film office,” “film office,” and “office” means the office created under section 17429a of this Code.

(mm) “Michigan film promotion fund” or “Promotion fund” means the fund created under 17429d of this Code.

(nn) “Motor vehicle” means a motor vehicle subject to registration and certificate of title under section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216, that is designed and intended to be used primarily in the transportation of passengers. Motor vehicle does not include a road tractor, school bus, special mobile equipment, tank vehicle, truck tractor, implement of husbandry, or farm tractor as these terms are defined by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923. [Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act.]

(oo) “Municipality”

Except as otherwise provided, “municipality” means a city, county, village, or township. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act” MCL 141.1321-1328)].

As used in sections 17363 through 17370 of this code, “municipality” means a county with a population of less than 650,000 or a city, village, or township within a county with a population of less than 650,000. Municipality does not include a special charter, fourth class city. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

(pp) “Obscene matter or an obscene performance” means matter described in 1984 PA 343, MCL 752.361 to 752.374.

(qq) “Owner”

Except as otherwise provide, “owner” means the owner of a transient facility located within the assessment district or, if the transient facility is operated or managed by a person other than the owner, then the operator or manager of that transient facility. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act” MCL 141.1321-1328); Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80 and Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

As used in sections 17223 through 17230 of this code, “owner” means the owner of a transient facility that is located within the regional assessment district or, if the transient facility is operated or managed by a person other than the owner, then the operator or manager of that transient facility. Owner includes a person electing to come under the provisions of pursuant to section 17229 of this code. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.]

(rr) “Person”

Except as otherwise provided, "person" means a natural person, partnership, fiduciary, association, corporation, or other entity. [Sections 17322-17340 of this Code, formerly PA 106 of 1985 – State Convention Facility Development Act]

As used in sections 17352 through 17359 of this code, "person" means an individual, partnership, corporation, association, or other legal entity. [Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act.]

(ss) "Postproduction expenditure" means a direct expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special or visual effects including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Postproduction expenditure includes direct expenditures for advertising, marketing, distribution, or related expenses. [Section 17451 of this Code.]

(tt) "Qualified city"

As used in sections 17381 through 17391 of this code, "qualified city" means a city with a population of more than 170,000 that is the most populous city in a qualified county. [Sections 17381 through 17391 of this Code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 *et seq.*]

As used in sections 17393 through 173883 of this code, "qualified city" means a city with a population of more than 700,000 according to the most recent decennial census that contains a qualified convention facility. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(uu) "Qualified county"

As used in sections 17381 through 17391 of this code, "qualified county" means a county with a population of more than 500,000 that contains a qualified city, and that is not a charter county or a county with an optional unified form of government. [Sections 17381 through 17391 of this Code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 *et seq.*]

As used in sections 17393 through 17399e of this code, "qualified county" means a county that contains a qualified city. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(vv) "Qualified convention facility" means a publicly owned convention facility with not less than 600,000 square feet of usable exhibition area and that is located in a qualified city. [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(ww) "Qualified film and digital media infrastructure project" means a film, video, television, or digital media production and postproduction facility located in this state, movable and immovable property and equipment related to the facility, and any other facility that is a necessary component of the primary facility. A qualified film and digital media infrastructure project does not include a movie theater or other commercial exhibition facility, a facility used to produce obscene matter or an obscene performance as described in 1984 PA 343, MCL 752.361 to 752.374, or a facility used for a production for which records are required to be maintained with respect to any performer in the production under 18 USC 2257. [Section 17453 of this Code, formerly, qualified film and digital media infrastructure project; tax credit. (From PA 86 of 2008, MCL 208.1457).]

(xx) "Qualified job training expenditure" means salary and other expenditures paid by an eligible production company to provide qualified personnel with on-the-job training as a member of the below the line crew for a state certified qualified production that is intended to upgrade or enhance the skills of the qualified personnel and address deficiencies in skills among residents of this state as determined by the office. As used in section 17455 of this code, formerly eligible production company; tax credit (from MCL 208.1459, Michigan Business Tax Act, PA 74 of 2008).

(yy) "Qualified local governmental unit" means a city, village, township, county, or authority that is located in, or includes within its territory or jurisdiction, a county in which convention hotels are located and that either is the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space on July 30, 1985 or, if such a convention facility does not exist, will be the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space through the application of distributions under this section to the purchase or lease of a convention facility.

(zz) "Qualified lodging facility" means 1 or more of the following:

(i) Lodging facilities that constitute a portion of a tourism attraction facility and represent less than 50% of the total cost of the tourism attraction facility, or the lodging facilities are to be located on recreational property owned or leased by the municipal, state, or federal government.

(ii) The lodging facilities involve the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or are located in a national register historic district and certified by this state as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by this state.

[\[Sections 17201 through 17203a of this Code, formerly the Michigan Tourism Policy Act, 106 of 1945, MCL 2.101 \*et seq.\*\]](#)

(aaa) "Qualified metropolitan area" means a geographic area of this state that includes a qualified city, a qualified county, and the 2 counties bordering the qualified county with the largest populations according to the most recent decennial census. [\[Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.\]](#)

(bbb) "Regional assessment district" means a region of this state composed of a number of counties in which a regional marketing organization operates. Regional assessment district does not include a portion of the region that is a special charter, fourth class city. [\[Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.\]](#)

(ccc) "Regional convention authority" means a regional convention facility authority created under section 17393 of this code. [\[Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.\]](#)

(ddd) "Regional Convention Facility Board" means the board of directors of an authority. [\[Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.\]](#)

(eee) "Regional marketing organization" means a nonprofit corporation that promotes tourism within a region of this state. Regional marketing organization includes only an organization that has been operating for 10 or more years and that operates in a region composed of 15 counties. [\[Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.\]](#)

(fff) "Regional Tourism Marketing Board" means the board of directors elected by the members of a regional marketing organization. [\[Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.\]](#)

(ggg) "Room"

As used in sections 17223 through 17230 and 17363 through 17370 of this code, "room" means a room or other space provided for sleeping that can be rented independently, including the furnishings and other accessories in the room. Room includes, but is not limited to, a condominium or time-sharing unit that, pursuant to a management agreement, may be used to provide dwelling, lodging, or sleeping quarters for a transient guest. [\[Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act and Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.\]](#)

As used in sections 17233 through 17238 and 17373 through 17378 of this code, "room" means a room or other space provided for sleeping, including the furnishings and other accessories in the room. [Sections 17233 through 17238 of this Code, formerly the "convention and tourism promotion act" MCL 141.1321-1328) and Sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

(hhh) "Room charge"

Except as otherwise provided, "room charge" means the charge imposed for the use or occupancy of a room, excluding charges for food, beverages, state use tax, telephone service or like services paid in connection with the charge, and reimbursement of the assessment imposed by sections 17233 through 17238 and 17373 through 17378 of this code. [Sections 17233 through 17238 of this code formerly the "convention and tourism promotion act" MCL 141.1321-1328; and sections 17373 through 17378 of this code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

As used in sections 17223 through 17320 of this code, "room charge" means the charge imposed for the use or occupancy of a room, excluding charges for food, beverages, state use tax, telephone service, or like services paid in connection with the room charge, and reimbursement of the assessment as allowed in section 17226 of this code. [Sections 17223 through 17320 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.]

As used in sections 17322 through 17340 of this code, "room charge" means the charge imposed for the use or occupancy of accommodations, excluding charges for food, beverages, telephone services, the use tax imposed under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, or like services paid in connection with the charge. Room charge does not include reimbursement of the assessment imposed by sections 17363-17370 of this code, previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80, sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws, or sections 17322-17340 of this Code. [Sections 17322-17340 of this Code, formerly PA 106 of 1985 – State Convention Facility Development Act.]

As used in sections 17363 through 17370 of this code, "room charge" means the charge imposed for the use or occupancy of a room, excluding charges for food, beverages, state use tax, telephone service, or like services paid in connection with the charge, and excluding reimbursement of the assessment imposed by sections 17363-17370 of this code. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

(iii) "Stadium" means a facility, including necessary sites, related parking lots or structures, and appurtenant properties and facilities, that is intended to provide space for any of the following:

- (i) A professional baseball franchise, if the facility itself contains not less than 25,000 seats and is located in the downtown area of the most populous city in the eligible county.
- (ii) Professional sports or entertainment, if the facility itself contains not less than 3,000 seats, is not a facility as defined by subparagraph (i). [Sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act.]

(jjj) "Tourism attraction facility" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomena or scenic beauty, or an entertainment destination center as determined by the Michigan economic growth authority as follows:

(i) In making a determination, the Michigan economic growth authority shall consider all of the following:

- (A) Whether the facility will actually attract tourists.



(B) Whether 50% or more of the persons using the facility reside outside a 100-mile radius.

(C) Whether 50% or more of the gross receipts are from admissions, food, or nonalcoholic drinks.

(D) Whether the facility offers a unique experience

(ii) The Michigan economic growth authority shall not determine any of the following as a tourism attraction facility:

(A) Facilities, other than an entertainment destination center, that are primarily devoted to the retail sale of goods, a theme restaurant destination attraction, or a tourism attraction where the attraction is a secondary and subordinate component to the sale of goods.

(B) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the facility.

[Sections 17201 – 17203a of this Code, formerly the Michigan Tourism Policy Act, 106 of 1945, MCL 2.101 *et seq.*]

(kkk) "Transfer date" means the date 90 days after the creation of an authority under section 17397 on which the right, title, interest, ownership, and control of a qualified convention facility are conveyed and transferred from a qualified city to an authority if the transfer is not disapproved as provided under section 17399(1). [Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.]

(lll) "Transient facility"

Except as otherwise provided, "transient facility" means a building that contains 35 or more rooms used in the business of providing dwelling, lodging, or sleeping to transient guests, whether or not membership is required for the use of the rooms. A transient facility shall not include a hospital or nursing home. [Sections 17233 through 17238 of this Code, formerly the "convention and tourism promotion act" MCL 141.1321-1328; and sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

As used in sections 17223 through 17230 of this code, "transient facility" means a building or combination of buildings under common ownership, operation, or management that contains 10 or more rooms used in the business of providing dwelling, lodging, or sleeping to transient guests, whether or not membership is required for the use of the rooms. Transient facility includes a building or combination of buildings, the owner of which has elected to come under the provisions of sections 17223 through 17230 of this code pursuant to section 17229 of this code. Transient facility does not include a college or school dormitory; a hospital; a nursing home; a hospice; a building or combination of buildings that is otherwise a transient facility, but that is located within 1 mile of a ski lift as defined in section 2 of the ski area safety act of 1962, Act No. 199 of the Public Acts of 1962, being section 408.322 of the Michigan Compiled Laws; or a facility owned and operated by an organization qualified for an exemption from federal taxation under section 501(c) of the internal revenue code. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.]

As used in sections 17363 through 17370 of this code, "transient facility" means a building or combination of buildings under common ownership, operation, or management that contains 10 or more rooms used in the business of providing dwelling, lodging, or sleeping to transient guests, whether or not membership is required for the use of the rooms. Transient facility does not include a college or school dormitory, a hospital, a nursing home, or a facility owned and operated by an organization qualified for an exemption from federal taxation under section

501(c) of the internal revenue code. [Sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80.]

(mmm) “Transient guest”

Except as otherwise provided, “transient guest” means a person who occupies a room in a transient facility for less than 30 consecutive days. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act; sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act” MCL 141.1321-1328; sections 17352 – 17359 of this Code formerly PA 180 of 1991 – Stadia or Convention Facility Development Act]; sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80; and sections 17373 through 17378 of this Code, formerly the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws.]

As used in sections 17322 through 17340 of this code, “transient guest” means a natural person staying less than 30 consecutive days. [Sections 17322-17340 of this code]

(nnn) “Tourism marketing program” means a program established by a regional marketing organization to develop, encourage, solicit, and promote tourism within a region of this state. The encouragement and promotion of tourism includes a service, function, or activity, whether or not performed, sponsored, or advertised by a regional marketing organization, that intends to attract transient guests to the regional assessment district. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.]

(ooo) “Tourism marketing program notice” means the notice described in section 17223. [Sections 17223 through 17230 of this Code, formerly PA 244 of 1991 – Regional Tourism Marketing Act.]

(ppp) “Use tax” means the tax imposed under the use tax act, 1937 PA 94, MCL 205.91 to 205.111. [Sections 17233 through 17238 of this Code, formerly the “convention and tourism promotion act” MCL 141.1321-1328.]

## DIVISION II PROMOTION OF TOURISM

### Part A. State Activities

**Sec. 17201. Short title; legislative findings; intent.** [Sections 17201 – 17203a of this code, formerly the Michigan Tourism Policy Act, 106 of 1945, MCL 2.101 *et seq.*]

[Editor’s note: In general, the drafters intended to omit sections relating to legislative findings and purposes. In some cases, such as the text below, these provisions were provisionally included, pending a discussion regarding the need for such provisions when the government provides funds that provide apparent benefit to private business.]

(2) The legislature finds all of the following:

(a) Tourism is a major source of employment, income, and tax revenues in this state, and the expansion of the tourism industry is vital to the growth of the state's economy.

(b) The tourism industry is important to the state, not only because of the numbers of people it serves and the vast human, financial, and physical resources it employs, but because of the benefits tourism and related activities confer on individuals and on society as a whole.

(c) Investment of state resources is needed to provide a more effective means of marketing travel to, and within, the state, and to optimize the considerable investment of time, energy, capital, and resources being made by the tourism industry.



(d) Coordination of existing state government involvement in tourism promotion at the state level and with local government and the private sector will maximize the economic and employment benefits of the tourism industry.

(3) Through sections 17201-17203a of this code the legislature intends to encourage all of the following:

- (a) A commitment to the fostering of the economic activity inherent in tourism promotion.
- (b) Development of a means to promote and market the state as a destination for tourists on a worldwide basis.
- (c) Tourism growth to assist this state in remaining competitive in the world tourism marketplace.
- (d) Maximization of the contribution of the tourism-related industries to the state's economic prosperity and expansion of employment opportunities.
- (e) Recognition of historic, natural, and scenic environments, and the development of cultural and heritage tourism programs and international marketing strategies, to enhance the state's appeal as a destination for domestic and international tourism.
- (f) Provision of timely, up-to-date travel and tourism information on urban and rural locations in various regions of the state to enable state residents to take maximum advantage of travel opportunities within the state.
- (g) Health, education, and intercultural appreciation of the geography, natural resources, history, arts, and ethnicity of the state.
- (h) The welcome entry of individuals traveling to the state to enhance international understanding and goodwill, consistent with immigration laws, laws protecting the public health, laws governing the importation of goods into the United States, and other applicable laws and regulations.
- (i) The collection, analysis, and timely dissemination of data which accurately measures the economic impact of tourism on the state in order to facilitate planning in the public and private sectors.
- (j) The establishment of a program to market the travel vacation opportunities available in this state to residents and nonresidents by using any medium or means that the travel bureau, in consultation with the travel commission, determines appropriate.
- (k) Public interest in protection of the natural resources and the cultural heritage of the state.
- (l) Recognition of state and locally managed recreational opportunities including camping, hunting, fishing, boating, snowmobiling, golfing, skiing, and other outdoor recreation experiences.

**Sec. 17202. Michigan travel commission; creation; appointment, qualifications, and terms of members; vacancies; compensation and expenses; travel bureau director; chair and vice-chair; meetings; removal from office; quorum; voting; public meeting; documents subject to freedom of information act.**

(1) The Michigan travel commission is created within the department of commerce.

(2) The commission shall consist of 13 members appointed by the governor with the advice and consent of the senate. The governor shall select members who are experienced in the travel, tourism, and recreation industry or an associated field. Members of the commission shall be representative of all geographic areas of the state. Not less than 7 members of the commission shall be owners and operators of for-profit businesses from the private sector of the travel, tourism, and recreation industry and shall be experienced in the travel, tourism, and recreation industry. Of the 7 members appointed from the private sector not less than 4 members shall be owners and operators of small businesses. As used in this section, "small businesses" means business concerns incorporated or doing business in this state which employ not more than 100 full-time or part-time employees.

(3) A member of the commission shall be appointed for a term of 4 years. No member may serve more than 2 full 4-year terms. A vacancy on the commission shall be filled in the same manner as the original appointment.

(4) The members of the commission shall serve without compensation. However, members of the commission may be reimbursed for their expenses incurred in the performance of their official duties not to exceed 25 days in a fiscal year pursuant to the standard travel regulations of the department of management and budget.

(5) The commission shall recommend by name the appointment of the travel bureau director to the director of the department of commerce, and elect from its membership annually a chair and vice-chair. The commission shall meet at least quarterly, or more frequently if requested by 8 or more members, or at the call of the chair.

(6) A member of the commission may be removed from office by the governor in accordance with section 10 of article V of the state constitution of 1963.

(7) A majority of the commission constitutes a quorum for the transaction of business at a meeting of the commission. A majority vote of the members present and serving is required for official action of the Michigan travel commission.

(8) The business of the Michigan travel commission shall be conducted at a public meeting of that commission, held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(9) A document prepared, owned, used, in the possession of, or retained by the Michigan travel commission in the performance of an official function is subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**[Editor's Comment: The subsections (8) and (9) above are similar to provisions appearing in Article I Division V and should be deleted.]**

**Sec. 17202a. Travel bureau; creation; duties.**

The travel bureau is created within the department of commerce and shall do all of the following:

- (a) Implement programs to market this state as a desirable travel destination.
- (b) Before funding a promotional effort, identify and document those benefits to the state that the travel bureau determines likely to result from the promotional effort.
- (c) Withhold funds for any proposed promotional effort that in the travel bureau's determination will not likely benefit the travel industry in the state or conform with the goals of the master plan described in section 17202c.
- (d) If the travel bureau expends funds for a promotional effort, identify and document the actual benefits, if any, conferred upon the state by that promotional effort.
- (e) Use reasonable means to identify, review, and comment upon the policies and programs of state agencies which directly affect the achievement of the duties and responsibilities of the travel bureau.
- (f) Facilitate travel to and within this state to the maximum extent feasible.
- (g) From time to time, convene interagency committees, consisting of representatives of units of state government that may be required to devise recommendations to identify and solve tourism problems.
- (h) Provide informational assistance and guidance to regional, county, and city tourism development organizations and similar private organizations in planning programs to attract visitors.

**Sec. 17202b. Employee acceptance of free meals or lodging; policy.**

The travel bureau shall develop with the department of commerce a formal, written policy governing travel bureau employee acceptance of free meals or lodging, and implement that policy within 1 year of the effective date of the amendatory act that added this section.

**Sec. 17202c. Master plan.**

(1) In consultation with the appropriate divisions of the Michigan department of commerce, the travel bureau and Michigan travel commission shall develop a comprehensive, long-range master plan for a period of not less than 2 years and not more than 5 years that identifies each of the following:

- (a) Tourism development and management goals.
- (b) Programs proposed to be implemented during the term of the master plan.

(2) The master plan shall be updated as the travel bureau, Michigan travel commission, and the appropriate divisions of the department of commerce determine necessary.

**Sec. 17202d. Annual report.**

~~Beginning 1 year after the effective date of the amendatory act that added this section,~~ The travel bureau shall submit to the travel commission, the governor, and the legislature an annual report containing all of the following: [Drafter's note; in case the reference to the amendatory act is desired it is PA 109 of 1993, effective July 16, 1993.]

- (a) A statement identifying and analyzing expenditures authorized by the travel bureau during the preceding 12 months, and a summary of the results of those expenditures.
- (b) A tourism marketing plan for the next fiscal year.

**Sec. 17203. Michigan travel commission; duties.**

(1) The Michigan travel commission shall do all of the following:

- (a) Assist the Michigan travel bureau with the development of a comprehensive long-range master plan.
- (b) Annually assess the activities and accomplishments of the Michigan travel bureau, and convey each assessment in writing to the director of the department of commerce.
- (c) Work to the maximum extent practicable with those private associations, nonprofit corporations, organizations, or other private entities which promote tourism in this state.
- (d) Promulgate rules for the implementation of sections 17201-17203a of this code pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.
- (e) Conduct public hearings to obtain input concerning policy development from a broad cross section of travel interests.
- (f) Withhold expenditure of state funds otherwise authorized sections 17201-17203a of this code if the Michigan travel bureau determines that the proposed expenditure is for an activity that does not conform with the goals of the master plan described in section 17202c or does not benefit the travel industry in the state.

(2) The commission shall authorize the expenditure of funds necessary to carry out sections 17201-17203a of this code, and shall be authorized to incur necessary expenses, in accordance with the accounting laws of the state.

(3) The commission, in cooperation with the Michigan travel bureau, may convene committees consisting of qualified professionals and experts in various segments of the tourism industry that may be required to aid in the preparation of, or revision of, all or part of a marketing plan.

**Sec. 17203a. Appropriation; basic support and discretionary grants.**

The legislature shall annually appropriate the sums necessary to implement [sections 17201 through 17203a of this code](#). Amounts as appropriated by the legislature shall be made available for basic support and discretionary grants to eligible local and regional travel authorities and agencies in accordance with the following:

(a) Basic support grants shall be made to eligible agencies and authorities to provide continuing support of advertising and promotional efforts designed to encourage travel for purposes of resort and recreational tourism, business and conventions, and sightseeing and entertainment. Grant funds shall be utilized to fund the operating expenses of eligible agencies and the direct cost of advertising and promotion. The specific amount of grants, matching requirements, eligible applicants, application procedure, and administrative and reporting requirements shall be established within the guidelines of rules promulgated by the Michigan travel commission.

~~(b) Basic support grants for the fiscal year ending June 30, 1976, shall be made in accordance with sections 26(a), 26(b), and 26(c) of Act No. 239 of the Public Acts of 1974, and section 6 of this act. [Drafter's Comment: This subsection seems unnecessary based on the fact that it only covers the fiscal year ending on June 30, 1976.]~~

(b) Discretionary grants shall be made to eligible applicants for travel development and marketing projects based upon the extent of impact upon employment, economic stability, and increase in real per capita income. The specific application procedure and project grant requirements shall be established in rules promulgated by the Michigan travel commission.

[Drafter's Comment: sections 201.104 – 108 of the original act have been previously repealed, therefore they were not included here.]

\*

**Sec. 17209. Legislative findings; intent; scope of activities.** [PA 100 of 2008; As formerly found at MCL 125.2089 of the Michigan Strategic Fund]

[Editor's note: In general, the drafters intended to omit sections relating to legislative findings and purposes. In some cases, such as the text below, these provisions were provisionally included, pending a discussion regarding the need for such provisions when the government provides funds that provide apparent benefit to private business.]

(1) The legislature finds and declares that the activities authorized under [sections 17209 through 17209d of this code](#) to promote this state and the creation of jobs in this state are a public purpose and of paramount concern in the interest of the health, safety, and general welfare of the citizens of this state. It is the intent of the legislature that the economic benefits and the creation of jobs resulting from [sections 17209 through 17209d of this code](#) shall accrue substantially within this state.

(2) Activities authorized under [sections 17209 through 17209d of this code](#) shall not be considered a project, economic development project, or a product assisted by the fund for purposes of part 1 or 2 of Article II of this code, formerly of the Michigan Strategic Fund Act. [Drafter's Comment: Does the proviso language that activities are not to be considered an economic development project take this out of the code?]

**Sec. 17209a. Michigan promotion program; establishment; tourism promotion explained; funding; use of appropriation provided from 21st century jobs trust fund.**

(1) The [Michigan strategic fund](#) board shall establish a Michigan promotion program to promote tourism in Michigan and pay business development and marketing costs to promote business development in Michigan. Tourism promotion shall include, but is not limited to, cultural, vacation, recreational, leisure, hunting-related, motor sports entertainment-related, and agriculture-related travel across this state that includes activities that promote tourism in all 4 seasons.

(2) The funding provided under [sections 17209 through 17209d of this code](#) for tourism promotion is intended to enhance funding beyond that included in the annual appropriation for travel Michigan to attract additional tourism expenditures and development of the tourism industry in this state.

(3) Not more than 4% of the annual appropriation as provided by law from the 21st century jobs trust fund established in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be used for the purpose of administering the program authorized under [sections 17209 through 17209d of this code](#) [PA 100 of 2008; As formerly found at MCL 125.2089a of the Michigan Strategic Fund]

**Sec. 17209b. Michigan promotion program; appropriation and transfer of funds; appropriation as work project; carrying forward unencumbered or unallotted funds; compliance with MCL 18.1451a. [PA 98 of 2008, as formerly found at MCL 125.2089b of the Michigan Strategic Fund]**

(1) For the fiscal year ending September 30, 2008, there is appropriated and transferred from the general fund to the 21st century jobs trust fund \$60,000,000.00 and there is appropriated from the 21st century jobs trust fund to the fund \$50,000,000.00 for carrying out the purposes of [sections 17209 through 17209d of this code](#). Not more than 1/4 of the total amount appropriated from the net proceeds described in section 8(2) of the Michigan tobacco settlement finance authority act, 2005 PA 226, MCL 129.268, shall be used to promote business development in this state.

(2) Upon request from the board, the state treasurer shall transfer appropriated funds from the 21st century jobs trust fund established under section 7(1)(b) of the Michigan trust fund act, 2000 PA 489, MCL 12.257, in the amounts designated by the board at the time and as necessary to fund disbursements required for the Michigan promotion program.

(3) The appropriation authorized in subsection (1) is a work project appropriation and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide economic benefits and job creation within this state through the promotion of tourism.

(b) The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts.

(c) The total estimated completion cost of the project is \$50,000,000.00.

(d) The expected completion date is December 31, 2010.

**Sec. 17209c. Selection of vendors; request for proposal; evaluation of proposals; establishment of standard process; appointment of committee to review proposals; use of funds; limitation. [PA 98 of 2008, MCL, as formerly found at 125.2089c of the Michigan Strategic Fund]**

(1) The [strategic](#) fund board shall select vendors for Michigan promotion program expenditures under [sections 17209 through 17209d of this code](#) exceeding \$250,000.00 by issuing a request for proposal. At a minimum, the request for proposal shall require the responding entities to disclose any conflict of interest, disclose any criminal convictions, disclose any investigations by the internal revenue service or any other federal or state taxing body or court, disclose any pertinent litigation regarding the conduct of the entity, and maintain records and evidence pertaining to work performed for at least 5 years. The [strategic](#) fund board shall establish a standard process to evaluate proposals submitted as a result of a request for proposal and appoint a committee to review the proposals. Members of any committee or individuals working on behalf of the Michigan strategic fund, paid or unpaid, shall have no conflict of interest as determined by the office of the chief compliance officer established in section [11588i of this code](#). This subsection does not apply to a contract that was in existence on March 25, 2008 or to the extension of a contract in which the right to extend was in existence on or before March 25, 2008.

(2) Not less than 75% of the funds appropriated under [sections 17209 through 17209d of this code](#) shall be targeted to persons or entities outside of this state. No funds may be used for any Michigan promotion program effort that includes a reference to or the image or voice of an elected official, appointed state employee, state employee

governed by a senior executive service limited term employment agreement, or a candidate for elective office, and that is targeted to a media market in this state.

**Sec. 17209d. Reports; mechanism to report return on investment for agriculture-related tourism; use of data to establish baseline.** [PA 98 of 2008, MCL, as formerly found at 125.2089d of the Michigan Strategic Fund]

(1) In addition to any reporting requirements under section 11209 of this code (formerly, section 9 of the Michigan Strategic Fund Act, MCL 125.2009), on or before April 15, 2009, and each succeeding April 15, the Michigan strategic fund shall report to the senate and house appropriations subcommittees that have jurisdiction over economic development issues, the senate and house standing committees that have jurisdiction over economic development issues, and the senate and house fiscal agencies on the programs established in part 8b of Article II, formerly chapter 8b of the Michigan Strategic Fund Act. The report shall include, but is not limited to, the following information:

(a) For tourism promotion efforts, all of the following:

(i) The amount spent for promotion outside of this state.

(ii) An itemized list by market of how much was spent, when the promotion occurred, the types of media purchased, and the type of tourism promoted, specifically cultural, vacation, recreational, leisure, hunting-related, or agriculture-related.

(iii) The return on investment analysis that utilizes existing baseline data and compares results with prior outcome evaluations funded by travel Michigan.

(b) For business development efforts, all of the following:

(i) The amount spent for business development outside of this state.

(ii) An itemized list by market of how much was spent, when the promotion occurred, and the types of media purchased.

(iii) A performance analysis that compares the program or campaign objectives and outcome of the campaign or program. Outcome measures may include, but are not limited to, businesses relocated to this state, impact on the business community's perception of the quality of life in this state, jobs created, increases in export sales, impact on the number of retailers carrying Michigan commodities, both within and outside of this state, and increased sales of Michigan products at chain grocers.

(2) The fund shall work with the department of agriculture to develop a mechanism to report the return on investment for agriculture-related tourism and compare results with prior outcome evaluations conducted by the department of agriculture if applicable.

(3) The fund shall ensure data reported on or before April 15, 2009 can be used to establish a baseline for future comparison.

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**Part B. Local Activities**

[PA 244 of 1989, formerly found at MCL 141.891 et seq. of the Regional Tourism and Marketing Act. The last digit of the section number in the proposed code is the same as that in the original act. ]

**Sec. 17223. Tourism marketing program notice; filing; contents; copies; list of transient facilities.**

(1) In order to establish a tourism marketing program within a regional assessment district, a regional marketing organization shall file a tourism marketing program notice with the director of commerce.

(2) The tourism marketing program notice shall contain all of the following:

- (a) A statement that the regional marketing association proposes to create a tourism marketing program under [sections 17223 through 17230 of this code](#).
- (b) A statement that the regional marketing association proposes to levy and collect an assessment from owners to pay the costs of the tourism marketing program.
- (c) A description of the structure, membership, and activities of the regional marketing organization, including a statement that the regional marketing organization is governed by a regional tourism marketing board and that a majority of the members of the regional tourism marketing board are owners. The description shall include the business name and address of the person designated by the regional marketing organization to receive the payment of assessments under section 17226 and the independent certified public accountants who audit the financial statements of the regional marketing organization.
- (d) A description of the tourism marketing program to be implemented by the regional marketing organization with the assessment revenues.
- (e) A statement specifying the amount of the assessment proposed to be levied. The assessment shall not exceed 1% of the room charges in the applicable payment period.
- (f) A list of the counties comprising the regional assessment district.
- (g) Other information considered necessary by the director of commerce.

(3) On the same day the tourism marketing program notice is filed under subsection (1), the regional marketing organization shall mail a copy of the tourism marketing program notice to each owner of a transient facility located in the regional assessment district. The tourism marketing program notice shall be mailed by registered or certified mail to the owner at the last known address of the transient facility. The regional marketing organization shall use any information that is reasonably available to the regional marketing organization to establish the list of all transient facilities within the regional assessment district.

**Sec. 17224. Tourism marketing program; approval or disapproval; written referendum; effective date; failure of referendum.**

- (1) The director [of commerce](#) shall approve or disapprove a tourism marketing program within 30 days after a tourism marketing program notice is filed. The director [of commerce](#) shall not disapprove a tourism marketing program unless the tourism marketing program violates [sections 17223 through 17230 of this code](#).
- (2) Within 40 days after approval of a tourism marketing program under subsection (1), the director [of commerce](#) shall conduct among all owners a written referendum by mail on whether the tourism marketing program should be approved. For the purpose of the referendum and except as provided in section [17229 of this code](#), each owner has 1 vote for each room in the owner's transient facility.
- (3) If the tourism marketing program is approved by a majority of the votes actually cast in the regional assessment district, the tourism marketing program and assessment set forth in the tourism marketing program notice become effective on the first day of the month that is more than 30 days after certification by the [director of commerce](#) of the results of the referendum. A regional marketing organization may file and serve another tourism marketing program notice under section 17223 no sooner than 1 year after certification by the director [of commerce](#) of the results of a referendum if the referendum failed.

**Sec. 17225. Tourism marketing program; scope.**

A tourism marketing program may include 1 or more of the following:

- (a) A provision for establishing and paying the costs of advertising, marketing, and promotional programs to encourage tourism in the regional assessment district.



- (b) A provision for assisting a transient facility within the regional assessment district to promote tourism.
- (c) A provision for the acquisition of personal property considered appropriate by the regional marketing organization to achieve the purpose of the tourism marketing program.
- (d) A provision for the hiring of and payment for personnel employed by the regional marketing organization to implement the tourism marketing program.
- (e) A provision for contracting with organizations, agencies, or persons to carry out activities to achieve the purpose of the tourism marketing program.
- (f) A program to establish and pay for the costs of research designed to encourage tourism in the regional assessment district.
- (g) A provision to incur any other expense or cost that the regional tourism marketing board, in the exercise of its reasonable business judgment, considers reasonably related to the promotion of tourism within the regional assessment district.
- (h) A procedure for election of the regional tourism marketing board that requires that a majority of the members of the regional tourism marketing board are owners.

**Sec. 17226. Assessments generally.**

- (1) Upon the effective date of an assessment under section 17224 of this code, each owner is liable for payment of the assessment computed by multiplying the percentage set forth in the tourism marketing program notice by the aggregate room charges imposed by the transient facility during a calendar month. Except as provided in subsection (2), the owner shall pay the assessment, within 30 days after the end of each calendar month, to the person designated by the regional marketing organization, which person is independent of the accountants who audit the financial statements of the regional marketing organization. A payment shall be accompanied by a statement of room charges imposed by the transient facility for that calendar month. [Sections 17223 through 17230 of this code](#) do not prohibit an owner from reimbursing the transient facility by adding the assessment imposed under [sections 17223 through 17230 of this code](#) to room charges payable by a transient guest. However, the owner shall disclose that the transient facility has been reimbursed for the assessment imposed under [sections 17223 through 17230 of this code](#) on the bill presented to the transient guest.
- (2) A regional marketing organization may enter into an agreement with a bureau established under [sections 17363-17370 of this code](#) ~~the community convention or tourism marketing act, Act No. 395 of the Public Acts of 1980, being sections 141.871 to 141.880 of the Michigan Compiled Laws, to accept assessments levied under sections 17223 through 17230 of this code.~~ If an owner is subject to assessments under [sections 17223 through 17230 of this code](#) and [sections 17363-17370 of this code](#) ~~Act No. 395 of the Public Acts of 1980,~~ and an agreement is entered into under this subsection, the owner may satisfy the payment requirements under subsection (1) by paying the assessment under [sections 17223 through 17230 of this code](#) to the bureau or the person designated by the bureau under [sections 17363-17370 of this code](#) ~~Act No. 395 of the Public Acts of 1980~~ at the same time the assessment under [sections 17363-17370 of this code](#) ~~Act No. 395 of the Public Acts of 1980~~ is paid by the owner. The regional marketing organization shall reimburse a bureau or the person designated by the bureau under [sections 17363-17370 of this code](#) ~~Act No. 395 of the Public Acts of 1980~~ for reasonable administrative costs incurred to receive and forward assessments due a regional marketing organization under [sections 17223 through 17230 of this code](#). The regional marketing organization may agree with the bureau to allow the bureau or the person designated by the bureau under [sections 17363-17370 of this code](#) ~~Act No. 395 of the Public Acts of 1980~~ to withhold a portion of an assessment received on behalf of the regional marketing organization as reimbursement for the reasonable administrative costs incurred.
- (3) Within 30 days after the close of each calendar quarter, each owner shall forward to the independent certified public accountants who audit the financial statements of the regional marketing organization copies of the state use tax returns of the transient facility for the preceding quarter. The copies of the state use tax returns shall be used



solely by the certified public accountants to verify and audit the payment of the assessment by the owner under [sections 17223 through 17230 of this code](#), and shall not be disclosed to the regional marketing organization except as the director determines necessary to enforce [sections 17223 through 17230 of this code](#).

(4) An owner shall pay interest to the regional marketing organization on any assessment not paid within the time required under [sections 17223 through 17230 of this code](#). The interest shall accrue at the rate of 1.5% per month. An owner delinquent for more than 90 days in paying an assessment, in addition to interest, shall pay a penalty of 1.5% per month or fraction of a month on the amount of the delinquent assessment. The regional marketing organization may sue in its own name to collect the assessment, interest, and penalty.

(5) An owner is not liable for payment of an assessment until a tourism marketing program notice and, if the owner is eligible to vote, the referendum ballot has been mailed to the owner at the last known address of the transient facility pursuant to sections 17223 and 17224 of this code.

**Sec. 17227. Disposition of assessment revenues; financial statements; certified report; copies.**

(1) The assessment revenues collected under [sections 17223 through 17230 of this code](#) are not state funds. The regional marketing organization shall deposit assessment revenues collected under [sections 17223 through 17230 of this code](#) in a bank or other depository in this state in the name of the regional marketing organization. The assessment revenues shall be disbursed only for the expenses properly incurred by the regional marketing organization with respect to the tourism marketing program developed by the regional marketing organization under [sections 17223 through 17230 of this code](#).

(2) The financial statements of the regional marketing organization shall be audited at least annually by an independent certified public accountant. The regional marketing organization shall mail a copy of the audited financial statements to each owner 150 days or less after the close of the regional marketing organization's fiscal year. The financial statements shall include a statement of all assessment revenues received by the regional marketing organization during the fiscal year and shall be accompanied by a detailed report, certified as correct by the chief operating officer of the regional marketing organization, describing the tourism marketing programs implemented or, to the extent then known, to be implemented by the regional marketing organization.

(3) On the same day copies of the audited financial statements and certified report are mailed under subsection (2), the regional marketing organization shall file a copy of the audited financial statements and certified report with the director [of commerce](#).

**Sec. 17228. Discontinuance of assessment; referendum.**

1) A regional marketing organization shall conduct a referendum on whether an assessment levied under a tourism marketing program shall be discontinued if both of the following requirements are met:

(a) The tourism marketing program levying the assessment has been in effect for 2 years or more.

(b) Forty percent or more of the total number of owners in the regional assessment district, or owners representing 40% or more of the total number of rooms in transient facilities within the regional assessment district, file with the regional marketing organization a written request for a referendum under this section.

(2) The regional marketing organization shall conduct a written referendum, by mail or in person, among all owners within 60 days after receipt of the written request for a referendum under subsection (1). For the purpose of the referendum, each owner has 1 vote for each room in the owner's transient facility.

(3) If a majority of the votes actually cast at the referendum approves the discontinuance of the assessment, the assessment under a tourism marketing program shall be discontinued on the first day of the month that is more than 60 days after certification by the regional marketing organization of the results of the referendum.

(4) The discontinuance of an assessment under this section does not prevent a regional marketing organization from filing and serving a new tourism marketing program notice under section 17223 during or after the 60-day period under subsection (3).

(5) If a referendum held under this section does not result in the discontinuance of the assessment under a tourism marketing program, a further referendum on the discontinuance of that assessment shall not be held until the expiration of 1 year after the date of the referendum under this section.

**Sec. 17229. Building or combination of buildings; agreement to be subject to tourism marketing program; assessment.**

(1) An owner of a building or combination of buildings that is within a regional assessment district, that has less than 10 rooms or is located within 1 mile of a ski lift, and that otherwise meets the definition of a transient facility under [sections 17223 through 17230 of this code](#) may agree in writing to be subject to a tourism marketing program under [sections 17223 through 17230 of this code](#). If an owner of a building or combination of buildings agrees to be subject to the tourism marketing program, the building or combination of buildings is considered a transient facility for the purposes of [sections 17223 through 17230 of this code](#). The owner of the building or combination of buildings is considered an owner for the purposes of [sections 17223 through 17230 of this code](#) except that the owner is not eligible to vote in the referendum on the tourism marketing program. The owner shall otherwise participate in the tourism marketing program for that regional assessment district.

(2) A building or combination of buildings that is considered a transient facility under subsection (1) shall remain subject to an assessment imposed under [sections 17223 through 17230 of this code](#) until the assessment is discontinued as provided in [section 17228 of this code](#).

**Sec. 17230. Effect of assessment or tax based on room charge.**

A regional marketing organization is not prohibited from levying an assessment under [sections 17221 through 17230 of this code](#) because an assessment or tax based on a room charge under another law of this state is or may be levied on a transient facility.

[Drafter's Comment: This language originated from. Sections 17233 through 17238 of this code, formerly the "convention and tourism promotion act".]

**Sec. 17233. Marketing program notice; filing; contents; assessment; limitation; mailing; form; effectiveness; referendum; effective date of assessment.**

(1) A bureau that has its principal place of business in an assessment district may file a marketing program notice with ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#). The notice shall state that the bureau proposes to create a marketing program under [sections 17233 through 17238 of this code](#) and cause an assessment to be collected from owners of transient facilities within the assessment district to pay the costs of the program.

(2) The marketing program notice shall describe the structure, history, membership, and activities of the bureau in sufficient detail to enable ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#) to determine whether the bureau satisfies all of the requirements of section 17101(1)(g) of this code. [Drafter's Comment: this refers to a definition that was previously contained within the statute itself, but now appears in division 1 of this article. I think it would be more beneficial to list the requirements again here.]

(3) The marketing program notice shall describe the marketing program to be implemented by the bureau with the assessment revenues and specify the amount of the assessment proposed to be levied, which shall not exceed 2% of the room charges in the applicable payment period, and the municipality or municipalities composing the assessment district. In an assessment district composed of more than 1 municipality, the assessment may be different in each of the municipalities that compose the assessment district.

(4) A bureau may impose an assessment not to exceed 2% of the room charges in the applicable payment period if either of the following conditions is met:

(a) The assessment district includes a municipality having a population of more than 570,000 and less than 775,000.

(b) The assessment district includes a municipality within which is levied a 4% marketing assessment under 1980 PA 395, MCL 141.871 to 141.880.

(5) Simultaneously with the filing of the marketing program notice with ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#), the bureau shall cause a copy of the notice to be mailed by registered or certified mail to each owner of a transient facility located in the assessment district specified in the notice in care of the respective transient facility. In assembling the list of owners to whom the notices shall be mailed, the bureau shall use any data that are reasonably available to the bureau.

(6) The form of the marketing program notice, in addition to the information required by subsections (1), (2), and (3), shall set forth the right of referendum prescribed in subsection (7).

(7) Except as otherwise provided in subsection (9), the assessment set forth in the notice shall become effective on the first day of the month following the expiration of 40 days after the date the notice is mailed, unless ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#), within the 40-day period, receives written requests for a referendum by owners of transient facilities located within the assessment district representing not less than 40% of the total number of owners or not less than 40% of the total number of rooms in all of the transient facilities.

(8) If ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#) receives referendum requests in the time and number set forth in subsection (7), ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#) shall cause a written referendum to be held by mail or in person, as ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#) chooses, among all owners of transient facilities in the assessment district within 20 days after the expiration of the 40-day period. For the purposes of the referendum, each owner of a transient facility shall have 1 vote for each room in each of the owner's transient facilities within the assessment district. If a majority of votes actually cast at the referendum approve the assessment, as proposed by the bureau in its marketing program notice, the assessment shall become effective, except as otherwise provided in subsection (9), as to all owners of transient facilities located in the assessment district on the first day of the month following expiration of 30 days after certification of the results of the referendum by ~~the director~~ [the chief executive officer of the Michigan economic development corporation or his or her designee](#). If a majority of votes actually cast at the referendum are opposed to the assessment, the assessment shall not become effective. If the assessment is defeated by the referendum, the bureau may file and serve a new notice of intention if at least 60 days have elapsed from the date of certification of the results of the earlier referendum. Not more than 2 referenda or notices may be held pursuant to this subsection or filed pursuant to this section in any 1 calendar year. Only 1 assessment under [sections 17233 through 17238 of this code](#) may be in existence in an assessment district, or any part of an assessment district, at any 1 time.

(9) [Editor's note, this subsection should be omitted as it is no longer relevant due to the passage of time.] The assessment described in [sections 17233 through 17238 of this code](#) shall not be effective before January 1, 2007.

#### **Sec 17234. Marketing program; provisions.**

A marketing program may include all or any of the following:

(a) Provisions for establishing and paying the costs of advertising, marketing, and promotional programs to encourage convention business and tourism in the assessment district.

(b) Provisions for assisting transient facilities within the assessment district in promoting convention business and tourism.

(c) Provisions for the acquisition of personal property considered appropriate by the bureau in furtherance of the purposes of the marketing program.

(d) Provisions for the hiring of and payment for personnel employed by the bureau to implement the marketing program.

(e) Provisions for contracting with organizations, agencies, or persons for carrying out activities in furtherance of the purposes of the marketing program.

(f) Programs for establishing and paying the costs of research designed to encourage convention business and tourism in the assessment district.

**Sec. 17235. Payment by owner of transient facility in assessment district; copies of use tax returns; forwarding to certified public accountants; interest; liability for payment; notice required.**

(1) Upon the effective date of an assessment, each owner of a transient facility in the assessment district shall be liable for payment of the assessment, computed using the percentage set forth in the marketing program notice. The assessment shall be paid by the owner of each such transient facility to the bureau within 30 days after the end of each calendar month and shall be accompanied by a statement of room charges imposed with respect to the transient facility for that month. [Sections 17233 through 17238 of this code](#) shall not prohibit a transient facility from reimbursing itself by adding the assessment imposed pursuant to [sections 17233 through 17238 of this code](#) to room charges payable by transient guests, provided that the transient facility discloses that it has done so on any bill presented to a transient guest.

(2) Within 30 days after the close of each calendar quarter, each owner within an assessment district shall forward to the independent certified public accountants who audit the financial statements of the bureau copies of its use tax returns for the preceding quarter. These copies of the use tax returns shall be used solely by the certified public accountants to verify and audit the owner's payment of the assessments and shall not be disclosed to the bureau except as necessary to enforce this [sections 17233 through 17238 of this code](#).

(3) Interest shall be paid by an owner to the bureau on any assessments not paid within the time called for under [sections 17233 through 17238 of this code](#). The interest shall accrue at the rate of 1.5% per month. Owners delinquent for more than 90 days in paying assessments, in addition to the 1.5% interest, shall pay a delinquency charge of 10% per month or fraction of a month on the amount of the delinquent assessments. The bureau may sue in its own name to collect the assessments, interest, and delinquency charges.

(4) The owner of a transient facility shall not be liable for payment of an assessment until a notice has been mailed to the transient facility of the owner pursuant to section [17233\(5\) of this code](#).

**Sec. 17236. State funds prohibited; disposition of money; disbursement; financial statements; audit; mailing.**

(1) The assessment revenues collected pursuant to [sections 17233 through 17238 of this code](#) shall not be state funds. The money shall be deposited in a bank or other depository in this state, in the name of the bureau, and disbursed only for the expenses properly incurred by the bureau with respect to the marketing programs developed by the bureau under [sections 17233 through 17238 of this code](#).

(2) The financial statements of the bureau shall be audited at least annually by a certified public accountant. A copy of the audited financial statements shall be mailed to each owner not more than 150 days after the close of the bureau's fiscal year. The financial statements shall include a statement of all assessment revenues received by the bureau during the fiscal year in question and shall be accompanied by a detailed report, certified as correct by the

chief operating officer of the bureau, describing the marketing programs implemented or, to the extent then known, to be implemented by the bureau.

(3) Copies of the audited financial statements and the certified report shall simultaneously be mailed to ~~the director~~ **the chief executive officer of the Michigan economic development corporation or his or her designee.**

**Sec. 17237. Advisory committee.**

(1) Upon the effective date of the establishment of an assessment under **sections 17231 through 17238 of this code**, the bureau shall cause an advisory committee to be elected consisting of representatives of the owners of transient facilities located within the assessment district, together with ~~the director~~ **the chief executive officer of the Michigan economic development corporation or his or her designee.**

(2) The advisory committee shall consist of not fewer than 5 or more than 9 persons, at least 1 of whom shall not be affiliated with a bureau member. The advisory committee shall include at least 1 member who is affiliated with a transient facility of 120 rooms or fewer. Procedures for the election and terms of the office of the members of the advisory committee shall be established by the bureau.

(3) The bureau at regular intervals, but not less than quarterly, shall cause a formal meeting of the advisory committee to be held at which the bureau shall present its current and proposed marketing programs. At these formal meetings the advisory committee shall review and either approve or reject any proposed marketing programs. An approved marketing program shall be instituted by the bureau. A rejected marketing program shall not be instituted by the bureau.

(4) The advisory committee may make recommendations to the bureau and the board from time to time with respect to current or proposed marketing programs.

**Sec. 17238. Discontinuance of assessment; referendum; resolution; further referendum.**

(1) At any time 2 years or more after the effective date of an assessment, and upon the written request of owners of transient facilities located within the assessment district representing not less than 40% of the total number of owners or not less than 40% of the total number of rooms in all the transient facilities, the bureau shall conduct a referendum on whether the assessment shall be discontinued. The bureau shall cause a written referendum to be held by mail or in person, as the bureau chooses, among all owners of transient facilities in the assessment district within 60 days of the receipt of the requests. For the purposes of the referendum, each owner shall have 1 vote for each room in each of the owner's transient facilities within the assessment district. If a majority of the total votes eligible to be cast at the referendum supports discontinuance of the assessment, the assessment shall be discontinued on the first day of the month following expiration of 90 days after the certification of the results of the referendum by the bureau.

(2) Passage of a resolution discontinuing the assessment shall not prevent a bureau from proposing a new marketing program notice during or after the 90-day period, in which case the procedures set forth in section 17233 shall be followed.

(3) If a referendum is conducted under subsection (1) and if a resolution to discontinue the assessment is not adopted, a further referendum on the discontinuation of that assessment shall not be held for a period of 2 years.

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**DIVISION III – PROMOTION OF MICHIGAN AS A TOURIST DESTINATION**

**PART A. STATE ACTIVITIES**

**[Drafter's Comment: sections 17322-17340, were formerly found at 207.621, State Convention Facility Development Act, PA 106 of 1985.]**

**Sec. 17322. Legislative Finding.**

[Editor's note: In general, the drafters intended to omit sections relating to legislative findings and purposes. In some cases, such as the text below, these provisions were provisionally included, pending a discussion regarding the need for such provisions when the government provides funds that provide apparent benefit to private business.]

The legislature of this state finds that there exists in this state a continuing need for programs to promote tourism and convention business in order to assist in the prevention of unemployment and the alleviation of the conditions of unemployment, to preserve existing jobs, and to create new jobs to meet the employment demands of population growth. To achieve these purposes, it is necessary to assist and encourage local units of government to acquire, construct, improve, enlarge, renew, replace, repair, furnish, and equip convention facilities and the real property on which they are located and to refinance these activities.

**Sec. 17324. Excise tax; rates; exemption.**

(1) There is hereby levied upon and there shall be collected from any person engaged in the business of providing accommodations to transient guests in a convention hotel, whether or not membership is required, an excise tax at the following rates:

(a) For a convention hotel located within a qualified local governmental unit under section 17329(3), the following:

(i) A rate of 3% of the room charge for accommodations in a convention hotel with 81 to 160 rooms.

(ii) A rate of 6% of the room charge for accommodations in a convention hotel with more than 160 rooms.

(b) For all other convention hotels not subject to the tax rates imposed by subdivision (a), the following:

(i) A rate of 1.5% of the room charge for accommodations in a convention hotel with 81 to 160 rooms.

(ii) A rate of 5% of the room charge for accommodations in a convention hotel with more than 160 rooms.

(2) Beginning with the state fiscal year 1987, a person engaged in the business of providing accommodations to transient guests in a convention hotel is exempt from the tax imposed by sections 17322-17340 of this code for any state fiscal year in which appropriations of the tax collections pursuant to sections 17322-17340 of this code from that convention hotel have not been made for distributions pursuant to section 17329 that would be received by a qualified local governmental unit from the collections of the tax under sections 17322 through 17340 ~~of the convention facility promotion tax act~~ [struck because the act was repealed] that the qualified local governmental unit is eligible to receive.

**[Drafter's Comment: the Convention Facility Promotion Tax Act was repealed effective April 14, 1998]**

**Sec. 17325. Excise tax; time and manner of collection; administration of tax.**

(1) The excise tax shall be collected at the same time and in the same manner as the use tax pursuant to the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.



(2) The tax imposed by [sections 17322 through 17340](#) of this code shall be administered by the revenue division of the department of treasury pursuant to Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.30 of the Michigan Compiled Laws.

**Sec. 17326. Tax cumulative.**

The excise tax imposed and levied by the state pursuant to [sections 17322 through 17340](#) of this code shall be in addition to any other taxes, charges, or fees imposed by law upon accommodations.

**[Drafter's Comment- section 8 of the State Convention Facility Development Act, 108 of 1985 has been amended and the below in Sec. 17328 of the Code is the new language.]**

**Sec. 17328. State convention facility development fund; creation; disposition of collections; use of fund; contract requirement; appropriation to authority created under [sections 17393 through 17399e](#) of this code ~~regional convention facility authority act.~~**

1) The collections from the tax imposed by section 4 shall be deposited in the state treasury, to the credit of the convention facility development fund, which is hereby created within the state treasury. Collections from the additional tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, funds appropriated from the 21st century jobs trust fund under subsection (4), and amounts designated under section 5(b)(iii) of the health and safety fund act, 1987 PA 264, MCL 141.475, shall also be deposited to the credit of the convention facility development fund.

(2) The convention facility development fund shall be distributed for certain state purposes and to local governmental units for use only for 1 or more of the following purposes:

(a) Acquiring, constructing, improving, enlarging, renewing, replacing, or leasing a convention facility.

(b) In conjunction with an activity listed in subdivision (a), repairing, furnishing, and equipping the convention facility.

(c) Refinancing an activity listed in subdivision (a) or (b).

(d) General fund expenditures.

(e) In the case of a local governmental unit that is a metropolitan authority, for any purpose authorized under [sections 17393 through 17399e](#) of this code ~~the regional convention facility authority act.~~

(3) A contract made by a local governmental unit for the purposes included in subsection (2)(a) or (b) concerning a convention facility funded by distributions pursuant to section [17329 of this code](#) shall contain a fixed price or guaranteed maximum price for the total cost of activities conducted for these purposes pursuant to that contract.

(4) For the fiscal year ending September 30, 2009, \$9,000,000.00 is appropriated from the 21st century jobs trust fund described in section 2 of the Michigan trust fund act, 2000 PA 489, MCL 12.252, to an authority created under [sections 17393 through 17399e](#) of this code ~~the regional convention facility authority act~~ for the purpose of developing a qualified convention facility as defined under section 17101(1)(vv) of this code.

**[Drafter's Comment- section 9 of the State Convention Facility Development Act, 108 of 1985 has been amended and the new text and is found in Sec. 17329 of the Code.]**

**Sec. 17329. Distribution of fund; "qualified local governmental unit" defined; certain payments prohibited.**

(1) Except as provided in subsection (4), on or before the thirtieth day of each month, the state treasurer shall make a distribution from the convention facility development fund to a qualified local governmental unit. The distribution shall be an amount equal to the sum of the collections from the excise tax levied for accommodations under [sections 17322 through 17340 of this code](#) for the previous month from the convention hotels in the county in which the

convention facility is or is to be located and in any county in which convention hotels are located that is contiguous to the county in which the convention facility is located, or is to be located, the additional tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, for the previous month received in the fund, and any distribution received under section 5(b)(iii) of the health and safety fund act, 1987 PA 264, MCL 141.475, and from the 21st century jobs trust fund under section 17328(4). However, distributions for any state fiscal year to any qualified local governmental unit under this section shall not exceed an amount equal to the amount pledged, assigned, or dedicated by the qualified local governmental unit pursuant to section 17331 for the payment during that state fiscal year of bonds, obligations, or other evidences of indebtedness incurred for the purposes specified in [sections 17322 through 17340](#) or [sections 17393 through 17399e of this code](#) ~~the regional convention facility authority act~~, plus operating deficit cost expenditures under section 17330, plus any amount necessary to maintain a fully funded debt reserve or other reserves intended to secure the principal and interest on the bonds, obligations, or other evidences of indebtedness as contained in the resolution or ordinance authorizing their issuance.

(2) Notwithstanding the distributions provided by subsection (1), if a local governmental unit becomes a qualified local governmental unit entitled to receive distributions from the tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, or from the tax imposed by [sections 17322 through 17340 of this code](#) in counties in which the convention facility is located or in a county in which a convention hotel is located that is contiguous to the county in which the convention facility is located, and from any distribution under section 5(b)(iii) of the health and safety fund act, 1987 PA 264, MCL 141.475, no other qualified local governmental unit is entitled to distributions pursuant to this section for which that qualified local governmental unit has previously become entitled, until such time as that qualified local governmental unit ownership or leasehold interest described in subsection (3) is transferred to another local governmental unit. If that transfer renders the transferee a qualified local governmental unit, the transferee shall, immediately upon that transfer, be entitled to the distributions to a qualified local governmental unit provided in subsection (1) and the priority provided to a qualified local governmental unit in this subsection, notwithstanding that the amount of the distributions may increase as a result of that transfer.

(3) ~~As used in [sections 17322 through 17340 of this code](#), "qualified local governmental unit" means a city, village, township, county, or authority that is located in, or includes within its territory or jurisdiction, a county in which convention hotels are located and that either is the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space on July 30, 1985 or, if such a convention facility does not exist, will be the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space through the application of distributions under this section to the purchase or lease of a convention facility.~~ [Drafter's Comment: Removed and placed in definitions division.]

(4) Before the 2015-2016 fiscal year, collections from the excise tax levied for accommodations under [sections 17322 through 17340 of this code](#) and collections from the tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, shall not be paid to a qualified local governmental unit for the repayment of bonds, obligations, or other evidences of indebtedness incurred after 2007.

[Drafter's Comment- section 10 of the State Convention Facility Development Act, 108 of 1985 has been amended and the new text is in Sec. 17330 of the Code.]

#### **Sec. 17330. Distribution of money remaining in fund; priority; substance abuse treatment; quarterly distributions.**

(1) Any money remaining in the convention facility development fund that is not used for the bonds, obligations, or other evidences of indebtedness described in section [17329](#) shall be distributed pursuant to subsection (2).

(2) Money in the convention facility development fund shall be distributed as provided in subsection (4) in the following order of priority in the following amounts:

(a) For each of the following fiscal years, the following amounts shall be distributed to a metropolitan authority created under [sections 17393 through 17399e of this code](#) ~~the regional convention facility~~



~~authority act for the~~ operational deficit costs of a qualified convention facility operated by the authority under [those sections](#):

- (i) \$9,400,000.00 for the fiscal year ending September 30, 2009.
- (ii) \$11,000,000.00 each fiscal year for the fiscal years ending September 30, 2010 and September 30, 2011.
- (iii) \$9,000,000.00 each fiscal year for the fiscal years ending September 30, 2012 and September 30, 2013.
- (iv) \$8,000,000.00 each fiscal year for the fiscal years ending September 30, 2014 and September 30, 2015.
- (v) \$7,000,000.00 for the fiscal year ending September 30, 2016.
- (vi) \$6,000,000.00 for the fiscal year ending September 30, 2017.
- (vii) \$5,000,000.00 each fiscal year for the fiscal years ending September 30, 2018 and September 30, 2019.
- (viii) \$5,000,000.00 for the fiscal year ending September 30, 2020.
- (ix) \$5,000,000.00 for the fiscal year ending September 30, 2021.
- (x) \$5,000,000.00 for the fiscal year ending September 30, 2022.
- (xi) \$5,000,000.00 for the fiscal year ending September 30, 2023.

(b) For fiscal years ending before October 1, 2009, an amount equal to the difference, if any, between the tax imposed under [sections 17322 through 17340 of this code](#) in the preceding state fiscal year that is designated under section 17329 to a qualified local governmental unit and the tax imposed under [sections 17322 through 17340 of this code](#) that is designated under section 17329 in the state fiscal year immediately preceding the preceding state fiscal year for the same local governmental unit shall be distributed to that local governmental unit. This subdivision does not apply unless a tax has been imposed under [sections 17322 through 17340 of this code](#) in the entire 2 state fiscal years immediately preceding the state fiscal year in which a distribution under this subdivision is made. Any amount distributed under this subdivision shall be used by the local governmental unit only for the retirement of outstanding bonds, obligations, or other evidences of indebtedness incurred for which distributions under section 17329 are pledged. A distribution under this subdivision shall not be made to the extent that the obligations, bonds, or other evidences of indebtedness cannot be retired or are not outstanding.

(c) For fiscal years ending before October 1, 2015, an amount equal to that portion of the liquor tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are not located shall be distributed to those counties in which convention hotels are not located in the same proportion that the amount of tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from the licensees in a county bears to the total tax collections under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from all counties in which convention hotels are not located.

(d) For fiscal years ending before October 1, 2015, the remaining money available after distributions under subdivisions (a), (b), and (c) shall be distributed to each county in the following amounts:

- (i) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the preceding state fiscal year under

section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are not located shall be distributed to each county in which convention hotels are not located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from all counties in which convention hotels are not located.

(ii) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the preceding state fiscal year under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are located shall be distributed to each county in which convention hotels are located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from all counties in which convention hotels are located. However, in the calculation of the proportion represented by a county's share of distributions under this subparagraph, the amount of the tax collected from licensees in the qualified local governmental unit that received distributions under section 17329 in fiscal year 2007-2008 shall not be included.

(e) For the fiscal year ending September 30, 2016, an amount equal to the product of the total amount of tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, and distributed to all counties in the 2014-2015 fiscal year multiplied by 1.01 shall be distributed to all counties as provided in this subdivision. For fiscal years beginning after September 30, 2016, an amount equal to the product of the amount of liquor tax distributions in the immediately preceding fiscal year multiplied by 1.01, not to exceed the total amount of tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, shall be distributed to counties. Distributions to each county under this subdivision shall be calculated as follows:

(i) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the immediately preceding state fiscal year under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are not located shall be distributed to each county in which convention hotels are not located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from all counties in which convention hotels are not located.

(ii) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the immediately preceding state fiscal year under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are located shall be distributed to each county in which convention hotels are located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from all counties in which convention hotels are located. However, in

the calculation of the proportion represented by a county's share of distributions under this subparagraph, the amount of the tax collected from licensees in the qualified local governmental unit that received distributions under section 17329 in the 2007-2008 state fiscal years shall not be included.

(f) Beginning with the fiscal year ending on September 30, 2016, and each fiscal year thereafter, if the revenue in the convention facility development fund exceeds the amounts distributed under section 17329 and the distributions under subdivision (e), the excess shall be distributed to a qualified local governmental unit that is a metropolitan authority to be used by that qualified local governmental unit only for the retirement of outstanding bonds, obligations, or other evidences of indebtedness incurred for which distributions under section 17329 are pledged and for a qualified governmental unit that is a metropolitan authority or next for the payment of any unfunded operational deficit costs incurred during the prior fiscal year by a metropolitan authority created under [sections 17393 through 17399e of this code](#) ~~the regional convention facility authority act~~ for the operation of a qualified convention facility under [those sections](#).

(3) A distribution to a county pursuant to this section shall be included for purposes of the calculations required to be made by section 24e of the general property tax act, 1893 PA 206, MCL 211.24e. If the governing body of a taxing unit approves the additional millage rate under section 24e of the general property tax act, 1893 PA 206, MCL 211.24e, which is due to distributions pursuant to this section, then an amount equal to 50% of the distribution under this section shall be used for substance abuse treatment within the taxing unit.

(4) Beginning October 1, 2007 and each year thereafter, from the revenue collected during the previous quarter, after distributing the monthly payments under section [17329\(1\)](#), the state treasurer shall make quarterly distributions under subsection (2)(b) and (c) or under subsection (2)(e). From the revenue collected in the last quarter of the state fiscal year, the state treasurer shall make the distribution under subsection (2)(a) prior to any distributions under subsection (2)(b) and (c) or (e).

**Sec. 17331. Refunding bonds, obligations, or other evidences of indebtedness; purposes for issuance; dedication of tax distributions from convention facility development fund; determination by state treasurer; effect of unlawful expenditure.**

1) Refunding bonds, obligations, or other evidences of indebtedness described in subsection (2) are issued subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) Pursuant to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, a local governmental unit may issue refunding bonds, obligations, or other evidences of indebtedness to refund all or a portion of the bonds, obligations, or other evidences of indebtedness issued for purposes specified in [sections 17322 through 17340 of this code](#). If refunding bonds, obligations, or other evidences of indebtedness are issued, an assignment or pledge of distributions of taxes from the convention facility development fund for the payment of principal or interest on the refunded bonds, obligations, or other evidences shall apply, after the issuance of the refunding bonds, only to the refunding bonds, obligations, or other evidences of indebtedness and to any bonds, obligations, or other evidences of indebtedness that were not refunded and to which the assignment or pledge previously applied.

(3) A local governmental unit that refunds bonds, obligations, or other evidences of indebtedness pursuant to subsection (2) may dedicate distributions of taxes from the convention facility development fund to the payment of principal, interest, or credit support fees or other costs of issuance or of the maintenance of any required reserves for general obligation bonds, obligations, or other evidences of indebtedness issued or to be issued for purposes specified in [sections 17322 through 17340 of this code](#) but not pursuant to the authority granted in [sections 17322 through 17340 of this code](#) or may reimburse itself for such payments from such distributions. However, distributions to a local governmental unit pursuant to this subsection in any state fiscal year shall not exceed the lesser of the following:

(a) Principal, interest, or credit support fees or other costs of issuance or of the maintenance of required reserves payable in the state fiscal year on the bonds, obligations, or other evidences of indebtedness to which the distributions are dedicated.

(b) The difference between the amount that would have been distributed to the local governmental unit had it not issued refunding bonds pursuant to subsection (2) and the amount of distribution of taxes to which an assignment or pledge applies under subsection (2).

(4) After September 30, 1999, taxes shall not be distributed from the convention facility development fund pursuant to subsection (3).

(5) If bonds, obligations, or other evidences of indebtedness are to be issued for the purposes set forth in section 17328(2), for which all or a portion of the distribution of taxes that the local governmental unit is eligible to receive are pledged or assigned as set forth in subsection (1) or (2), and if as a direct result of the acquiring, constructing, improving, enlarging, renewing, replacing, or in conjunction with these activities, repairing, furnishing, equipping, or leasing of a convention facility financed from the proceeds of the bonds, obligations, or other evidences of indebtedness, it is necessary for the state to expend money from the state trunk line fund from the proceeds of bonds issued by this state payable from deposits into the state trunk line fund, or from direct appropriations for the costs of relocating, constructing, or reconstructing highways, roads, streets, or bridges, and costs ancillary thereto, then before the issuance of the bonds, obligations, or other evidences of indebtedness, the state treasurer shall determine that the total amount of these costs to be paid from the state trunk line fund, from the proceeds of bonds or notes payable from deposits into the state trunk line fund, or from direct appropriations of this state, excluding any of the cost to be reimbursed to this state by the federal government, any local unit of government or authority or agency thereof, or any other person or entity, shall not exceed 25% of the total cost of the relocation, construction, or reconstruction of highways, roads, streets, and bridges, and costs ancillary to those costs, directly resulting from the convention facility project purposes described in section 17328(2). For purposes of the validity of the bonds, obligations, or other evidences of indebtedness, the determination of the state treasurer is conclusive as to the matters stated in the determination. If after the determination by the state treasurer the total costs of relocating, constructing, and reconstructing highways, roads, streets, and bridges, and costs ancillary thereto, increase, this state shall not expend from the state trunk line fund, from the proceeds from bonds payable from deposits in the state trunk line fund, or from direct appropriations of this state, any additional funds that cause the total expenditure by this state from these sources, after any reimbursement, to exceed 25% of the total cost, as increased, of the relocation, construction, and reconstruction, including ancillary costs. An expenditure by this state in violation of this subsection does not invalidate or otherwise adversely affect any previously issued bonds, obligations, or other evidences of indebtedness described in this section or any security therefor.

**Drafter's Comment- section 12 of the State Convention Facility Development Act, 108 of 1985 has been amended and text and the text below in Sec. 17332 of the Code reflects the new language.**

**Sec. 17332. Transmitting payment to trustee or trustees for bonds, obligations, or other evidences of indebtedness; prohibition; exception.**

(1) Subject to approval pursuant to section 17331, a local governmental unit may assign or pledge all or a portion of the distribution of taxes that the local governmental unit is eligible to receive under sections 17322 through 17340 of this code for payment of bonds, obligations, or other evidences of indebtedness for the purposes specified in section 17328(2). If a local governmental unit assigns, pledges, or, pursuant to section 17331(3), dedicates all or a portion of the distribution of taxes that the local governmental unit is eligible to receive under sections 17322 through 17340a of this code for payment of bonds, obligations, or other evidences of indebtedness incurred for the purposes specified in sections 17322 through 17340 of this code, the state treasurer may transmit to the duly appointed trustee or trustees for the bonds, obligations, or other evidences of indebtedness, if any, the payment of the distribution assigned, pledged, or dedicated by the local governmental unit.

(2) A local governmental unit that becomes a qualified local governmental unit before May 1, 2008 shall not issue bonds, obligations, or other evidences of indebtedness to which distributions under section 17329 are pledged in a principal amount greater than \$180,000,000.00. This limit does not apply to refunding bonds, obligations, or other evidences of indebtedness issued pursuant to section 17331(2) or to bonds, obligations, or other evidences of indebtedness to which distributions of taxes from the convention facility development fund are dedicated under section 17331(3). A local governmental unit that becomes a qualified local governmental unit after December 1, 2008 shall not issue bonds, obligations, or other evidences of indebtedness to which distributions under section 17239 are pledged in order to finance a total cost for all projects undertaken by the qualified local governmental unit

that exceeds \$299,000,000.00. The cost of a project in addition to construction and acquisition costs may include an allowance for legal, engineering, architectural, and consulting services. The following shall not be considered costs of a project and may be financed with the proceeds of bonds, obligations, or other evidences of indebtedness for which section 17329 distributions are pledged:

- (a) Interest on revenue obligations issued to finance the project becoming due before the collection of the first revenues available for the payment of those revenue obligations.
- (b) A reserve for the payment of principal, interest, and redemption premiums on the revenue obligations of the qualified local governmental unit, and other necessary incidental expenses including, but not limited to, placement fees, fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, or commitments to purchase obligations issued pursuant to in sections 17322 through 17340 of this code.
- (c) Fees or charges associated with an agreement to manage payment, revenue, or interest rate exposure.
- (d) Any other fees or charges for any other security provided to assure timely payment of the obligations.
- (e) Refunding bonds.

**Sec. 17333. When pledge effective, valid, and binding; lien of pledge; filing or recording of instrument creating pledge; construction of section.**

(1) Any pledge of the distributions of the tax imposed under sections 17322 through 17340 of this code shall be effective, valid, and binding from the time when the pledge is made. The pledged distributions received shall be immediately subject to the lien of the pledge, whether or not there has been physical delivery. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against any person receiving the distributions of the tax, whether or not the parties have notice of the pledge. The ordinance, the resolution, or any other instrument of the local governmental unit by which a pledge of the proceeds of the tax imposed pursuant to sections 17322 through 17340 of this code is created is not required to be filed or recorded except in the records of the local governmental unit to be subject to this section.

(2) This section does not constitute a continuing appropriation and shall not be construed to create an indebtedness of the state.

**Sec. 17334. Bonds, obligations, or other evidences of indebtedness not debt, liability, or obligation of state; payment or refunding; statement.**

Bonds, obligations, or other evidences of indebtedness of the local governmental unit issued for the purposes specified in sections 17322 through 17340 of this code shall not be in any way a debt or liability of the state and shall not create or constitute any indebtedness, liability, or obligation of the state or be or constitute a pledge of the faith and credit of the state. However, all bonds, obligations, or other evidences of indebtedness issued by the local governmental unit for the purposes specified in sections 17322 through 17340 of this code, unless paid or refunded by bonds, obligations, or other evidences of indebtedness of a local governmental unit, shall be payable from the funds pledged or available for their payment as authorized in sections 17322 through 17340 of this code or as otherwise provided by law. Each bond, obligation, or other evidence of indebtedness issued for the purposes specified in sections 17322 through 17340 of this code shall contain on its face a statement to the effect that the local governmental unit is obligated to pay the principal, of the premium, if any, and the interest on the bonds, obligations, or other evidences of indebtedness from distributions under sections 17322 through 17340 of this code or as otherwise provided by law, that the state is not obligated to pay the principal of, the premium, if any, and the interest on the bonds, obligations, or other evidences of indebtedness, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of, the premium, if any, and the interest on the bonds, obligations, or other evidences of indebtedness issued by the local governmental unit.

**Sec. 17335. State pledge and agreement; construction of section.**

(1) The state pledges to and agrees with the holders of bonds, obligations, or other evidences of indebtedness issued by a local governmental unit in accordance with law that the state shall not limit or restrict the rights vested in any person or local governmental unit to do any 1 or more of the following:

(a) Establish and collect fees or other charges as are convenient or necessary to produce sufficient revenues to meet the expenses of the local governmental unit for operating the convention facilities.

(b) Fulfill the terms of any agreement made with the holders of bonds, obligations, or other evidences of indebtedness issued by the local governmental unit, or in any way impair the rights or remedies of the holders of bonds, obligations, or other evidences of indebtedness issued by the local governmental unit until the principal amount of the bonds, obligations, or other evidences of indebtedness, together with interest, and premiums, if any, on the bonds, obligations, or other evidences of indebtedness and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of the holders are fully met, paid, and discharged.

(2) This section shall not be construed to obligate or restrict any future legislature to make or from making the appropriation of distributions made under [sections 17322 through 17340a of this code](#) and shall not be construed to limit or prohibit the state from repealing or amending any law enacted for the imposition of taxes being distributed by [sections 17322 through 17340 of this code](#).

**Sec. 17336. Liberal construction.**

[Sections 17322 through 17340 of this code](#) shall be construed liberally to effectuate the legislative intent and purposes of [sections 17322 through 17340 of this code](#) as complete and independent authority for the performance of each and every act and thing authorized by [sections 17322 through 17340 of this code](#) and all powers granted shall be broadly interpreted to effectuate the intent and purposes of [sections 17322 through 17340 of this code](#) and not as a limitation of powers.

**Sec. 17337. Powers cumulative.**

The powers conferred in [sections 17322 through 17340 of this code](#) upon any county or local governmental unit shall be in addition to any other powers the county or local governmental unit shall possess by charter or statute

**Sec. 17338. Annual appropriation.**

There is appropriated each year from the convention facility development fund an amount sufficient to make the distributions under section [17329](#).

**Sec. 17339. Effective date of excise tax.**

The excise tax imposed pursuant to [sections 17322 through 17340 of this code](#) shall take effect on the first day of the calendar month, but not less than 29 days, after a facility becomes a convention hotel as certified by the state treasurer.

[\[Drafter's Comment- section 20 of the State Convention Facility Development Act, 108 of 1985 has been amended and the text below in Sec. 17328 of the Code reflects the new language.\]](#)

**Sec. 17340. Levy of tax; time period.**

The tax imposed by [sections 17322 through 17340 of this code](#) shall not be levied after the earlier of December 31, 2039 or 30 days after all bonds, notes, or other obligations issued by a metropolitan authority formed [sections 17393 through 17399e of this code](#) ~~the regional convention facility authority act~~ for purposes authorized under [those sections](#) are retired.



## PART B. LOCAL ACTIVITIES

[Sections 17352 – 17359 of this code formerly known as the – Stadia or Convention Facility Development Act, PA 180 of 1991, MCL 207.751-759. The last two digits of each section have been preserved to allow for ease of comparison.]

### **Sec. 17352. Municipal excise tax on certain businesses; maximum rate; ordinance; question presented to voters; expiration of excise tax; initiative and referendum; limitation.**

(1) The governing body of an eligible municipality, by ordinance, may levy, assess, and collect an excise tax on the privilege of operating the following businesses in the eligible municipality:

(a) A person engaged in the business of preparation and delivery of food or alcoholic or nonalcoholic beverages for immediate consumption either on or off the premises, who is licensed to operate within the eligible municipality as a food service establishment under part 129 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.12901 to 333.12922 of the Michigan Compiled Laws. This subdivision does not apply to a school district, to a nonprofit organization exempt from paying sanitation fees under section 12906(3) of part 129 of Act No. 368 of the Public Acts of 1978, being section 333.12906 of the Michigan Compiled Laws, or to a grocery store licensed under the food processing act of 1977, Act No. 328 of the Public Acts of 1978, being sections 289.801 to 289.810 of the Michigan Compiled Laws, whose sale of food or beverages for immediate consumption is in a volume incidental to the volume of its business as a grocery store.

(b) A person engaged in the business of the leasing or rental of motor vehicles of which delivery is made in the eligible municipality.

(c) A person engaged in the business of providing accommodations for dwelling, lodging, or sleeping purposes in an eligible municipality to transient guests, whether or not membership is required for the use of the accommodations.

(2) The rate of tax imposed pursuant to subsection (1) shall not exceed the following amounts:

(a) 1% of the gross receipts received by the person subject to tax under subsection (1)(a) from the sale of food and beverages, including alcoholic beverages, for immediate consumption either on or off the premises.

(b) 2% of the gross receipts received by the person subject to tax under subsection (1)(b) from the leasing or rental of motor vehicles for periods of less than 30 consecutive days.

(c) 1% of the gross receipts received by a person subject to tax under subsection (1)(c) from the charges imposed for the use or occupancy of accommodations provided in the eligible municipality to transient guests, but excluding charges imposed as reimbursement for the tax levied under [sections 17323 through 17340 of this code](#) the state convention facility development act, Act No. 106 of the Public Acts of 1985, being ~~sections 207.621 to 207.640 of the Michigan Compiled Laws~~, or for assessments imposed under [sections 17373 through 17378 of this code](#) the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being ~~sections 141.881 to 141.889 of the Michigan Compiled Laws~~, [sections 17223 through 17230 of this code](#) the regional tourism marketing act, Act No. 244 of the Public Acts of 1989, being ~~sections 141.891 to 141.900 of the Michigan Compiled Laws~~, and [sections 17363-17370 of this code](#) the community convention or tourism marketing act, Act No. 395 of the Public Acts of 1980, being ~~sections 141.871 to 141.880 of the Michigan Compiled Laws~~.

(3) The ordinance shall specify the date on which the ordinance becomes effective, which shall not be earlier than 30 days after the date on which the ordinance is approved by a vote of a majority of the electors of the eligible municipality voting on the ordinance at a primary or general election or at a special election called for that purpose. Any ordinance under [sections 17352 through 17359 of this code](#) shall not be submitted to the electors of an eligible municipality more than 2 times. The county clerk and all local election officials within the county shall take

those steps necessary to conduct the election, the incremental expense of which shall be reimbursed by the eligible county. The question presented to the voters shall state the rates at which the tax is authorized and that the purpose of the tax is principally to secure and fund the payment of rentals by the eligible municipality to an authority organized for the purpose of acquiring a stadium or convention facility and leasing it to the eligible municipality. The question presented may also request approval of the leasing and subleasing of the stadium or convention facility by the eligible municipality. However, if the question presented does not include a request for approval of the leasing and subleasing of the stadium or convention facility, a right of initiative and referendum exists, pursuant to the terms of the local charter, in relation to the adoption or execution of any contract, lease, or sublease for the stadium or convention facility or of any amendment to any contract of lease or sublease of any local unit of government necessary to allow the eligible municipality to lease or sublease the stadium or convention facility.

(4) The ordinance imposing the excise tax authorized by [sections 17352 through 17359 of this code](#) shall provide for the expiration of the excise tax not later than the end of the fiscal year of the eligible municipality in which obligations issued by an authority to which the revenues of the excise tax are pledged as rentals under section [17356 of this code](#) or any obligations that may refund those obligations, in whole or in part, are retired.

(5) A right of initiative and referendum exists in relation to any issue related to an ordinance adopted in a county that is not a charter county. To invoke that initiative or referendum, petitions signed by not less than 5% of the registered electors in the county shall be filed with the county clerk of that county. The county board of commissioners shall provide the time and manner of submitting the question at the election and of determining the result of the election.

(6) An eligible municipality shall not levy the tax under [sections 17352 through 17359 of this code](#) on businesses upon which another eligible municipality has imposed the tax.

**Sec. 17352a. Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.**

A petition under section [17352 of this code](#), including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

**Sec. 17353. Ordinance; required provisions.**

The ordinance adopted pursuant to section [17352 of this code](#) shall provide for the following:

- (a) The rates of the tax.
- (b) The manner of imposition of the tax, including the dates on which the tax is due, the period covered by each collection, and the method or methods of payment.
- (c) The rates and manner of the imposition of interest and penalties for delinquency in filing returns, payment of taxes, or violations of the ordinance, which shall not exceed interest and penalty charges imposed under Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws, for a tax levied by the state.
- (d) The determination and allowance of exemptions, abatements, and refunds.
- (e) The designation of the collector of the tax.
- (f) Procedures for the appeal of any assessment, including the period in which a person may appeal the assessment. All appeals shall be made to the tax tribunal subject to the tax tribunal act, Act No. 186 of the Public Acts of 1973, being sections 205.701 to 205.779 of the Michigan Compiled Laws.
- (g) That if any 1 or more provisions of the ordinance for any reason are adjudged invalid or unenforceable, that judgment does not affect, impair, or invalidate the remaining provisions of the ordinance.



**Sec. 17354. Administration and collection of excise tax; agreement with state treasurer; remittance to municipality; ordinance provisions; confidentiality of taxpayer information; violation; penalties.**

(1) The chief executive officer and the state treasurer may enter into an agreement providing that the tax imposed pursuant to sections 17352 through 17359 of this code be administered and collected by the revenue division under Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws. If there is agreement, the department of treasury shall administer and collect the tax imposed by sections 17352 through 17359 of this code on behalf of the eligible municipality, and the ordinance shall provide for the administration and collection of the tax imposed by sections 17352 through 17359 of this code in the same manner as state taxes are administered and collected under Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws, except for procedures for the appeal of any assessment as provided by the ordinance. Not more than 15 days after their due date, taxes, interest, and penalties collected by the revenue division of the department of treasury pursuant to that agreement shall be remitted to the eligible municipality that imposed the tax. Any remittance to the eligible municipality by the department of treasury after that date shall include interest earned on the gross collections after that deadline and before transmittal to the eligible county, calculated on the basis of the rate of interest accrued for this period on the common cash fund of the state.

(2) The ordinance may provide for 1 or more of the following:

(a) The adoption and enforcement of rules by the eligible municipality to apply, interpret, and effectuate the provision and purposes of the tax.

(b) The prescribing and furnishing to taxpayers of forms, instructions, manuals, and other materials necessary or convenient for the administration of the tax.

(c) The requiring of taxpayers to file returns, provide information, and maintain records that are reasonable for enforcement of the tax and auditing of the returns.

(d) The examination of the books and records of a taxpayer for purposes of determining the correctness of a tax return or information filed, or for the determination of any further tax liability.

(3) Information obtained pursuant to a provision in the ordinance authorized under subsection (2)(d) or through any return, investigation hearing, or verification required or authorized by the ordinance is confidential, except for official purposes in connection with the administration of the ordinance and except pursuant to a proper judicial order. A person who divulges this confidential information, except for official purposes, is guilty of a violation of the ordinance punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 5 years, or both. Additionally, if the offense is committed by an employee of the eligible municipality or the state, the person shall be dismissed from office or discharged from employment upon conviction.

**Sec. 17355. Excise tax levied in addition to other lawful taxes.**

The excise tax levied under [sections 17352 through 17359 of this code](#) is in addition to any other taxes, charges, or fees and may be levied notwithstanding any other law to the contrary.

**Sec. 17356. Disposition and use of excise tax revenues**

The revenues from the tax imposed under [sections 17352 through 17359 of this code](#) shall be deposited in a special fund and shall be used and may be pledged by the eligible municipality only for the following purposes or paid to the following entities in the following order of priority:

(a) Costs borne by the eligible municipality for the election required under section [17352\(3\) of this code](#) and in the administration and enforcement of the ordinance.

(b) Costs associated with the acquisition and construction of a stadium as defined by section [17101\(1\)\(iii\) of this code](#) or with the acquisition, improvement, enlargement, and construction of a stadium as defined by section [17101\(1\)\(iii\) of this code](#) or convention facility as defined by section [17101\(1\)\(l\) of this code](#), including the reimbursement of those costs paid by an eligible municipality, and costs of current or future annual rental payable for a stadium or convention facility by an eligible municipality, or

reimbursement of the eligible municipality for rentals paid, to an authority that is incorporated by the eligible municipality pursuant to Act No. 31 of the Public Acts of the First Extra Session of 1948, being sections 123.951 to 123.965 of the Michigan Compiled Laws.

(c) To the extent not needed for purposes identified in subdivision (a) or (b) in any year or to maintain a reserve for those purposes in future years, costs associated with the clearance and improvement of land for assembly and development purposes.

**Sec. 17357. Entering into contract for lease of stadium or convention facility payable from excise tax revenues; conditions.**

An eligible municipality imposing an excise tax pursuant to [sections 17352 through 17359 of this code](#) shall not enter into a contract for lease of a stadium or convention facility payable in whole or in part from the revenues of the excise tax unless the eligible municipality takes action to insure the proceeds of any obligations issued by an authority to which rentals are payable, whether or not secured by a pledge of revenues from the excise tax, and any other available money are sufficient to defray the cost of the stadium or convention facility. This action may include the appointment of officials or employees of a local governmental unit as members of the authority to which revenues of the excise tax may be pledged under [sections 17352 through 17359 of this code](#). An official or employee of a local governmental unit appointed to an authority to which revenues of the excise tax may be pledged under [sections 17352 through 17359 of this code](#) is not considered to be concurrently holding incompatible offices or to be in breach of a duty of his or her public office by reason of the power of the position or because of a contract for lease of the stadium or convention facility between the authority and the eligible municipality.

**Sec. 17358. Legislative intent.**

(1) It is the intent of this legislature that state funds shall not be used for the construction, maintenance, or operation of stadia or convention facilities.

(2) It is the intent of this legislature that state funds shall not be used as a subsidy or to subsidize a shortfall of revenues collected from nonstate sources.

**Sec. 17359. Repeal of MCL 141.851 to 141.855. [Deleted]**

**[Drafter's Comment: sections 17363-17370 of this code were previously the Community Convention or Tourism Marketing Act, PA 395 of 1980, formerly found at MCL 141.871-80. Sections 17363 through 17370 of this code were formerly known and cited as the "community convention or tourism marketing act".]**

**Sec. 17363. Marketing program and assessment district; establishment; filing marketing program notice; contents of notice; assessment; exclusion; excise or other tax; copies of notice; list of owners; transient facilities; imposition of assessment; conditions.**

(1) A bureau that intends to establish a marketing program and assessment district shall file a marketing program notice with the director of commerce. The marketing program notice shall state that the bureau proposes to create a marketing program under [sections 17363 through 17370 of this code](#) and cause an assessment to be collected from owners of transient facilities within the assessment district to pay the costs of the marketing program.

(2) The marketing program notice shall describe the structure, membership, and activities of the bureau.

(3) The marketing program notice shall describe the marketing program to be implemented by the bureau with the assessment revenues, specify the amount of the assessment proposed to be levied, which, except as provided in this subsection, shall not exceed 2% of the room charges in the applicable payment period, and describe the municipalities comprising the assessment district. A bureau described in subsection (8) may impose an assessment of 4% if the assessment and marketing program are approved by a majority of the transient facilities located within a township described in subsection (8) at a written referendum held by the [director of commerce](#) pursuant to section [17363a](#) by mail or in person for the purpose of which each owner shall have 1 vote for each room in an owner's transient facility.

(4) Except as provided in section 17370, an area shall not be included in the marketing program notice filed under sections 17363 through 17370 of this code and the assessment district specified in the notice if the area is part of an existing assessment district under sections 17363 through 17370 of this code is act for which a marketing program is in effect.

(5) If on the date of the mailing of the marketing program notice under sections 17363 through 17370 of this code an excise tax or other tax based on a room charge is not being collected, a municipality included in the marketing program notice shall not be subject to the collection of an excise tax imposed under Act No. 263 of the Public Acts of 1974, being sections 141.861 to 141.867 of the Michigan Compiled Laws, or another tax based on a room charge.

(6) If a part of a municipality is subject to an assessment under sections 17373 through 17378 of this code the convention and tourism marketing act, Act No. 383 of the Public Acts of 1980, being sections 141.881 to 141.889 of the Michigan Compiled Laws, that part of the municipality shall not be included in a marketing program notice or assessment district under sections 17363 through 17370 of this code.

(7) Simultaneously with the filing of the marketing program notice with the director of commerce, the bureau shall mail a copy of the notice, by registered or certified mail, to each owner of a transient facility located in the assessment district specified in the notice, in care of the respective transient facility. In assembling the list of owners to whom the notices shall be mailed, the bureau shall use any data that is reasonably available to the bureau.

(8) A bureau that is located within a township that is a municipality and, except for the assessment made under this subsection, that does not assess a room charge on the owners of a transient facility may impose an assessment of 4% if it meets all of the following:

(a) The assessment district is a township that is contiguous to a county that levies an excise tax of 5% under Act No. 263 of the Public Acts of 1974.

(b) The owners representing not less than 80% of the rooms in the assessment district are members of a nonprofit organization formed to promote convention business or tourism that receives funding from a tax levied under Act No. 263 of the Public Acts of 1974, in the contiguous county.

(c) The bureau contracts with the nonprofit organization formed to promote convention business or tourism that receives funding from a tax levied under Act No. 263 of the Public Acts of 1974, in the contiguous county to promote convention business or tourism and pays that nonprofit organization all of the assessment revenues collected under sections 17363 through 17370 of this Code for the promotion of convention business or tourism.

(d) The owners representing not less than 80% of the rooms in the assessment district voluntarily contributed during the nonprofit organization's preceding fiscal year to the nonprofit organization formed to promote convention business or tourism that receives funding from a tax levied under Act No. 263 of the Public Acts of 1974, in the contiguous county, an amount equivalent to the 2% assessment permitted under sections 17363 through 17370 of this code for the promotion of convention business or tourism.

**Sec. 17363a. Marketing program; approval or disapproval; referendum; effective date of marketing program and assessment; filing and serving another marketing program notice.**

(1) Within 30 days after a marketing program notice is filed, the director of commerce shall approve or disapprove the marketing program. The director of commerce shall not disapprove a marketing program unless the program violates sections 17363 through 17370 of this code.

(2) Within 40 days after approval of a marketing program, the director of commerce shall require a written referendum to be held by mail or in person, as determined by the director of commerce, among all owners of transient facilities in each municipality in the proposed assessment district. For the purpose of the referendum, each owner shall have 1 vote for each room in an owner's transient facility.

(3) The marketing program and assessment set forth in the notice shall become effective on the first day of the month that is more than 30 days after certification by the [director of commerce](#) that the program was approved by a majority of the votes actually cast in each municipality in the assessment district. If a majority of the votes actually cast in any municipality counted separately is not in favor of the program and assessment, the program and assessment shall not go into effect in the assessment district. However, for purposes of tabulating the votes in the referendum for a marketing program proposed on or after April 12, 1984, each municipality in the proposed assessment district requiring a majority of votes cast in favor of the proposed assessment district shall be defined in the marketing program notice required under section [17363](#). A bureau may file and serve another marketing program notice not less than 60 days after certification of the results of a referendum.

**Sec. 17364. Marketing program; contents.**

A marketing program may include all or any of the following:

- (a) Provisions for establishing and paying the costs of advertising, marketing, and promotional programs to encourage convention business or tourism in the assessment district.
- (b) Provisions for assisting transient facilities within the assessment district in promoting convention business or tourism.
- (c) Provisions for the acquisition of personal property considered appropriate by the bureau in furtherance of the purposes of the marketing program.
- (d) Provisions for the hiring of and payment for personnel employed by the bureau to implement the marketing program.
- (e) Provisions for contracting with organizations, agencies, or persons for carrying out activities in furtherance of the purposes of the marketing program.
- (f) Programs for establishing and paying the costs of research designed to encourage convention business or tourism in the assessment district.
- (g) Provisions for incurring any other expense or cost which the Community Convention Board, in the exercise of its reasonable business judgment, considers reasonably related to promotion of the convention business or tourism within the assessment district.
- (h) Procedures for election of the Community Convention Board.

**Sec. 17365. Assessment; computation; payment; reimbursement; agreement to accept payment of assessments; forwarding money; withholding portion of assessment for administrative costs; verification and audit of owner's assessment payments; state use tax returns; unpaid assessments; interest and delinquency charges; suit to collect; notice.**

(1) Upon the effective date of an assessment under section [17363a](#), each owner of a transient facility in the assessment district shall be liable for payment of the assessment, computed by multiplying the percentage set forth in the marketing program notice by the aggregate room charges imposed by the transient facility during a [calendar \[spelling correction\]](#) month. The assessment shall be paid by the owner of each such transient facility to the bureau or the person designated by the bureau within 30 days after the end of each calendar month, and shall be accompanied by a statement of room charges imposed by the transient facility for that calendar month. [Sections 17363 through 17370 of this code](#) does not prohibit an owner from reimbursing the transient facility by adding the assessment imposed under [sections 17363 through 17370 of this code](#) to room charges payable by transient guests. However, the owner shall disclose that the transient facility has been reimbursed for the assessment imposed under [sections 17363 through 17370 of this code](#) on the bill presented to the transient guest.

(2) A bureau or person designated by the bureau may enter into an agreement with a regional tourism marketing organization established under [sections 17223 through 17230 of this code](#) ~~the regional tourism marketing act~~ to accept from owners subject to an assessment under [sections 17363 through 17370 of this code](#) the payment of assessments that are levied by a regional marketing organization [section 17226 of this code](#) ~~section 6 of the regional~~

~~tourism marketing act.~~ A bureau or the person designated by the bureau shall forward the money received in payment of an assessment levied by a regional marketing organization [sections 17223 through 17230 of this code](#) ~~under the regional tourism marketing act~~ to the person designated by the regional marketing organization to receive the payment of assessments under [section 17226 of this code](#) ~~section 6 of the regional tourism marketing act~~. The bureau may withhold the portion of an assessment received on behalf of a regional marketing organization under this subsection and [section 17226 of this code](#) ~~section 6 of the regional tourism marketing act~~ as agreed upon between the bureau and the regional marketing organization to reimburse the bureau or person designated by the bureau for reasonable administrative costs to receive and forward assessments due a regional marketing organization.

(3) Within 30 days after the close of each calendar quarter, each owner within an assessment district shall forward to the independent certified public accountants who audit the financial statements of the bureau, copies of the state use tax returns of the transient facility for the preceding quarter. The copies of the state use tax returns shall be used solely by the certified public accountants to verify and audit the payment by the owner of the assessments under [sections 17363 through 17370 of this code](#), and shall not be disclosed to the bureau except as the director of [commerce](#) determines necessary to enforce [sections 17363 through 17370 of this code](#).

(4) Interest shall be paid by an owner to the bureau on any assessments not paid within the time required under [sections 17363 through 17370 of this code](#). The interest shall accrue at the rate of 1.5% per month. Owners delinquent for more than 90 days in paying assessments, in addition to the 1.5% interest, shall pay a delinquency charge of 1.5% per month or fraction of a month on the amount of the delinquent assessments. The bureau may sue in its own name to collect the assessments, interest, and delinquency charges.

(5) The owner of a transient facility shall not be liable for payment of an assessment until a marketing program notice has been mailed to the transient facility of the owner pursuant to [section 17363](#).

**Sec. 17366. Assessment revenues not state funds; deposit and disbursement; financial statements; audit; report; copies.**

(1) The assessment revenues collected pursuant to [sections 17363 through 17370 of this code](#) shall not be state funds. The money shall be deposited in a bank or other depository in this state, in the name of the bureau, and shall be disbursed only for the expenses properly incurred by the bureau with respect to the marketing programs developed by the bureau under [sections 17363 through 17370 of this code](#).

(2) The financial statements of the bureau shall be audited at least annually by a certified public accountant. A copy of the audited financial statements shall be mailed to each owner not more than 150 days after the close of the bureau's fiscal year. The financial statements shall include a statement of all assessment revenues received by the bureau during the fiscal year in question and shall be accompanied by a detailed report, certified as correct by the chief operating officer of the bureau, describing the marketing programs implemented or, to the extent then known, to be implemented by the bureau.

(3) Copies of the audited financial statements and the certified report shall simultaneously be mailed to the director of [commerce](#).

**Sec. 17367. Repealed. 1984, Act 59, Imd. Eff. Apr. 12, 1984.**

**Sec. 17368. Discontinuance of assessment; referendum; proposing new marketing program notice; failure to adopt resolution discontinuing assessment; further referendum.**

(1) At any time 2 years or more after the effective date of an assessment, and upon the written request of owners of transient facilities located within an assessment district representing not less than 40% of the total number of owners or not less than 40% of the total number of rooms in all of the transient facilities in the assessment district, the bureau shall conduct a referendum on whether the assessment shall be discontinued. The bureau shall cause a written referendum to be held by mail or in person, as the bureau chooses, among all owners of transient facilities in the petitioning assessment district within 60 days of the receipt of the requests. For the purposes of the referendum, each owner shall have 1 vote for each room in each of the owner's transient facilities within the petitioning assessment district. If a majority of the votes actually cast at the referendum for the assessment district supports

discontinuance of the assessment, the assessment shall be discontinued for that area or county on the first day of the month following expiration of 60 days after the certification of the results of the referendum by the bureau.

(2) Passage of a resolution discontinuing the assessment shall not prevent a bureau from proposing a new marketing program notice during or after the 60-day period, in which case the procedures set forth in section 17363 shall be followed.

(3) If a referendum is conducted under subsection (1) and if a resolution to discontinue the assessment is not adopted, a further referendum on the discontinuation of that assessment for the assessment district for which the referendum was held shall not be held for a period of 2 years.

**Sec. 17369. Building or combination of buildings with less than 10 rooms; agreement to be subject to assessment; participation in marketing program; duration of assessment.**

(1) The owner of a building or combination of buildings, which is within an assessment district, has less than 10 rooms, and otherwise meets the definition of transient facility, may agree in writing to be subject to the assessment. If an owner agrees to be subject to the assessment, the building or combination of buildings shall be considered a transient facility for the purposes of sections 17363 through 17370 of this code. The owner and transient facility shall participate in the marketing program for that assessment district.

(2) A building or combination of buildings which becomes a transient facility under this section shall remain subject to the assessment unless the assessment is discontinued as provided in section 17368.

**Sec. 17370. Existing assessment district and marketing program.**

An assessment district and marketing program under sections 17363 through 17370 of this code which is in effect before the effective date of this section shall remain in effect for 365 days after the effective date of this section or until a new marketing program and assessment district, which includes any portion of an existing assessment district and which is established under sections 17363 through 17370 of this code, becomes effective, whichever is sooner.

**Sections 17371-17378 were formerly known as, PA 383 of 1980 – Convention and Tourism Marketing Act, found at MCL 141.883 *et seq.* Last digit in the section corresponds to the last digit in the Convention and Tourism Marketing act for ease of comparison. ]**

**[Sections 17373 through 17378 of this code were formerly known and cited as the “convention and tourism marketing act”.]**

**Sec. 17373. Marketing program notice; contents; assessment; mailing copy of notice to owner of transient facility; referendum.**

(1) A bureau which has its principal place of business in a county having a population of more than 1,500,000 may file a marketing program notice with the director. The notice shall state that the bureau proposes to create a marketing program under sections 17373 through 17378 of this code and cause an assessment to be collected from owners of transient facilities within the assessment district to pay the costs of the program.

(2) The marketing program notice shall describe the structure, history, membership, and activities of the bureau in sufficient detail to enable the director to determine if the bureau satisfies all of the requirements of a “bureau” under section 17101(1)(g).**[ Drafter’s Comment: this refers to a definition that was previously contained within the statute itself, but now appears in division 1 of the article. I think it would be more beneficial to list the requirements again here.]**

(3) The marketing program notice shall describe the marketing program to be implemented by the bureau with the assessment revenues, specify the amount of the assessment proposed to be levied which shall not exceed 2% of the room charges in the applicable payment period, and the county or counties comprising the assessment district. A county shall not be included in the marketing program notice and the assessment district specified in the notice if on



the date the notice is mailed the county is collecting a tax pursuant to Act No. 263 of the Public Acts of 1974, being sections 141.861 to 141.867 of the Michigan Compiled Laws.

(4) Simultaneously with the filing of the marketing program notice with the director, the bureau shall cause a copy of the notice to be mailed by registered or certified mail to each owner of a transient facility located in the assessment district specified in the notice in care of the respective transient facility. In assembling the list of owners to whom the notices shall be mailed, the bureau shall use any data which is reasonably available to the bureau.

(5) The form of the marketing program notice, in addition to the information required by subsections (1), (2), and (3), shall set forth the right of referendum prescribed in subsection (6).

(6) The assessment set forth in the notice shall become effective on the first day of the month following the expiration of 40 days after the date the notice is mailed, unless the director, within the 40-day period, receives written requests for a referendum by owners of transient facilities located within the assessment district representing not less than 40% of the total number of owners or not less than 40% of the total number of rooms in all the transient facilities.

(7) If the director receives referendum requests in the time and number set forth in subsection (6), the director shall cause a written referendum to be held by mail or in person, as the director chooses, among all owners of transient facilities in the assessment district within 20 days after the expiration of the 40-day period. For the purposes of the referendum, each owner of a transient facility shall have 1 vote for each room in each of the owner's transient facilities within the assessment district. If a majority of votes actually cast at the referendum approve the assessment, as proposed by the bureau in its marketing program notice, the assessment shall become effective as to all owners of transient facilities located in the assessment district on the first day of the month following expiration of 30 days after certification of the results of the referendum by the director. If a majority of votes actually cast at the referendum are opposed to the assessment, the assessment shall not become effective. If the assessment is defeated by the referendum, the bureau may file and serve a new notice of intention if at least 60 days have elapsed from the date of certification of the results of the earlier referendum. Not more than 2 referenda or notices may be held pursuant to this subsection or filed pursuant to this section in any 1 calendar year. Only 1 assessment may be in existence in an assessment district, or any part of an assessment district, at any 1 time.

#### **Sec. 17374. Marketing program; Contents.**

A marketing program may include all or any of the following:

(a) Provisions for establishing and paying the costs of advertising, marketing, and promotional programs to encourage convention business and tourism in the assessment district.

(b) Provisions for assisting transient facilities within the assessment district in promoting convention business and tourism.

(c) Provisions for the acquisition of personal property considered appropriate by the bureau in furtherance of the purposes of the marketing program.

(d) Provisions for the hiring of and payment for personnel employed by the bureau to implement the marketing program.

(e) Provisions for contracting with organizations, agencies, or persons for carrying out activities in furtherance of the purposes of the marketing program.

(f) Programs for establishing and paying the costs of research designed to encourage convention business and tourism in the assessment district.

#### **Sec. 17375. Assessment; payment; statement of room charges; reimbursement from room charges; verification and audit of owner's assessment payments; state use tax returns; unpaid assessments; interest and delinquency charges; suit to collect; notice.**

(1) Upon the effective date of an assessment, each owner of a transient facility in the assessment district shall be liable for payment of the assessment, computed using the percentage set forth in the marketing program notice. The assessment shall be paid by the owner of each such transient facility to the bureau within 30 days after the end of each calendar month, and shall be accompanied by a statement of room charges imposed with respect to the transient facility for that month. [Sections 17373 through 17378 of this code](#) shall not prohibit a transient facility from reimbursing itself by adding the assessment imposed pursuant to [sections 17373 through 17378 of this code](#) to room charges payable by transient guests, provided the transient facility discloses that it has done so on any bill presented to a transient guest.

(2) Within 30 days after the close of each calendar quarter, each owner within an assessment district shall forward to the independent certified public accountants who audit the financial statements of the bureau, copies of its state use tax returns for the preceding quarter. These copies of the state use tax returns shall be used solely by the certified public accountants to verify and audit the owner's payment of the assessments, and shall not be disclosed to the bureau except as necessary to enforce [sections 17373 through 17378 of this code](#).

(3) Interest shall be paid by an owner to the bureau on any assessments not paid within the time called for under [sections 17373 through 17378 of this code](#). The interest shall accrue at the rate of 1.5% per month. Owners delinquent for more than 90 days in paying assessments, in addition to the 1.5% interest, shall pay a delinquency charge of 10% per month or fraction of a month on the amount of the delinquent assessments. The bureau may sue in its own name to collect the assessments, interest, and delinquency charges.

(4) The owner of a transient facility shall not be liable for payment of an assessment until a notice has been mailed to the transient facility of the owner pursuant to section 17373(4) of this code.

**Sec. 17376. Assessment revenues not state funds; deposit and disbursement; financial statements; audit; report; copies.**

(1) The assessment revenues collected pursuant to [sections 17373 through 17378 of this code](#) shall not be state funds. The money shall be deposited in a bank or other depository in this state, in the name of the bureau, and disbursed only for the expenses properly incurred by the bureau with respect to the marketing programs developed by the bureau under [sections 17373 through 17378 of this code](#).

(2) The financial statements of the bureau shall be audited at least annually by a certified public accountant. A copy of the audited financial statements shall be mailed to each owner not more than 150 days after the close of the bureau's fiscal year. The financial statements shall include a statement of all assessment revenues received by the bureau during the fiscal year in question and shall be accompanied by a detailed report, certified as correct by the chief operating officer of the bureau, describing the marketing programs implemented or, to the extent then known, to be implemented by the bureau.

(3) Copies of the audited financial statements and the certified report shall simultaneously be mailed to the director.

**Sec. 17377. Advisory committee; election and terms of members; formal meetings; review of proposed marketing program; approval or rejection; recommendations; Convention and Tourism Marketing Board of directors.**

(1) Upon the effective date of the establishment of an assessment under [sections 17373 through 17378 of this code](#), the bureau shall cause an advisory committee to be elected consisting of representatives of the owners of transient facilities located within the assessment district, together with the director or the director's designated representative.

(2) The advisory committee shall consist of not less than 9 nor more than 15 persons, at least 1 of whom shall not be affiliated with a bureau member. The advisory committee shall include at least 3 persons from each county within the assessment district, at least 1 of whom, from each county, is affiliated with a transient facility of 75 rooms or less. Procedures for the election and terms of the office of the members of the advisory committee shall be established by the bureau.



(3) The bureau at regular intervals, but not less than quarterly, shall cause a formal meeting of the advisory committee to be held at which the bureau shall present its current and proposed marketing programs. At these formal meetings the advisory committee shall review and either approve or reject any proposed marketing programs. An approved marketing program shall be instituted by the bureau. A rejected marketing program shall not be instituted by the bureau.

(4) The advisory committee may make recommendations to the bureau and the Convention and Tourism Marketing Board from time to time with respect to current or proposed marketing programs.

(5) The bureau shall cause to be elected to its of directors, from the members of the advisory committee, 1 person from each of the counties within the assessment district.

**Sec. 17378. Discontinuance of assessment; referendum; proposing new marketing program notice; failure to adopt resolution discontinuing assessment; further referendum.**

(1) At any time 2 years or more after the effective date of an assessment, and upon the written request of owners of transient facilities located within the assessment district representing not less than 40% of the total number of owners or not less than 40% of the total number of rooms in all the transient facilities, the bureau shall conduct a referendum on whether the assessment shall be discontinued. The bureau shall cause a written referendum to be held by mail or in person, as the bureau chooses, among all owners of transient facilities in the assessment district within 60 days of the receipt of the requests. For the purposes of the referendum, each owner shall have 1 vote for each room in each of the owner's transient facilities within the assessment district. If a majority of the total votes eligible to be cast at the referendum supports discontinuance of the assessment, the assessment shall be discontinued on the first day of the month following expiration of 90 days after the certification of the results of the referendum by the bureau.

(2) Passage of a resolution discontinuing the assessment shall not prevent a bureau from proposing a new marketing program notice during or after the 90-day period, in which case the procedures set forth in section 3 shall be followed.

(3) If a referendum is conducted under subsection (1), and if a resolution to discontinue the assessment is not adopted, a further referendum on the discontinuation of that assessment shall not be held for a period of 2 years.

[Sections 17381 through 17391 of this code, formerly PA 203 of 1999, The Convention Facility Authority Act, which was found at MCL 141.1401 *et seq.*]

**Sec. 17381. Establishment of convention authority by county and city; resolution; organization.**

(1) A qualified county and a qualified city may by resolutions of their respective legislative governing bodies jointly establish an convention authority under [sections 17381 through 17391 of this code](#). On the date on which all the certified copies of the resolutions establishing the convention authority are filed with the secretary of state, the convention authority is created as a body corporate and politic.

(2) A convention authority under [sections 17381 through 17391 of this code](#) is an authority organized pursuant to state law for purposes of 1974 PA 263, MCL 141.861 to 141.867.

**Sec. 17382. Convention facility board of directors; powers, duties, and functions; membership; terms; oath of office; vacancy; eligibility of legislative member or city official.**

(1) The powers, duties, and functions of a convention authority are vested in and shall be exercised by a convention facility board of directors. The convention facility board shall consist of 7 members as follows:

- (a) Two members who are residents of the qualified county appointed by the county board of commissioners of the qualified county, 1 of whom is from the private sector with experience in economic development.

(b) Two members who are residents of the qualified county appointed by the mayor of the qualified city with approval by the legislative body of the qualified city, 1 of whom is from the private sector with experience in economic development.

(c) One member who is a resident of the qualified county appointed by the governor.

(d) Two members who are residents of the qualified county appointed by the 5 members described in subdivisions (a), (b), and (c) at the first meeting of the convention facility board as the first item of business, both of whom shall be selected from a list of not fewer than 3 individuals provided by the local convention and visitors bureau. Every 2 years after the first appointment under this subdivision, 1 member shall be appointed at the first meeting of the convention facility board following the expiration of the member's term as the first item of business.

(2) Except as otherwise provided in this subsection, members of the convention facility board shall be appointed for a term of 4 years. One of the convention facility board members first appointed by the county board of commissioners of the qualified county and 1 of the convention facility board members first appointed by the mayor of the qualified city with the approval of the legislative body of the qualified city shall be appointed for a term of 2 years. The first member appointed under subsection 1(d) shall be appointed for a term of 2 years. A person is not eligible to be a member of the convention facility board if that person has served 12 or more consecutive years as a member of that convention facility board.

(3) Upon appointment to a convention facility board under subsection (1) and upon taking and the filing of the constitutional oath of office, a member of the convention facility board shall enter office and exercise the duties of the office to which he or she is appointed.

(4) A vacancy on a convention facility board of a member serving for a fixed term shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member of the convention facility board holds office until a successor is appointed and qualified.

(5) Notwithstanding a charter provision of a qualified city to the contrary, a member of the legislative body or other city official of the qualified city is eligible to serve as a member of a convention facility board established [sections 17381 through 17391 of this code](#).

**Sec. 17383. Convention facility board of directors; discharge of duties; actions; meetings; compensation.**

[Editor's note: This section and the following one are similar to provisions found in article I, division V, and, if reconciled with those provisions, this one may be struck.]

(1) Members of a convention facility board and officers and employees of the convention authority are subject to 1968 PA 317, MCL 15.321 to 15.330. A member of the convention facility board or an officer, employee, or agent of the convention authority shall discharge the duties of his or her position in a nonpartisan manner, in good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the convention facility board or an officer, employee, or agent of the convention authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the convention authority.

(b) The report of an independent appraiser selected by the convention facility board.

(c) Financial statements of the convention authority represented to the member of the convention facility board, officer, employee, or agent to be correct by the officer of the convention authority having charge of its books of account or stated in a written report by the state auditor general or a certified public accountant, or a firm of certified accountants, to reflect the financial condition of the convention authority.

(2) A convention facility board shall organize and make its own policies and procedures and shall adopt bylaws governing its operations. A majority of the members of a convention facility board constitutes a quorum for transaction of business, notwithstanding the existence of 1 or more vacancies on the convention facility board. Except as otherwise provided in sections 17381 through 17391 of this code, actions taken by the convention facility board shall be by a majority vote of the members present in person at a meeting of the convention facility board or, if authorized by the bylaws, by the use of amplified telephonic or video conferencing equipment. The convention authority shall meet at the call of the chairperson and as may be provided in the bylaws.

(3) Members of a convention facility board shall serve without compensation for their membership on the convention facility board, but members of the convention facility board may receive reasonable reimbursement for necessary travel and expenses.

**Sec. 17384. Conduct of business at public meetings; disclosure requirements.**

(1) A convention facility board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) A record or a portion of a record, material, or other data received, prepared, used, or retained by the convention authority that relates to financial or proprietary information that is identified in writing by the person submitting the information and acknowledged by the convention facility board as confidential is not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The convention facility board may meet in closed session pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, to make a determination of whether it acknowledges as confidential any financial or proprietary information submitted and considered by the person submitting the information as confidential. For the purpose of this subsection, "financial or proprietary information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause the person submitting

**Sec. 17385. Powers of convention authority; limitation.**

(1) A convention authority may do all things necessary or convenient to carry out the purposes, objectives, and provisions of [sections 17381 through 17391 of this code](#) and the purposes, objectives, and powers delegated to the convention authority or the convention facility board by other laws or executive orders, including, without limitation, all of the following:

- (a) Adopt bylaws for the regulation of its affairs and alter the bylaws at its pleasure.
- (b) Sue and be sued in its own name.
- (c) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers and designate the person or persons who have authority to execute those contracts and investments on behalf of the convention authority.
- (d) Solicit, receive, and accept from any source gifts, grants, loans, or contributions of money, property, or other things of value, and other aid or payment, or participate in any other way in a federal, state, or local government program.
- (e) Procure insurance against loss in connection with the property, assets, or activities of the convention authority.
- (f) Invest money of the convention authority under 1943 PA 20, MCL 129.91 to 129.96, and deposit money of the convention authority under 1932 (1st Ex Sess) PA 40, MCL 129.11 to 129.16.
- (g) Engage, on a contract basis, the services of private consultants, managers, legal counsel, and auditors for rendering professional or technical assistance and advice payable out of any money of the convention authority.

(h) Indemnify and procure insurance indemnifying members of the convention facility board from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the convention authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the convention authority.

(i) Establish and maintain an office and employ and fix compensation for personnel of the convention authority. To hire an executive director or other chief administrative officer who is authorized to establish and fix a schedule of rents, admission fees, or other charges for occupancy, use of, or admission to any convention facility operated by the convention authority and provide for the collection and enforcement of those rents, admission fees, or other charges.

(j) Hold, clear, remediate, improve, maintain, manage, control, sell, exchange, mortgage and hold mortgages on and other security interests in, lease, as lessor or lessee, and obtain or grant easements and licenses on property that the convention authority acquires. A sale, exchange, lease, or other disposition of convention authority property shall be to a person or persons for a project or projects involving a convention facility. Property acquired by the convention authority and later determined by the convention authority to be not necessary for a convention facility may be sold or otherwise disposed of for use or uses not inconsistent with the purposes of [sections 17381 through 17391 of this code](#). Temporary or permanent easements or licenses or other appropriate interests in property acquired by the convention authority may be conveyed or granted by the convention authority for utility, vehicular, or pedestrian traffic facilities, or related purposes not inconsistent with [sections 17381 through 17391 of this code](#). The convention authority does not have the power to condemn property.

(k) Issue negotiable revenue bonds under the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140. Revenue bonds issued by the convention authority are not a debt of the qualified county, qualified city, or this state.

(l) Develop a convention facility.

(m) Do all other acts and things necessary or convenient to carrying out the purposes for which the convention authority was established.

(2) A convention authority established under [sections 17381 through 17391 of this code](#) shall not levy a tax.

**Sec. 17386. Employment of staff; audits; budget.**

(1) A convention authority may employ staff, including legal and technical experts, and other officers, or employees, permanent or temporary, paid from the funds of the convention authority.

(2) The accounts of a convention authority are subject to annual audits by the state auditor general or a certified public accountant selected by the convention authority. Copies of the audits shall be forwarded annually to the state treasurer as provided in the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a. Records shall be maintained according to generally accepted accounting principles.

(3) The convention authority shall prepare and adopt an annual budget.

**Sec. 17387. Convention facility convention authority fund; creation; disposition of money.**

A convention facility convention authority fund is created for each convention authority. A convention authority shall deposit all money received and generated by the convention facility into the fund.

**Sec. 17388. Payment of costs from certain revenues.**

The payment of principal, interest, and other costs including engineering, financial, and issuance costs, associated with bonds issued by the convention authority may be made by the convention authority from any of the following revenues:

- (a) Federal grants, loans, appropriations, payments, or contributions.
- (b) The proceeds from the sale, exchange, mortgage, lease, or other disposition of property that the convention authority has acquired.
- (c) Grants, loans, appropriations, payments, proceeds from repayments of loans made by the convention authority, or contributions from public or private sources.
- (d) Money in the fund including rents, admission fees, or other charges for use of the convention facility.
- (e) Investment earnings on the revenues described in subdivisions (a) to (d).

**Sec. 17389. Issuance of negotiable revenue bonds; limitations.**

(1) A convention authority may only issue negotiable revenue bonds under the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140. A convention authority may not issue any other kinds of bonds, notes, or other obligations.

(2) A convention authority may authorize and issue its negotiable revenue bonds payable solely from the revenues or funds available to the convention authority under section 17387 of this code. Bonds, notes, or other obligations of a convention authority are not a debt or liability of this state, a qualified county that established the convention authority, or a qualified city that established the convention authority and do not create or constitute an indebtedness, liability, or obligation or constitute a pledge of faith and credit of this state, the qualified county that established the convention authority, or a qualified city that established the convention authority. Bonds issued by a convention authority are payable solely from revenues or funds pledged or available for their payment as authorized by [sections 17381 through 17391 of this code](#) or as provided in the resolution of the convention facility board authorizing the bonds.

**Sec. 17390. Property of convention authority.**

(1) Property of a convention authority is public property devoted to an essential public and governmental function and purpose. Income of the convention authority is for a public purpose.

(2) Except as otherwise provided in this subsection, the property of the convention authority and its income and operations are exempt from all taxes and special assessments of this state or a political subdivision of this state. Property of the convention authority and its income and operations that are leased to private persons are not exempt from any tax or special assessment of this state or a political subdivision of this state. Property of the convention authority is exempt from any ad valorem property taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(3) Bonds issued by the convention authority, and the interest on or income from those bonds, are exempt from all taxation of this state or a political subdivision of this state.

**Sec. 17391. Use of funds received pursuant to section 301 of 1999 PA 137.**

Funds received by the convention authority pursuant to section 301 of 1999 PA 137 shall not be used by the convention authority to defray costs incurred before the date on which the funds are released by the state treasurer.

[\[Sections 17393 through 17399e, formerly PA 554 of 2008, Regional Convention Facility Authority Act, which was found at MCL 141.1351 -1379.\]](#)

**Sec. 17393. Qualified metropolitan area; creation of regional convention authority; regional convention authority as municipal public body corporate and politic; powers, duties, and jurisdictions; name; transfer of qualified convention facility from qualified city to regional convention authority; exemption from taxes and special assessments; presumption of validity.**

(1) For an area of this state that is a qualified metropolitan area on the effective date of [sections 17393 through 17399e of this code](#), a regional convention authority is created for the qualified metropolitan area on the effective date of [sections 17393 through 17399e of this code](#). For an area of this state that becomes a qualified metropolitan area after the effective date of [sections 17393 through 17399e of this code](#), a regional convention authority is created for the qualified metropolitan area on the date the area became a qualified metropolitan area. A regional convention authority created under this section shall be a municipal public body corporate and politic and a metropolitan authority authorized by section 27 of article VII of the state constitution of 1963 and shall possess the powers, duties, and jurisdictions vested in the regional convention authority under [sections 17393 through 17399e of this code](#) and other laws. The regional convention authority shall not be an authority or agency of this state. The name of a regional convention authority created under this section shall include the name of the qualified city located within the qualified metropolitan area and the phrase "regional convention facility authority".

(2) Before the transfer date, a regional convention authority may organize and exercise all powers, duties, and jurisdictions granted under [sections 17393 through 17399e of this code](#), except the powers, duties, and jurisdictions related to the management, operation, and development of a qualified convention facility. On the transfer date, a regional convention authority is vested with the additional powers, duties, and jurisdictions under [sections 17393 through 17399e of this code](#) related to the management, operation, and development of a qualified convention facility.

(3) It is the intent of the legislature that the transfer of a qualified convention facility from a qualified city to a regional convention authority under [sections 17393 through 17399e of this code](#) and any payment required [section 17399 \(9\)](#) represents at least a fair exchange of value for value for the qualified city considering, without limitation, all of the following:

(a) The net value of the qualified convention facility prior to the transfer date after deducting deferred maintenance obligations, operational deficits, repair or expansion needs, and other liabilities related to the qualified convention facility that are obligations of the qualified city.

(b) The benefits to the qualified city resulting from the transfer of the qualified convention facility to the regional convention authority, including, but not limited to, assumption or payment of debt obligations of the qualified city by the regional convention authority, reductions in costs, liabilities or other obligations of the qualified city, additional revenues or other money not otherwise available for the qualified convention facility, and the positive economic impact to the qualified city likely to be generated by the operation of the qualified convention facility by the regional convention authority or any expansion or improvement of the qualified convention facility by the regional convention authority, especially economic impact resulting in the creation or retention of jobs and capital investment.

(c) Any bond proceeds, debt service payments, or other money payable directly or indirectly to the qualified city after the transfer date under [sections 17393 through 17399e of this code](#), ~~t sections 17323 through 17340 of this code~~ ~~state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640,~~ or the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(4) The property of a regional convention authority created under [sections 17393 through 17399e of this code](#) is public property devoted to an essential public and governmental purpose. Income of the regional convention authority is for a public and governmental purpose.

(5) Except as otherwise provided in this subsection, the property of the regional convention authority created under [sections 17393 through 17399e of this code](#) and its income, activities, and operations are exempt from all taxes and special assessments of this state or a political subdivision of this state. Property of a regional convention authority and its income, activities, and operations that are leased to private persons are not exempt from any tax or special assessment of this state or a political subdivision of this state. Property of a regional convention authority is exempt from any ad valorem property taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or other law of this state authorizing the taxation of real or personal property. A regional convention authority is an entity of government for purposes of section 4a(1)(a) of the general sales tax act, 1933 PA 167, MCL 205.54a, and section 4h of the use tax act, 1937 PA 94, MCL 205.94h.



(6) The validity of the creation of a regional convention authority shall be conclusively presumed unless questioned in an original action filed in the court of appeals within 60 days after the creation of the regional convention authority under this section. The court of appeals has original jurisdiction to hear an action under this subsection. The court shall hear the action in an expedited manner.

**Sec. 17394. Regional convention facility board of directors; membership; qualifications; "local government" defined; terms; vacancy; filing of appointment; oath; compensation; individuals prohibited from appointment.**

1) A regional convention authority created under [sections 17393 through 17399e of this code](#) shall be directed and governed by a regional convention facility board of directors consisting of 5 members. The members of a regional convention authority regional convention facility board shall include all of the following:

- (a) One individual appointed by the governor of this state with the advice and consent of the senate.
- (b) One individual appointed by the local chief executive officer of the qualified city.
- (c) One individual appointed by the local chief executive officer of the qualified county.
- (d) One individual appointed by the local chief executive officer of the county bordering the qualified county with the highest population according to the most recent decennial census bordering the qualified county.
- (e) One individual appointed by the local chief executive officer of the county bordering the qualified county with the second highest population according to the most recent decennial census.

(2) Regional convention facility board members appointed under this section shall possess business, financial, or professional experience relevant to the operation of a corporation or a convention facility. No regional convention facility board member shall be an employee or officer of any local government or of this state. For purposes of this subsection, "local government" includes any county, township, city, village, or intergovernmental entity in this state.

(3) Except as otherwise provided in this subsection, regional convention facility board members shall be appointed for a term of 6 years. Initial appointments under subsection (1) shall be made within 30 days of the creation of the regional convention authority. Of the regional convention facility board members initially appointed under subsection (1), the members appointed under subsection (1)(a) and (c) shall be appointed for a term expiring on the second August 31 following the creation of the regional convention authority, the members appointed under subsection (1)(b) and (d) shall be appointed for a term expiring on the third August 31 following the creation of the regional convention authority, the member appointed under subsection (1)(e) shall be appointed for a term expiring on the fourth August 31 following the creation of the regional convention authority. If a vacancy occurs on the regional convention facility board other than by expiration of a term, the vacancy shall be filled in the same manner as the original appointment for the remainder of the term. Regional convention facility board members may continue to serve until a successor is appointed and qualified.

(4) Each officer appointing a regional convention facility board member under this section shall file the appointment with the secretary of state and the county clerk of each county in the qualified metropolitan area. Notwithstanding any law or local charter provision to the contrary, appointments by an officer are not subject to approval or rejection by a legislative body.

(5) Upon appointment to a regional convention facility board under this section, and upon taking and filing of the oath of office required by section 1 of article XI of the state constitution of 1963, a regional convention facility board member shall enter office and exercise the duties of the office of regional convention facility board member.

(6) Regional convention facility board members shall serve without compensation but may be reimbursed for actual and necessary expenses incurred while attending regional convention facility board meetings or performing other authorized official business of the regional convention authority.

(7) An individual who is not of good moral character or who has been indicted or charged with, convicted of, pled guilty or no contest to, or forfeited bail concerning a felony under the laws of this state, any other state, or the United States shall not be appointed or remain as a member of the regional convention facility board.

**Sec. 17395. Regional convention facility board; meeting; election of chairperson and officers; actions requiring unanimous consent; business conducted at public meeting; availability of records and documents to public; system of accounts; annual audit; budget; contracts; use of competitive procurement methods; exceptions; purchases; preferences; procedures to monitor performance of contracts; employment of personnel; certain actions prohibited.**

(1) Within not more than 30 days following appointment of the members of a regional convention facility board, the regional convention facility board shall hold its first meeting at a date and time determined by the individual appointed under section 17394(1)(a). The regional convention facility board members shall elect from among the regional convention facility board members an individual to serve as chairperson of the regional convention facility board and may elect other officers as the regional convention facility board considers necessary. All officers shall be elected annually by the regional convention facility board. All actions of the regional convention facility board under sections 17393 through 17399e of this code shall require the unanimous consent of all serving members of the regional convention facility board, excluding any members prohibited from voting on an action due to a conflict of interest under section 17397.

(2) The business of the regional convention facility board shall be conducted at a public meeting of the regional convention facility board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A regional convention facility board shall adopt bylaws consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, governing its procedures and the holding of meetings. After organization, a regional convention facility board shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time. A special meeting of the regional convention facility board may be called by the chairperson of the regional convention facility board or as provided in bylaws adopted by the regional convention facility board. Notice of a special meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A regional convention facility board shall keep a written or printed record of each meeting, which record and any other document or record prepared, owned, used, in the possession of, or retained by the regional convention authority in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) A regional convention facility board shall provide for a system of accounts for the regional convention authority to conform to a uniform system required by law and for the auditing of the accounts of an regional convention authority. The regional convention facility board shall obtain an annual audit of the regional convention authority by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by sections 6 to 13 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also shall be in accordance with generally accepted government auditing standards and shall satisfy federal regulations relating to federal grant compliance audit requirements.

(5) Before the beginning of each fiscal year, a regional convention facility board shall cause to be prepared a budget for the regional convention authority containing an itemized statement of the estimated current operational expenses and the expenses for capital outlay including funds for the operation and development of convention facilities under the jurisdiction of the regional convention facility board, including the amount necessary to pay the principal and interest of any outstanding bonds or other obligations of the regional convention authority maturing during the next fiscal year or that have previously matured and are unpaid, and an estimate of the estimated revenue of the regional convention authority from all sources for the next fiscal year. The regional convention facility board shall adopt a budget as for the fiscal year in accordance with the uniform budget and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(6) A regional convention facility board shall provide for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third-party financing, equipment, printing, and all other items as



needed by the regional convention authority to efficiently and effectively meet the needs of the regional convention authority using competitive procurement methods to secure the best value for the regional convention authority. The regional convention facility board shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of regional convention authority contracts. A regional convention facility board shall provide for the acquisition of professional services, including, but not limited to, architectural services, engineering services, surveying services, accounting services, services related to the issuance of bonds, and legal services, in accordance with a competitive, qualifications-based selection process and procedure for the type of professional service required by the regional convention authority. A regional convention authority is not required to use competitive bidding when acquiring proprietary services, equipment, or information available from a single source, such as a software license agreement. A regional convention authority may enter into a cooperative purchasing agreement with the federal government, this state, or other public entities for the purchase of goods or services necessary for the regional convention authority. A regional convention authority may enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items purchased unless otherwise prohibited by law. In all purchases made by the regional convention authority, all other things being equal, preference shall be given first to products manufactured or services offered by firms based in the regional convention authority's qualified metropolitan area, including, but not limited to, each qualified city and qualified county in the qualified metropolitan area, and next to firms based in this state, if consistent with federal law. Except as otherwise provided in this section, the regional convention authority shall utilize competitive solicitation for all purchases authorized under [sections 17393 through 17399e of this code](#) unless 1 or more of the following apply:

- (a) Procurement of goods or services is necessary for the imminent protection of public health or safety or to mitigate an imminent threat to public health or safety, as determined by the regional convention authority or its chief executive officer.
  - (b) Procurement of goods or services is for emergency repair or construction caused by unforeseen circumstances when the repair or construction is necessary to protect life or property.
  - (c) Procurement of goods or services is in response to a declared state of emergency or state of disaster under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421.
  - (d) Procurement of goods or services is in response to a declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.
  - (e) Procurement of goods or services is in response to a declared state of energy emergency under 1982 PA 191, MCL 10.81 to 10.89.
  - (f) Procurement of goods or services is under a cooperative purchasing agreement with the federal government, this state, or more public entities for the purchase of goods and services necessary at fair and reasonable prices using a competitive procurement method for regional convention authority operations.
  - (g) The value of the procurement is less than \$5,000.00, and the regional convention facility board has established policies or procedures to ensure that goods or services with a value of less than \$5,000.00 are purchased by the regional convention facility board at fair and reasonable prices. Procurement of goods or services with a value of less than \$5,000.00 may be negotiated with or without using competitive bidding as authorized in a procurement policy adopted by the regional convention facility board.
- (7) A regional convention facility board may not enter into any cost plus construction contract unless all of the following apply:
- (a) The contract cost is less than \$50,000.00.
  - (b) The contract is for emergency repair or construction caused by unforeseen circumstances.
  - (c) The repair or construction is necessary to protect life or property.

(d) The contract complies with requirements of applicable state or federal law.

(8) The regional convention facility board shall adopt a procurement policy consistent with the requirements of [sections 17393 through 17399e of this code](#) and federal and state laws relating to procurement. The regional convention facility board shall adopt a policy to govern the control, supervision, management, and oversight of each contract to which the regional convention authority is a party. The regional convention facility board shall adopt procedures to monitor the performance of each contract including, but not limited to, a contract that exists on transfer date, to assure execution of the contract within the budget and time periods provided under the contract. The monitoring shall include oversight as to whether the contract is being performed in compliance with the terms of the contract, [sections 17393 through 17399e of this code](#), and federal and state law procurement law. The chief executive officer or other authorized employee of a regional convention authority shall not sign or execute a contract until the contract is approved by the regional convention facility board. A regional convention facility board for a regional convention authority shall establish policies to ensure that the regional convention authority does not enter into a procurement or employment contract with a person who has been convicted of a criminal offense incident to the application for or performance of a contract or subcontract with a governmental entity in this state. A regional convention facility board for a regional convention authority shall establish policies to ensure that the regional convention authority does not enter into a procurement or employment contract with a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes, or similar laws. As used in this subsection, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(9) A regional convention facility board may employ personnel as the regional convention facility board considers necessary to assist the regional convention facility board in performing the power, duties, and jurisdictions of the regional convention authority, including, but not limited to, employment of a chief executive officer as authorized under section 17396.

(10) A regional convention facility board shall establish policies to assure that the regional convention facility board and the regional convention authority shall not do either of the following:

(a) Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment, or a contract with the regional convention authority because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job, position, or contract.

(b) Limit, segregate, or classify an employee, a contractor, or applicant for employment or a contract in a way that deprives or tends to deprive the employee, contractor, or applicant of an employment opportunity or otherwise adversely affects the status of an employee, contractor, or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

**Sec. 17396. Chief executive officer; appointment; compensation; duties; responsibilities; service; powers; bond; certain conduct prohibited.**

(1) A regional convention facility board may appoint and fix the compensation of a chief executive officer for the authority. If the regional convention facility board appoints a chief executive officer, the regional convention facility board shall prescribe the duties and responsibilities of the chief executive officer in addition to any duties and responsibilities imposed upon the chief executive officer under [sections 17393 through 17399e of this code](#). A chief executive officer of a regional convention authority shall serve at the pleasure of the regional convention facility board.

(2) A chief executive officer shall supervise, and be responsible for, the day-to-day operation of the regional convention authority, including the control, supervision, management, and oversight of convention facilities, the

issuance of bonds and notes approved by the regional convention facility board, the negotiation and establishment of compensation and other terms and conditions of employment for any employees of the regional convention authority, the negotiation, supervision, and enforcement of contracts entered into by the regional convention authority and approved by the regional convention facility board, and the supervision of contractors of the regional convention authority in their performance of their duties. A regional convention facility board may delegate to the chief executive officer of a regional convention authority the power and responsibility to execute and deliver, and sign for, contracts, leases, obligations, and other instruments as have been approved by the regional convention facility board.

(3) A chief executive officer of a regional convention authority shall have all powers as are incident to the performance of his or her duties that are prescribed by [sections 17393 through 17399e of this code](#) or by the regional convention facility board. All actions of the chief executive officer of a regional convention authority shall be in conformance with the policies of the regional convention facility board and in compliance with applicable law.

(4) A regional convention facility board shall require the chief executive officer of a regional convention authority and any treasurer or chief financial officer of the regional convention authority to post a suitable bond of not less than \$50,000.00 issued by a responsible bonding entity, with the cost of the premium of the bond paid by the regional convention authority.

(5) All actions of the chief executive officer of a regional convention authority shall be in conformance with policies adopted by the regional convention facility board and in compliance with applicable law.

(6) The regional convention facility board of a regional convention authority shall not authorize the chief executive officer of the regional convention authority to do any of the following:

- (a) Appoint a successor to the chief executive officer.
- (b) Approve of a contract or a contract amendment.
- (c) Appoint or hire legal counsel for the regional convention facility board.
- (d) Prescribe ethical standards for the regional convention facility board or regional convention authority employees.

**Sec. 17397. Regional convention facility board member or officer, appointee, or employee of regional convention authority; discharge of duties; nonpartisan; reliance on certain opinions, reports, or statements; adoption of bylaws; personal liability; insurance; conflicts of interest; ethics manual; removal of regional convention facility board member from office; filing financial disclosure statement; rules; interest in or employment by entity after termination of regional convention facility board membership or employment.**

(1) A regional convention facility board member or an officer, employee, or agent of a regional convention authority shall discharge the duties of his or her position in a nonpartisan manner, in good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a regional convention facility board member or an officer, employee, or agent of a regional convention authority, when acting in good faith, may rely upon any of the following:

- (a) The opinion of counsel for the regional convention authority.
- (b) The report of an independent appraiser selected by the regional convention facility board.
- (c) Financial statements of the regional convention authority represented to the member of the regional convention facility board, officer, employee, or agent to be correct by the officer of the regional convention authority having charge of its books of account or stated in a written report by the state auditor general or a certified public accountant, or a firm of certified accountants, to reflect the financial condition of the regional convention authority.

(2) A regional convention facility board shall organize and make its own policies and procedures and shall adopt bylaws not inconsistent with [sections 17393 through 17399e of this code](#) governing its operations. The regional convention facility board shall meet at the call of the chairperson and as may be provided in the bylaws.

(3) A member of a regional convention facility board or an officer, appointee, or employee of a regional convention authority shall not be subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the regional convention authority, and the regional convention facility board may indemnify a member of the regional convention facility board or an officer, appointee, or employee of the regional convention authority against liability arising out of the discharge of his or her official duties. A regional convention authority may indemnify and procure insurance indemnifying members of the regional convention facility board and other officers and employees of the regional convention authority from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the regional convention authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the regional convention authority. The regional convention authority also may purchase and maintain insurance on behalf of any person against any liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a member of the regional convention facility board or an officer or employee of the regional convention authority, whether or not the regional convention authority would have the power to indemnify the person against that liability under this section. A regional convention authority, pursuant to bylaw, contract, agreement, or resolution of its regional convention facility board, may obligate itself in advance to indemnify persons.

(4) Regional convention facility board members and officers and employees of a regional convention authority are public servants subject to 1968 PA 317, MCL 15.321 to 15.330, and are subject to any other applicable law with respect to conflicts of interest. A regional convention facility board shall establish policies and procedures requiring periodic disclosure of relationships which may give rise to conflicts of interest. The regional convention facility board shall require that a regional convention facility board member or chief executive officer of the regional convention authority with a direct interest in any matter before the regional convention authority disclose the regional convention facility board member's or officer's interest and any reasons reasonably known to the regional convention facility board member or officer why the transaction may not be in the best interest of the public or the regional convention authority before the regional convention facility board takes any action with respect to the matter. The disclosure shall become part of the record of a regional convention authority's proceedings.

(5) A regional convention authority shall establish an ethics manual governing the conducting of regional convention authority business and the conduct of regional convention authority officers and employees. A regional convention authority shall establish policies that are no less stringent than those provided for public officers and employees by 1973 PA 196, MCL 15.341 to 15.348, and coordinate efforts for the regional convention authority to preclude the opportunity for and the occurrence of transactions by the regional convention authority that would create a conflict of interest involving regional convention facility board members and officers or employees of the regional convention authority. At a minimum, the policies shall include compliance by each regional convention facility board member and officer or employees who regularly exercises significant discretion over the award and management of regional convention authority procurements with policies governing all of the following:

- (a) Immediate disclosure of the existence and nature of any financial interest that could reasonably be expected to create a conflict of interest.
- (b) Withdrawal by an employee, officer, or regional convention facility board member from participation in or discussion or evaluation of any recommendation or decision involving a regional convention authority procurement that would reasonably be expected to create a conflict of interest for that employee or member.
- (c) Annual public financial disclosure of significant financial interests as provided under [sections 17393 through 17399e of this code](#).

(6) The appointing regional convention authority of a regional convention facility board member may remove the regional convention facility board member from office for gross neglect of duty, corrupt conduct in office, or any other misfeasance or malfeasance in office.

(7) Each member of the regional convention facility board of a regional convention authority, the chief executive officer, and each key employee as determined by the regional convention facility board shall file with the secretary of state a financial disclosure statement listing assets and liabilities, property and business interests, and sources of income of the member, chief executive officer, and each key employee and any of their spouses in a form determined by the secretary of state. The financial disclosure statement shall be under oath and shall be filed at the time of appointment or employment and annually thereafter. The secretary of state may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the implementation of this subsection.

(8) A member of the regional convention facility board of a regional convention authority or employee of a regional convention authority shall not hold any direct or indirect interest in, be employed by, or enter into a contract for services with any entity doing business with the regional convention authority for a period of 2 years after the date his or her membership on the regional convention facility board terminates or his or her employment with the regional convention authority terminates.

**Sec. 17398. Regional convention authority; powers and duties; levy of tax.**

(1) Except as otherwise provided in [sections 17393 through 17399e of this code](#), a regional convention authority may do all things necessary or convenient to implement the purposes, objectives, and provisions of [sections 17393 through 17399e of this code](#) and the purposes, objectives, and jurisdictions vested in the regional convention authority or the regional convention facility board by [sections 17393 through 17399e of this code](#) or other law, including, but not limited to, all of the following:

- (a) Adopt and use a corporate seal.
- (b) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.
- (c) Sue and be sued in its own name and plead and be impleaded.
- (d) Borrow money and issue bonds and notes according to the provisions of [sections 17393 through 17399e of this code](#).
- (e) Make and enter into contracts, agreements, or instruments necessary, incidental, or convenient to the performance of its duties and execution of its powers, duties, and jurisdictions under [sections 17393 through 17399e of this code](#) with any federal, state, local, or intergovernmental governmental agency or with any other person or entity, public or private, upon terms and conditions acceptable to the regional convention authority.
- (f) Engage in collective negotiation or collective bargaining and enter into agreements with a bargaining representative as provided by 1947 PA 336, MCL 423.201 to 423.217.
- (g) Solicit, receive, and accept gifts, grants, labor, loans, contributions of money, property, or other things of value, and other aid or payment from any federal, state, local, or intergovernmental government agency or from any other person or entity, public or private, upon terms and conditions acceptable to the regional convention authority, or participate in any other way in a federal, state, local, or intergovernmental government program.
- (h) Make application for and receive loans, grants, guarantees, or other financial assistance in aid of a convention facility from any state, federal, local, or intergovernmental government or agency or from any other source, public or private, including, but not limited to, financial assistance for purposes of developing, planning, constructing, improving, and operating a convention facility.

- (i) Procure insurance or become a self-funded insurer against loss in connection with the property, assets, or activities of the regional convention authority.
- (j) Indemnify and procure insurance indemnifying regional convention facility board members from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the regional convention authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the regional convention authority.
- (k) Invest money of the regional convention authority, at the discretion of the regional convention facility board, in instruments, obligations, securities, or property determined proper by the regional convention facility board and name and use depositories for regional convention authority money. Investments shall be made consistent with an investment policy adopted by the regional convention facility board that complies with [sections 17393 through 17399e of this code](#) and 1943 PA 20, MCL 129.91 to 129.96.
- (l) Contract for goods and services as necessary and as provided under [sections 17393 through 17399e of this code](#). A regional convention authority may contract with a management firm, either corporate or otherwise, to operate a qualified convention facility, under the supervision of the regional convention authority.
- (m) Employ legal and technical experts, other officers, agents, employees, or other personnel, permanent or temporary, as considered necessary by the regional convention facility board as provided under [sections 17393 through 17399e of this code](#).
- (n) Contract for the services of persons or entities for rendering professional or technical assistance, including, but not limited to, consultants, managers, legal counsel, engineers, accountants, and auditors, as provided under [sections 17393 through 17399e of this code](#).
- (o) Establish and maintain an office.
- (p) Acquire by gift, devise, transfer, exchange, purchase, lease, or otherwise on terms and conditions and in a manner the regional convention authority considers proper property or rights or interests in property. Property or rights or interests in property acquired by a regional convention authority may be by purchase contract, lease purchase, agreement, installment sales contract, land contract, or otherwise. The acquisition of any property by a regional convention authority for a convention facility in furtherance of the purposes of the regional convention authority is for a public use, and the exercise of any other powers granted to the regional convention authority is declared to be public, governmental, and municipal functions, purposes, and uses exercised for a public purpose and matters of public necessity.
- (q) Hold, clear, remediate, improve, maintain, manage, protect, control, sell, exchange, lease, or grant easements and licenses on property or rights or interests in property that the regional convention authority acquires, holds, or controls.
- (r) Except as provided in [section 17399](#) (13), convey, sell, transfer, exchange, lease, or otherwise dispose of property or rights or interest in property, excluding the sale or transfer of a qualified convention facility, to any person or entity on terms and conditions, and in a manner and for consideration the regional convention authority considers proper, fair, and valuable.
- (s) Develop a convention facility.
- (t) Assume and perform the obligations and covenants of a local government related to a qualified convention facility.
- (u) Enter into contracts or other arrangements with persons or entities, for granting the privilege of naming or placing advertising on or in all or any portion of a convention facility.



(v) Receive financial or other assistance from a person licensed under section 6 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.206.

(w) Establish and fix a schedule of rents, admission fees, or other charges for occupancy, use of, or admission to any convention facility operated by the regional convention authority and provide for the collection and enforcement of those rents, admission fees, or other charges.

(x) Adopt reasonable rules and regulations for the orderly, safe, efficient, and sanitary operation and use of a convention facility owned by the regional convention authority or under its operational jurisdiction.

(y) Do all other acts and things necessary or convenient to exercise the powers, duties, and jurisdictions of the regional convention authority under [sections 17393 through 17399e of this code](#) or other laws that related to the purposes, powers, duties, and jurisdictions of the regional convention authority.

(2) Notwithstanding any other provision of law to the contrary, a regional convention authority shall not have the power to impose or levy a tax.

**Sec. 17399. Transfer of qualified convention facility to regional convention authority; resolution disapproving transfer; actions to occur on transfer date; duties and obligations of regional convention authority; certain contracts, agreements, conveyances, rights, obligations, or liabilities as voidable; cancellation or termination of agreement to which local government is party; reversion.**

(1) Within 45 days of the effective date of [sections 17393 through 17399e of this code](#) or the date on which a metropolitan area becomes a qualified metropolitan area and prior to a transfer date, the legislative body of the qualified city in which a qualified convention facility is located may disapprove the transfer of the qualified convention facility to the authority by adopting a resolution disapproving the transfer. If the transfer is not disapproved, the qualified convention facility is transferred to the authority on the ninetieth day after the effective date of [sections 17393 through 17399e of this code](#) or the date on which a convention facility becomes a qualified convention facility. All of the following shall occur on a transfer date:

(a) All right, title, and interest of a local government in and to a qualified convention facility located in a qualified metropolitan area shall by operation of [sections 17393 through 17399e of this code](#) be conveyed and transferred from the local government to the regional convention authority for the qualified metropolitan area, and the regional convention authority shall receive, succeed to, and assume the exclusive right, responsibility, and authority to own, occupy, operate, control, develop, and use the qualified convention facility from and after the transfer date, including, but not limited to, all real property, buildings, improvements, structures, easements, rights of access, and all other privileges and appurtenances pertaining to the qualified convention facility, subject only to those restrictions imposed by [sections 17393 through 17399e of this code](#).

(b) All right, title, and interest in and to the fixtures, equipment, materials, furnishings, and other personal property of a local government owned or controlled and used for purposes of the qualified convention facility by the local government shall by operation of [sections 17393 through 17399e of this code](#) be conveyed and transferred from the local government to the regional convention authority for the qualified metropolitan area, and the regional convention authority shall receive, succeed to, and assume the exclusive right, responsibility, and authority to possess and control the property from and after the transfer date.

(c) All licenses, permits, approvals, or awards of a local government related to the ownership, occupancy, operation, control, development, or use of a qualified convention facility by the local government shall by operation of [sections 17393 through 17399e of this code](#) be conveyed and transferred from the local government to the regional convention authority for the qualified metropolitan area and be assumed by the regional convention authority.

(d) All grant agreements, grant preapplications, grant applications, rights to receive the balance of any funds payable under the agreements or applications, the right to receive any amounts payable from and

after the transfer date, and the benefits of contracts or agreements of a local government related to the ownership, occupancy, operation, control, development, or use of a qualified convention facility by the local government shall by operation of [sections 17393 through 17399e of this code](#) be conveyed and transferred from the local government to the regional convention authority for the qualified metropolitan area and be assumed by the regional convention authority.

(e) All of the duties, liabilities, responsibilities, and obligations of a local government related to the ownership, occupancy, operation, control, development, or use of a qualified convention facility by the local government shall by operation of [sections 17393 through 17399e of this code](#) be conveyed and transferred from the local government to the regional convention authority for the qualified metropolitan area and assumed by the regional convention authority, except for any liabilities, responsibilities, or obligations that are contested in good faith by, or, as of the transfer date, unknown to, the regional convention authority or as otherwise provided [sections 17393 through 17399e of this code](#).

(f) A regional convention authority for a qualified metropolitan area shall assume all of the outstanding securities of the local government that are special limited obligations payable from and secured by a lien on distributions received under [sections 17323 through 17340 of this code](#) ~~the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640,~~ and were originally issued to finance the acquisition or construction of, development of, or improvements to the qualified convention facility conveyed and transferred to the regional convention authority for the qualified metropolitan area under this section, and the regional convention authority may refund or defease the securities. If the regional convention authority refunds the outstanding securities assumed under this subsection, that refunding shall be considered, as a matter of law, to be necessary to eliminate requirements of covenants applicable to the existing outstanding securities.

(2) A regional convention authority shall assume, accept, or become liable for lawful agreements, obligations, promises, covenants, commitments, and other requirements of a local government relating to operating a qualified convention facility conveyed and transferred under this section, except as provided in subsection (4). A regional convention authority shall perform all of the duties and obligations and shall be entitled to all of the rights of a local government and under any agreements expressly assumed and accepted by the regional convention authority related to the transfer of a qualified convention facility from the local government to the regional convention authority under this section.

(3) The local chief executive officer of a local government from which the rights, responsibility, and authority to own, occupy, operate, control, develop, and use a qualified convention facility are conveyed and transferred from the local government to a regional convention authority for a qualified metropolitan area under this section shall execute the instruments of conveyance, assignment, and transfer or other documents as may, in the regional convention authority's and the officer's reasonable judgment, as necessary or appropriate to recognize, facilitate, or accomplish the transfer of the qualified convention facility from the local government to the regional convention authority under this section.

(4) A regional convention authority for a qualified metropolitan area shall not assume any unfunded obligations of a local government transferring a qualified convention facility under this section to provide pensions or retiree health insurance. Upon request by the regional convention authority, the local government shall provide the regional convention authority with a statement of the amount of the unfunded obligations, determined by a professional actuary acceptable to the regional convention authority.

(5) All lawful actions, commitments, and proceedings of a local government made, given, or undertaken before the transfer date and assumed by a regional convention authority under this section are ratified, confirmed, and validated upon assumption. All actions, commitments, or proceedings of the local government relating to a qualified convention facility in the process of being undertaken by, but not yet a commitment or obligation of, the local government regarding the qualified convention facility may, from and after the date of assumption by the regional convention authority under this section, be undertaken and completed by the regional convention authority in the manner and at the times provided in [sections 17393 through 17399e of this code](#) or other applicable law and in any



lawful agreements made by the local government before the date of assumption by the regional convention authority under this section.

(6) The exclusive right and authorization to own, occupy, operate, control, develop, and use a qualified convention facility transferred under this section shall include, but not be limited to:

(a) Ownership and operational jurisdiction over all real property of the qualified convention facility, subject to any liens of record and legal restrictions and limitations on the use of the property.

(b) The local government's right, title, and interest in, and all of the local government's responsibilities arising under, operating leases and concessions relating to a qualified convention facility.

(7) The transfers described under this section shall include, but need not be limited to, all of the following:

(a) All contracts with licensees, franchisees, tenants, concessionaires, and leaseholders.

(b) All operating financial obligations secured by revenues and fees generated from the operations of the qualified convention facility.

(c) All cash balances and investments relating to or resulting from operations of the qualified convention facility, all funds held under an ordinance, resolution, or indenture related to or securing obligations of the local government assumed by the regional convention authority, and all of the accounts receivable or choses in action arising from operations of the qualified convention facility. Fund transfers under this subdivision are limited to funds received after the transfer date and funds necessary to pay obligations related to the operation of the qualified convention facility accrued before the transfer date and not paid by the local government.

(d) All office equipment, including, but not limited to, computers, records and files, software, and software licenses required for financial management, personnel management, accounting and inventory systems, and general administration.

(8) The transfer of the real and personal property and operational jurisdiction over a qualified convention facility to a regional convention authority may not in any way impair any contracts with licensees, franchisees, vendors, tenants, bondholders, or other parties in privity with the local government that owned a qualified convention facility transferred to an regional convention authority under this section, if the contracts were not entered into or modified in violation of [sections 17393 through 17399e of this code](#).

(9) From and after the transfer date, a local government from which a qualified convention facility has been transferred shall be relieved from all further costs, responsibility, and liability arising from, or associated with, control, operation, development, and maintenance of the qualified convention facility. The local government shall continue to be responsible for all costs associated with local municipal services, including, but not limited to, police, fire, and emergency medical services, without any additional compensation from the regional convention authority. The regional convention authority shall provide for the payment of compensation not exceeding \$20,000,000.00 to the qualified city for any revenue otherwise payable to the qualified city from parking facilities operated by the qualified city at the qualified convention facility and for other costs incurred by the qualified city associated with the transfer of the qualified convention facility to the regional convention authority under this section.

(10) A local government that owns a qualified convention facility subject to transfer under this section or that owned a qualified convention facility transferred to a regional convention authority under this section shall comply with all of the following, before and after the transfer:

(a) Refrain from any action to sell, transfer, or otherwise dispose of a qualified convention facility other than to the regional convention authority or incur new or expanded obligations related to qualified convention facility, without the consent of the regional convention authority.

(b) Refrain from any approval of or material modification to any collective bargaining agreement applicable to local government employees employed at or assigned to the qualified convention facility or to terms of employment for employees at or assigned to the qualified convention facility. Any approval or modification subject to this subsection shall be null and void.

(c) Refrain from any action that, in the regional convention authority's judgment, would impair the regional convention authority's exercise of the powers granted to the regional convention authority under [sections 17393 through 17399e of this code](#) or that would impair the efficient operation and management of the qualified convention facility by the regional convention authority.

(d) Take all actions reasonably necessary to cure any defects in title to the qualified convention facility and related property transferred under this section, including, but not limited to, providing documents, records, and proceedings in respect of title.

(e) At the request of a regional convention authority, grant any license, easement, or right-of-way in connection with the qualified convention facility to the extent the regional convention authority has not been empowered to take these actions.

(f) Upon creation, a regional convention authority for the qualified metropolitan area in which the local government is located and before the transfer date may conduct operations, maintenance, and repair of the convention facility in the ordinary and usual course of business.

(11) Any contract, agreement, lease, sale, disposition, transfer, or other conveyance, easement, license, right, obligation, debt, or liability assumed, approved, entered into, amended, or modified in violation of this section shall be voidable as a matter of law to the extent that the regional convention authority would otherwise assume, become party to or transferee of, or otherwise be obligated under the contract, agreement, lease, sale, disposition, transfer, conveyance, easement, license, right, obligation, debt, or liability.

(12) Unless otherwise provided in [sections 17393 through 17399e of this code](#), the local chief executive officer of a local government that owns a qualified convention facility subject to transfer under this section is authorized and shall take all reasonable steps to cancel or terminate any agreement to which the local government is a party that relates to the qualified convention facility and meets all the following criteria:

(a) The agreement relates to the qualified convention facility and the regional convention authority has not expressly assumed or accepted the agreement under subsection (2).

(b) The agreement provides for cancellation or termination.

(c) In the absence of cancellation or termination, the regional convention authority would become a party to the agreement by succession, assignment, operation of law, or any other involuntary means.

(13) If real property transferred from a qualified city to a regional convention authority under this section is no longer used by the regional convention authority for the purpose of maintaining or operating a convention facility as determined by a vote of the regional convention facility board, all right, title, and interest of the regional convention authority in the real property shall revert from the regional convention authority to the qualified city with the consent of the qualified city and upon payment by the qualified city to the regional convention authority of an amount equal to the compensation paid to the qualified city under [section 17399 \(9\)](#).

**Sec. 173199a. Transfer of employees to regional convention authority; reassignment of employees within local government; representation; rights and benefits; effect of transfer on pension benefits or credits.**

(1) The regional convention authority, as of the transfer date, immediately shall assume and be bound by any existing collective bargaining agreements applicable to employees of the local government whose employment is transferred to the regional convention authority either as a result of the regional convention authority's express assumption of the employees or by application of [section 17399](#) for the remainder of the term of the collective

bargaining agreement. Local government employees whose employment is not transferred to the regional convention authority shall be reassigned within the local government, pursuant to the terms of any applicable collective bargaining agreements. A representative of the employees or a group of employees in the local government who represents or is entitled to represent the employees or a group of employees of the local government pursuant to 1947 PA 336, MCL 423.201 to 423.217, shall continue to represent the employee or group of employees after the employees transfer to the regional convention authority. This subsection does not limit the rights of employees, pursuant to applicable law, to assert that a bargaining representative protected by this subsection is no longer their representative. The rights and benefits protected by this subsection may be altered by a future collective bargaining agreement or, for employees not covered by collective bargaining agreements, by benefit plans as established and adopted by the regional convention authority.

(2) Transferred employees shall not by reason of the transfer have their accrued local government pension benefits or credits diminished. If a transferring employee is not vested in his or her local government pension rights at the time of transfer, his or her posttransfer service with the regional convention authority shall be credited toward vesting in any local government retirement system in which the transferring employee participated prior to the transfer, but posttransfer service with the regional convention authority shall not be credited for any other purpose under the local government's retirement system, except as provided in subsection (4).

(3) A transferred local government employee described in this section or a person hired by the regional convention authority as a new employee after the transfer date may remain or become a participant in the local government retirement system until the regional convention authority has established its own retirement system or pension plan. During the period the employee remains or is a participant in the local government system, the employee's posttransfer service with the regional convention authority and his or her posttransfer compensation from the regional convention authority shall be counted in determining both eligibility for and the amount of pension benefits that the employee will be eligible to receive from the local government system or plan.

(4) If the local government maintains a retirement system that provides for continuing participation and benefit accrual by local government employees who transfer their employment to another entity in conjunction with transfer of a local government function to that entity, then the transferred employee may elect to remain a participant in the local government retirement system in lieu of participation in any retirement system or pension plan of the regional convention authority. If the transferred employee elects to remain a participant in the local government system, the employee's posttransfer service with the regional convention authority and his or her posttransfer compensation from the regional convention authority shall be counted in determining both eligibility for and the amount of pension benefits that the employee will be eligible to receive from the local government system or plan. Any election to remain in a local government system or plan shall be made within 60 days following the date the regional convention authority has established its own retirement system or pension plan and shall be irrevocable. Employees eligible to make the election described in this subsection shall be those employees who immediately before their transfer date were participating in the local government system and who agree to make any employee contributions required for continuing participation in the local government system and also agree to meet all requirements and be subject to all conditions that, from time to time, apply to employees of the local government who participate in the local government system.

(5) For each employee meeting the requirements of subsection (4) who elects to remain a participant in the local government retirement system, the regional convention authority shall, on a timely basis, contribute, as applicable, to the trustees of that retirement system an amount determined by the local government system's actuary to be sufficient to fund the liability for all of that employee's retirement and other postemployment benefits under the system on a current basis, as those liabilities are accrued from and after the transfer date.

**Sec. 17399b. Revenue sources; establishment of regional convention facility operating trust fund; expenditures; limitation; financial obligation.**

(1) Except as provided in subsection (3), a regional convention authority may raise revenues to fund all of its activities, operations, and investments consistent with its purposes. The sources of revenue available to the regional convention authority may include, but are not limited to, any of the following:

- (a) Rents, admission fees, or other charges for use of a convention facility which the regional convention authority may fix, regulate, and collect.
  - (b) Federal, state, or local government grants, loans, appropriations, payments, or contributions.
  - (c) The proceeds from the sale, exchange, mortgage, lease, or other disposition of property that the regional convention authority has acquired.
  - (d) Grants, loans, appropriations, payments, proceeds from repayments of loans made by the regional convention authority, or contributions from public or private sources.
  - (e) Distributions from the convention facility development fund of the state pursuant to [sections 17323 through 17340 of this code](#) ~~the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640.~~
  - (f) Investment earnings on the revenues described in subdivisions (a) to (e).
- (2) The revenues raised by a regional convention authority may be pledged, in whole or in part, for the repayment of bonded indebtedness and other expenditures issued or incurred by the regional convention authority.
- (3) Notwithstanding any other provision of law to the contrary, a regional convention authority shall not have the power to impose or levy a tax.
- (4) The regional convention facility board by resolution may establish a regional convention facility operating trust fund for the purpose of accumulating funds to pay for the cost of operating and maintaining a qualified convention facility. Money for operating and maintaining a qualified convention facility, at the regional convention authority's discretion, may be provided from this fund or any other money of the regional convention authority. The resolution establishing the fund shall include all of the following:
- (a) The designation of a person or persons who shall act as the fund's investment fiduciary.
  - (b) A restriction of withdrawals from the fund solely for the payment of reasonable operating and maintenance expenses of a convention facility and the payment of the expenses of administration of the fund.
- (5) An investment fiduciary shall invest the assets of the fund in accordance with an investment policy adopted by the regional convention facility board that complies with section 13 of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133. However, the investment fiduciary shall discharge his or her duties solely in the interest of the regional convention authority. The regional convention authority may invest the fund's assets in the investment instruments and subject to the investment limitations governing the investment of assets of public employee retirement systems under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m.
- (6) A regional convention authority shall not expend more than \$279,000,000.00 to develop an expanded or renovated convention facility under [sections 17393 through 17399e of this code](#). Contracts for the development of an expanded or renovated convention facility shall be fixed price contracts and shall not exceed \$279,000,000.00 in total.
- (7) A financial obligation of a regional convention authority is a financial obligation of the regional convention authority only and not a financial obligation of this state, a qualified city, a qualified county, or a county bordering a qualified county. A financial obligation of the regional convention authority shall not be transferred to this state, a qualified city, a qualified county, or a county bordering a qualified county.

**Sec. 17399c. Bonds or municipal securities; issuance; interest rate exchange or swap, hedge, or similar agreements; creation of reserve fund; pledge; filing; issuance and delivery of notes; maturity; use of proceeds; exemptions.**

(1) For the purpose of acquiring, purchasing, constructing, improving, enlarging, furnishing, equipping, reequipping, developing, refinancing, or repairing a convention facility transferred under section 17399 or subsequently acquired by a regional convention authority, the regional convention authority may issue self-liquidating bonds of the regional convention authority in accordance with and exercise all of the powers conferred upon public corporations by the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140. Revenue bonds issued by the regional convention authority are a debt of the regional convention authority and not a debt of any qualified county, county, qualified city, city, or this state.

(2) The regional convention authority may borrow money and issue municipal securities in accordance with and exercise all of the powers conferred upon municipalities by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) The regional convention authority may issue a bond or municipal security that bears no interest and appreciates as to principal amount. The bonds or municipal securities authorized by this subsection shall be exempt from section 305(2) and (3) of the revised municipal finance act, 2001 PA 34, MCL 141.2305.

(4) All bonds, notes, or other evidences of indebtedness issued by a regional convention authority under [sections 17393 through 17399e of this code](#), and the interest on the bonds or other evidences of indebtedness, are free and exempt from all taxation within this state, except for transfer and franchise taxes.

(5) The issuance of bonds, notes, or other evidences of indebtedness by a regional convention authority shall require approval of the regional convention facility board.

(6) For the purpose of more effectively managing its debt service, a regional convention authority may enter into an interest rate exchange or swap, hedge, or similar agreement or agreements in connection with the issuance or proposed issuance of bonds, notes, or other evidences of indebtedness or in connection with its then outstanding bonds, notes, or other evidences of indebtedness.

(7) In connection with entering into an interest rate exchange or swap, hedge, or similar agreement, the regional convention authority may create a reserve fund for the payment thereof.

(8) An agreement entered into pursuant to this section shall comply with all of the following:

(a) The agreement is not a debt of the regional convention authority entering into the agreement for any statutory or charter debt limitation purpose.

(b) The agreement is payable from general funds of the regional convention authority or, subject to any existing contracts, from any available money or revenue sources, including revenues specified by the agreement, securing the bonds, notes, or evidences of indebtedness in connection with which the agreement is entered into.

(9) A regional convention authority upon approval by resolution of the regional convention authority board may issue notes in anticipation of the proceeds of a proposed regional convention authority bond issuance. The regional convention authority may pledge for the payment of the principal, interest, or redemption premiums on the notes security from 1 or more of the sources to secure the bonds and the proceeds of the bonds to be issued to refund the notes. The pledge shall be valid and binding from the time made. The security pledged and received by a regional convention authority is immediately subject to the lien of the pledge without physical delivery of the security or further action. The lien is valid and binding against a person with a claim of any kind against the regional convention authority whether or not the person has notice of the pledge. Neither the resolution, trust indenture, nor any other instrument creating a pledge must be filed or recorded to establish and perfect a lien or security interest in the property pledged. In the resolution, the regional convention authority shall declare the necessity of the notes, the purpose of the notes, the principal amount of the notes to be issued, and an estimated principal payment schedule for and an estimated or maximum average annual interest rate on the notes. The issuance and delivery of the notes shall be conclusive as to the existence of the facts entitling the notes to be issued in the principal amount of the notes and shall not be subject to attack. The notes shall mature not more than the earlier of 3 years from the date of issuance or 90 days after the expected date of issuance of the bonds in anticipation of which the notes are issued and may bear

no interest or interest at a fixed or variable rate or rates of interest per annum. The proceeds of notes issued under this subsection shall be used only for the purpose to which the proceeds of the bonds may be applied, the costs of issuance of the notes, and the payment of principal and interest on the notes. Notes issued under this section are exempt from the provisions of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**Sec. 17399d. Evidences of indebtedness or liability as contract; assumption and performance of obligations.**

(1) Notwithstanding any other provisions of [sections 17393 through 17399e of this code](#) or any other law, the provisions of all ordinances, resolutions, and other proceedings of the local government in respect to any outstanding bonds, notes, or any and all evidences of indebtedness or liability assumed by a regional convention authority pursuant to [sections 17393 through 17399e of this code](#), if any, shall constitute a contract between the regional convention authority and the holders of the bonds, notes, or evidences of indebtedness or liability and are enforceable against the regional convention authority or any or all of its successors or assigns, by mandamus or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction in accordance with law.

(2) Bonds, notes, or any and all evidences of indebtedness or liability that are assumed by a regional convention authority under [sections 17393 through 17399e of this code](#) shall be payable from and secured by the sources of revenue that were pledged to those bonds, notes, or evidences of indebtedness or liability under the ordinance, resolution, or other proceedings of the local government and shall not constitute a full faith and credit obligation of the regional convention authority or of this state.

(3) Nothing in [sections 17393 through 17399e of this code](#) or in any other law shall be held to relieve the local government from which a convention facility has been transferred from any bonded or other debt or liability lawfully contracted by the local government, to which the full faith and credit of the local government has been pledged and that remains outstanding as of the transfer date, notwithstanding that the proceeds of the debt or liability have been used by the local government in support of the convention facility.

(4) Upon the transfer of a convention facility to a regional convention authority, trustees, paying agents, and registrars for any obligation of the local government that has been expressly assumed by the regional convention authority under section 17399 shall perform all of their duties and obligations and provide all notices related to the obligations as if the regional convention authority were the issuer of the obligations. The trustees, paying agents, and registrars shall care for and consider all revenues and funds pledged to secure obligations of the local government that have been assumed by the regional convention authority under [section 17399](#) as revenues and funds of the regional convention authority. The regional convention authority shall indemnify and hold harmless these trustees, paying agents, and registrars from liability incurred in compliance with this subsection.

**Sec. 17399e. Applicability of restrictions standards or prerequisites of local government; additional powers; construction of act.**

(1) Unless permitted by [sections 17393 through 17399e of this code](#) or approved by a regional convention authority, any restrictions standards or prerequisites of a local government otherwise applicable to a regional convention authority and enacted after the effective date of [sections 17393 through 17399e of this code](#) shall not apply to a regional convention authority. This subsection is intended to prohibit special local legislation or ordinances applicable exclusively or primarily to a regional convention authority and not to exempt a regional convention authority from laws generally applicable to other persons or entities.

(2) The powers conferred in [sections 17393 through 17399e of this code](#) upon any regional convention authority or local government shall be in addition to any other powers the regional convention authority or local government possesses by charter or statute. The provisions of [sections 17393 through 17399e of this code](#) apply notwithstanding any resolution, ordinance, or charter provision to the contrary.

(3) [Sections 17393 through 17399e of this code](#) shall be construed liberally to effectuate the legislative intent and the purpose of [sections 17393 through 17399e of this code](#) as complete and independent authorization for the performance of each and every act and thing authorized in [sections 17393 through 17399e of this code](#), and all

powers granted in [sections 17393 through 17399e of this code](#) shall be broadly interpreted to effectuate the intent and purposes of [sections 17393 through 17399e of this code](#) and not as to limitation of powers.

## **DIVISION IV – STATE ACTIVITIES PROMOTING FILM INDUSTRY ACTIVITY IN MICHIGAN**

### **PART A. FILM OFFICE**

**Sec. 17429a. Michigan film office; creation in fund; successor office; duties; powers; budget, procurement, and management functions; administration by film commissioner and president of fund; support staff; cooperation with departments, agencies, boards, commissions, and officers.**

(1) The Michigan film office is created in the fund. The office shall be the successor to any authority, powers, duties, functions, or responsibilities of the Michigan film office under section 21 of the history, arts, and libraries act, 2001 PA 63, MCL 399.721.

(2) The office may do all of the following:

- (a) Promote and market locations, talent, crews, facilities, and technical production and other services related to film, digital media, and television production in this state.
- (b) Provide to interested persons descriptive and pertinent information on locations, talent, crews, facilities, and technical production and other services related to film, digital media, and television production in this state.
- (c) Provide technical assistance to the film, television, and digital media industry in locating and securing the use of locations, talent, crews, facilities, and services in this state.
- (d) Encourage community and Michigan film, digital media, and television production industry participation in, and coordination with, state and local efforts to attract film, digital media, and television production in this state.
- (e) Serve as this state's chief liaison with the film, digital media, and television production industry and with other governmental units and agencies for the purpose of promoting, encouraging, and facilitating film, digital media, and television production in this state.
- (f) Explain the benefits and advantages of producing films, digital media, and television productions in this state.
- (g) Assist film, digital media, and television producers with securing location authorization and other appropriate services connected with film, digital media, and television production in this state.
- (h) Scout potential film locations for national and international film, digital media, and television prospects.
- (i) Escort film, digital media, and television producers on location scouting trips.
- (j) Serve as a liaison between film, digital media, and television producers, state agencies, local agencies, federal agencies, community organizations and leaders, and the film, digital media, and television industry in this state.
- (k) Assist film, digital media, and television producers in securing permits to film at specific locations in this state and in obtaining needed services related to the production of a film, digital media, or a television program.
- (l) Represent this state at film, digital media, and television industry trade shows and film festivals.



- (m) Sponsor workshops or conferences on topics relating to filmmaking, including, but not limited to, screenwriting, film financing, and the preparation of communities to attract and assist film, digital media, and television productions in this state.
- (n) Encourage cooperation between local, state, and federal government agencies and local film offices in the location and production of films, digital media, and television programming in this state.
- (o) Coordinate activities with local film offices.
- (p) Facilitate cooperation from state departments and agencies, local governments, local film offices, federal agencies, and private sector entities in the location and production of films, digital media, and television programming in this state.
- (q) Prepare, maintain, and distribute a directory of persons, firms, and governmental agencies available to assist in the production of films, digital media, and television programming in this state.
- (r) Prepare, maintain, and distribute a digital library depicting the variety and extent of the locations within this state for film, digital media, and television productions.
- (s) Prepare and distribute appropriate promotional and informational materials that do all of the following:
  - (i) Describe desirable locations in this state for film, digital media, and television production.
  - (ii) Explain the benefits and advantages of producing films, digital media, and television productions in this state.
  - (iii) Detail services and assistance available from state government, from local film offices, and from the film, digital media, and television industry in this state.
- (t) Solicit and accept gifts, grants, labor, loans, and other aid from any person, government, or entity.
- (u) Employ technical experts, other officers, agents, or employees, permanent or temporary, paid from the funds of the office. The office shall determine the qualifications, duties, and compensation of those the office employs.
- (v) Contract for goods and services and engage personnel as necessary to perform the duties of the office under this section.
- (w) Study, develop, and prepare reports or plans the office considers necessary to assist the office in the exercise of its powers under this section and to monitor and evaluate progress under this section.
- (x) Exercise the duties and responsibilities vested in the office under this section and all of the following:
  - (i) [Section 17438d](#).
  - (ii) Section 12288j(3)(e) of this code, [formerly section 88j\(3\)\(e\) of the Michigan Strategic Fund Act, 1984 PA 270, MCL 125.088j\(3\)\(e\)](#).
  - (iii) Former Section 4cc of the general sales tax act, 1933 PA 167, MCL 205.54cc.
  - (iv) Sections 17451, 17453, 17453 of this Code.
- (y) All other things necessary or convenient to achieve the objectives and purposes of the office, this section, or other laws that relate to the purposes and responsibilities of the office.



(3) The enumeration of a power in this section shall not be construed as a limitation upon the general powers of the office. The powers granted under this section are in addition to those powers granted by any other law.

(4) The film commissioner and the president of the fund shall cooperate in administering the budget, procurement, and related management functions of the office. The fund may provide the office with staff support and other services to assist the office in performing the functions and duties of the office.

(5) State departments, agencies, boards, commissions, and officers and local film offices shall cooperate with the office in the performance of the office's duties under this section.

**Sec. 17429b. Michigan film commissioner; member of state classified service; terms and conditions of employment; agreement; term; oath of office; service as advisor; duties; meetings; exercise of powers, duties, functions, and responsibilities; rules.**

(1) The head of the office shall be the Michigan film commissioner. The film commissioner shall be a member of the state classified service. The terms and conditions of the employment of the film commissioner shall be governed by a senior executive service limited term employment agreement and the rules and regulations of the civil service commission governing the senior executive service. The term of the agreement shall not exceed 2 years and shall end on December 31 of an even-numbered year consistent with the rules and regulations of the civil service commission. The governor shall be the appointing authority for the film commissioner. Before entering upon the duties of his or her office, the film commissioner shall take and file the constitutional oath of office provided in section 1 of article XI of the state constitution of 1963.

(2) The film commissioner shall serve as an advisor to the governor on matters relating to films and other digital media. The film commissioner may report directly to the governor and the president of the fund on matters relating to the office, to the film council, and to films and digital media generally.

(3) The film commissioner shall supervise, and be responsible for, the performance of the functions of the office under this section. The film commissioner shall perform all duties vested in the film commissioner under the laws of this state. The film commissioner shall consult with the president of the fund on activities of the office affecting the fund.

(4) The film commissioner shall attend the meetings of the film council and provide the film council and the president of the fund with regular reports and other information describing the activities of the office.

(5) Except as otherwise provided in this section, the film commissioner shall exercise his or her powers, duties, functions, and responsibilities under this section independently of the fund.

(6) The film commissioner may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as the film commissioner deems necessary to execute the duties and responsibilities of the office.

**Sec. 17429c. Michigan film office advisory film council; creation; membership; chairperson, vice-chairperson, and officers; terms; vacancy; compensation; duties; public meeting; quorum; writings; confidentiality; use of information for personal gain prohibited; adoption of code of ethics.**

(1) The Michigan film office advisory film council is created in the office. The film council shall consist of the following members:

(a) Fourteen individuals appointed by the governor as follows:

(i) Five members associated with broad areas of film, digital media, and motion picture making, production of television programs and commercials, and related industries in Michigan.

(ii) Two members from film, television, digital media, or related industry unions.

(iii) One member representing theater owners based in this state.

(iv) One member representing local film offices or local units of government.

(v) One individual selected from a list of 3 or more nominees submitted by the speaker of the house of representatives.

(vi) One individual selected from a list of 3 or more nominees submitted by the senate majority leader.

(vii) Three other residents of this state, including at least 2 residents not active in the film, television, digital media, and related industries.

(b) The film commissioner, who shall serve as an ex officio nonvoting member of the film council.

(c) The president of the fund.

(2) The governor shall designate 1 member of the film council to serve as chairperson of the film council at the pleasure of the governor. The members of the film council may elect a member of the film council to serve as vice-chairperson of the film council and may elect other members of the film council as officers of the film council as the film council considers appropriate.

(3) Except as provided in subsection (4), the term of office of each member of the film council appointed by the governor under subsection (1)(a) shall be 4 years.

(4) Of the members of the film council initially appointed by the governor under subsection (1)(a), 4 shall be appointed for terms expiring on September 30, 2008, 4 shall be appointed for terms expiring on September 30, 2009, 3 shall be appointed for terms expiring on September 30, 2010, and 3 shall be appointed for terms expiring on September 30, 2011.

(5) If a vacancy occurs on the film council other than by expiration of a term, the vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

(6) Members of the film council shall serve without compensation but, subject to available appropriations, may receive reimbursement for their actual and necessary expenses while attending meetings or performing other authorized official business of the film council.

(7) The film council may do 1 or more of the following:

(a) Advise the office, the fund, the governor, and the legislature on how to promote and market this state's locations, crews, facilities, and technical production facilities and other services used by film, television, digital media, and related industries.

(b) Encourage community and Michigan film, digital media, and television production industry participation in, and coordination with, state efforts to attract film, digital media, television, and related production to this state.

(c) Assist the office and the fund in promoting, encouraging, and facilitating film, digital media, television, and related production in this state.

- (d) Develop strategies and methods to attract film, digital media, television, and related business to this state.
  - (e) Under direction of the office, provide assistance to film, digital media, television, and related service personnel who use this state as a business location.
  - (f) Sponsor and support official functions for film, digital media, television, and related industries.
  - (g) Assist in the establishment of film, digital media, and television ventures and such related matters as the office considers appropriate.
  - (h) Make inquiries, studies, and investigations, hold hearings, and receive comments from the public. The film council may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, organized labor, government agencies, and at institutions of higher education.
  - (i) Provide other assistance or advice relating to the duties of the film council under this section as requested by the film commissioner.
- (8) The film council shall meet not less than 3 times per year and at the call of its chairperson.

(9) A meeting of the film council shall be conducted as a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Notice of the date, time, and place of a public meeting of the film council shall be given as prescribed in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A majority of the members of the film council serving constitute a quorum for the transaction of the film council's business. The film council shall act by a majority vote of its serving members. . **[Compilers' note: if sunshine provisions are universally adopted in Article I division V, this subsection and the next two (10-11) would be deleted.]**

(10) A writing prepared, owned, used, in the possession of, or retained by the film council when performing business of the film council is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that such a writing may be kept confidential for up to 6 months after the date a request to inspect, obtain, or copy the writing is received, if, in the judgment of the chairperson of the film council, disclosure of the record would compromise or otherwise undermine the ability of Michigan industry to compete in the promotion and marketing of Michigan's locations, crews, facilities, and technical production and other services.

(11) A member of the film council shall not use for personal gain information obtained by the member while performing business of the film council, nor shall a member of the film council disclose confidential information obtained by the member while conducting film council business, except as necessary to perform film council business. The film council shall adopt a code of ethics for its members and establish policies and procedures requiring the disclosure of relationships that may give rise to a conflict of interest. The film council shall require that any member of the film council with a direct or indirect interest in any matter before the film council disclose the member's interest to the film council before the film council takes any action on the matter.

**Sec. 17429d. Michigan film promotion fund; creation within state treasury; receipt of money or other assets; investment; money remaining in fund at close of fiscal year; expenditure.**

- (1) The Michigan film promotion fund is created within the state treasury.
- (2) The state treasurer may receive money or other assets from any source for deposit into the promotion fund, including federal funds, other state revenues, gifts, bequests, and other donations, including, but not limited to, all of the following:
  - (a) Fees deposited in the promotion fund under sections [17451](#), [17453](#), and [17455](#) of this Code.
  - (b) Fees deposited in the promotion fund under section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.

(c) Proceeds deposited in the promotion fund under section 17438d.

(3) The state treasurer shall direct the investment of the promotion fund and shall credit to the promotion fund interest and earnings from promotion fund investments.

(4) Money in the promotion fund at the close of a fiscal year shall remain in the promotion fund and shall not lapse to the general fund.

(5) Money in the promotion fund may be expended, upon appropriation, to support the functions of the office under this section and other applicable law and for purposes authorized under this article.

**Sec. 17429e. Michigan economic development corporation; joint exercise of power.**

The powers and duties of the strategic fund under this article may be exercised and performed by the Michigan economic development corporation as a joint exercise of power authorized under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, pursuant to the contractual interlocal agreement effective April 5, 1999, as amended, between local participating economic development corporations formed under the [economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636](#), and the strategic fund, or under an intergovernmental agreement with local film offices or other governmental entities. This section does not authorize the office to exercise the powers and duties of the strategic fund.

**Sec. 17429f. Representation as employee or agent of office, film commissioner, or film council; authorization required; violation as misdemeanor; penalty.**

(1) A person who is not an agent or employee of the office, film commissioner, or film council shall not represent that the person is an employee or agent of the office, film commissioner, or film council without the express authorization of the film commissioner.

(2) A person who violates this section is guilty of a misdemeanor and may be imprisoned for not more than 93 days and shall be fined not more than \$5,000.00.

**Sec. 17429g. Transfer of records, personnel, property, grants, and unexpended balances.**

(1) All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to any entity for the activities, powers, duties, functions, and responsibilities vested in the office under this section are transferred to the office. The state budget director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year ending September 30, 2008.

(2) The unexpended balances of appropriations transferred to the office under subsection (1) include, but are not limited to, any funds appropriated to the office under [section 12288j\(3\)\(e\) of this code, formerly of the Michigan strategic fund act of 1984, 1984 public act 270](#), remaining in a work project on the effective date of the amendatory act that added this subsection.

**Sec. 17438d Loan enhancement program; loan guarantee program; small business capital access program; Michigan film and digital media investment loan program; choose Michigan film and digital media loan fund; choose Michigan fund program; definitions. (PA 80 & 223 of 2008 amending section 125.2088d of the Michigan Strategic Fund, as added by PA 225 of 2005)**

(1) The fund shall create and operate a loan enhancement program.

(2) As a separate and distinct part of the loan enhancement program, the strategic fund may create a loan guarantee program that does all of the following:

(a) Provide a loan guarantee mechanism to financial institutions located in this state that provide commercial loans to qualified businesses, public authorities, and local units of government.

(b) Ensures that participating financial institutions do not refinance prior debt.

(c) Provide that a qualified business is only eligible for a loan guarantee under this section if it has a documented growth opportunity. As used in this subdivision, "documented growth opportunity" means a plant expansion, capital equipment investment, acquisition of intellectual property or technology, or the hiring of new employees to meet or satisfy a new business opportunity.

(d) Provide that a qualified business that engages primarily in retail sales is not eligible for a loan guarantee under this article unless the strategic fund board makes a specific finding that the loan guarantee supports a new concept that has significant growth potential.

(e) Provide repayment provisions for a loan or a guarantee given to a qualified business that leaves Michigan within 3 years of the provision of the loan or guarantee or otherwise breaches the terms of an agreement with the strategic fund.

(3) As a separate and distinct part of the loan enhancement program, the strategic fund shall reestablish the small business capital access program that was previously operated by the strategic fund for small businesses in a manner similar to how that program was operated before January 1, 2002. The small business capital access program shall operate on a market-driven basis and provide for premium payments by borrowers into a special reserve fund. The small business capital access program established by the board shall prohibit an officer, director, principal shareholder of a participating financial institution, or his or her immediate family members from receiving a small business capital access program loan from the financial institution. A loan under the small business capital access program may be issued to an eligible production company or film and digital media private equity fund even if the eligible production company or film and digital media private equity fund is not a small business. A loan under the small business capital access program shall provide that the proceeds of a loan may only be used for a business purpose within this state and may not be used for any of the following:

(a) The construction or purchase of residential housing.

(b) To finance passive real estate ownership.

(c) To refinance prior debt from the participating financial institution that is not part of the small business capital access program.

(4) As a separate and distinct part of the loan enhancement program, the strategic fund shall establish a Michigan film and digital media investment loan program to invest in loans from the investment fund to eligible production companies or film and digital media private equity funds. The fund board shall make investments under this subsection only upon approval of the chief compliance officer and the Michigan film office after a review by the investment advisory committee. If an investment is made under this section, not more than \$15,000,000.00 may be loaned to any 1 eligible production company or film and digital media private equity fund for any 1 qualified production. The fund board may make an investment in a qualified production if all of the following are satisfied:

(a) The production is filmed wholly or substantially in this state.

(b) The eligible production company or the film and digital media private equity fund has shown to the satisfaction of the Michigan film office that a distribution contract or plan is in place with a reputable distribution company.

(c) The eligible production company or film and digital media private equity fund agrees that, while filming in this state, a majority of the below the line crew for the qualified production will be residents of this state.

(d) The eligible production company or film and digital media private equity fund posts a completion bond approved by the Michigan film office and has obtained no less than 1/3 of the estimated total production costs from other sources as approved by the chief compliance officer and the Michigan film office or has

obtained a full, unconditional, and irrevocable guarantee of the repayment of the amount invested by the strategic fund in favor of the investment fund that satisfies 1 or more of the following:

- (i) The guarantee is from an entity that has a credit rating of not less than BAA or BBB from a national rating agency.
- (ii) The guarantee is from a substantial subsidiary of an entity that has a credit rating of not less than BAA or BBB from a national rating agency.
- (iii) The eligible production company or the film and digital media private equity fund provides a full, unconditional letter of credit from a bank with a credit rating of not less than A from a national rating agency.
- (iv) The guarantee is from a substantial and solvent entity as determined by the investment advisory committee.

(e) The fund board may make a loan under this subsection at a market rate of interest for a qualified production of up to 80% of expected and estimated tax credits available to the eligible production company or film and digital media private equity fund under sections 17451, 17453, 17453 of this Code, if the eligible production company or the film and digital media private equity fund agrees to name the strategic fund as its agent for the purpose of filing for the tax credits should the eligible production company not apply for the tax credits. The Michigan film office and the state treasurer shall determine the estimated amount of tax credits for purposes of this subsection. The fund board shall approve guidelines for the initiation of a loan and the terms of the loan under this subsection.

(f) A loan under this subsection may be converted to an equity investment by the strategic fund board with the approval of the chief compliance officer and the Michigan film office.

(g) An eligible production company or film and digital media production company that receives a loan under this subsection is not also eligible for a loan for the same qualified production under subsection (5).

(h) Fifty percent of any earnings on a loan or investment under this subsection shall be deposited in the investment fund and the remainder of the earnings shall be deposited in the Michigan film promotion fund created under section 17429d. One hundred percent of principal repaid under this subsection shall be deposited in the investment fund upon repayment.

(5) As a separate and distinct part of the loan enhancement program, the strategic fund shall establish and operate the choose Michigan film and digital media loan fund to invest in loans from the investment fund to eligible production companies or film and digital media private equity funds eligible for a tax credit under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, or sections 17451, 17453, 17453 of this Code. The fund board shall make investments under this subsection only upon approval of the chief compliance officer and the Michigan film office. A loan issued under this subsection is subject to all of the following requirements:

- (a) A loan shall be provided at an interest rate of not less than 1%.
- (b) The minimum amount of a loan under this subsection is \$500,000.00.
- (c) The maximum term of a loan under this subsection is 10 years, including up to 3 years of deferred principal payments to align principal payments with receipt of primary incentives, as determined by the strategic fund board.
- (d) The value of the loan may not exceed the value of the primary incentive that the eligible production company or film and digital media private equity fund is eligible to receive over 7 years, as discounted by the strategic fund board. A loan authorized by the strategic fund board may provide for a loan amount equal

to a portion or all of the discounted value of the primary incentives, as discounted by the strategic fund board.

(e) The eligible production company or film and digital media private equity fund is responsible for repayment of the loan regardless of actual primary incentive amounts received.

(f) The eligible production company or film and digital media private equity fund is responsible for loan preparation and closing costs.

(g) An eligible production company or film and digital media private equity fund that receives a loan under this subsection is not also eligible for a loan for the same qualified production under subsection (4).

(h) The eligible production company or film and digital media private equity fund also obtains an additional loan from an accredited financial institution or other approved lending market.

(i) The loan shall be issued consistent with guidelines for the initiation of a loan and the terms of the loan under this subsection approved by the strategic fund board.

(j) Fifty percent of any earnings on a loan under this subsection shall be deposited in the investment fund and the remainder of the earnings shall be deposited in the Michigan film promotion fund created under [17429d of this Code](#). One hundred percent of principal repaid under this subsection shall be deposited in the investment fund upon repayment.

(6) As a separate and distinct part of the loan enhancement program, the strategic fund shall operate the choose Michigan fund program to invest in loans from the investment fund to a qualified business. The choose Michigan fund program shall operate on an incentive basis and shall provide loans to qualified businesses to promote and enhance significant job creation or retention within this state. The choose Michigan fund shall not make a loan under this subsection after September 30, 2008. Notwithstanding any requirement imposed by the strategic fund before April 1, 2008, to receive a loan under this subsection, the strategic fund board may or may not require a qualified business to obtain an additional loan from an accredited financial institution or other approved lending market to obtain a loan under this subsection. At the discretion of the strategic fund board, not more than 2 loans provided through the choose Michigan fund may be forgivable. A loan issued under this subsection is subject to all of the following requirements:

(a) A loan shall be provided at an interest rate of not less than 1%.

(b) The minimum amount of a loan under this subsection is \$500,000.00.

(c) The maximum term of a loan under this subsection is 10 years, including up to 3 years of deferred principal payments to align principal payments with receipt of any primary incentives, as determined by the strategic fund board.

(d) Except as provided in subdivision (g), the qualified business is responsible for repayment of the loan regardless of any primary incentives received.

(e) The qualified business is responsible for loan preparation and closing costs.

(f) The loan shall be issued consistent with guidelines for the initiation of a loan and the terms of the loan under this subsection approved by the strategic fund board.

(g) A loan under this subsection may be converted to an equity investment by the strategic fund board.

(h) The loan shall be subject to repayment provisions. If the loan is with a qualified business that closes down or relocates outside of Michigan anytime within 3 years after the term of the loan, then the provisions of the loan shall also include, at a minimum, immediate repayment of any outstanding principal, payment of a default interest rate, and repayment of any amounts forgiven.

(i) In determining whether to forgive all or a portion of a loan to a qualified business, the strategic fund shall consider the net economic impact of the project on the state's economy. The loan agreement between the strategic fund and the qualified business shall clearly enumerate the terms, conditions and requirements under which all or a portion of the loan may be forgiven, including, but not limited to, job creation and investment in this state. [Source: Section 88d of the Strategic Fund Act of 1984, MCL 125.2088d.]

## PART B. FILM INDUSTRY TAX INCENTIVES

### Subpart 1. Business Tax Incentives

**Sec. 17451. Michigan film office; agreement with eligible production company; tax credit; requirements; application; form; fee; considerations; determination of compliance with terms of agreement; issuance of postproduction certificate; confidentiality of information, records, or other data; assignment of credit; submission of fraudulent or false information; annual report; definitions.** (PA 77 of 2008, added MCL 208.1455)

(1) The Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with an eligible production company providing the [production](#) company with a credit against the tax imposed by [the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601](#), or against taxes withheld under chapter 7 of the income tax act of 1967, 1967 PA 281, MCL 206.351 to 206.367, as provided under this section and section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367. To qualify for the credit under this section, a [production](#) company shall meet all of the following requirements:

- (a) Spend at least \$50,000.00 in this state for the development, preproduction, production, or postproduction costs of a state certified qualified production.
- (b) Enter into an agreement as provided in this section.
- (c) Receive a postproduction certificate of completion from the office under subsection (5).
- (d) Submit the postproduction certificate of completion issued by the office under subsection (5) to the department [of treasury](#) under subsection (7).
- (e) Shall not be delinquent in a tax or other obligation owed to this state or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state.

(2) For direct production expenditures or qualified personnel expenditures made after February 29, 2008, an agreement under this section may provide for an eligible production company to claim a tax credit equal to 42% of direct production expenditures for a state certified qualified production in a core community, 40% of direct production expenditures for a state certified qualified production in part of this state other than a core community, and 30% for qualified personnel expenditures. A taxpayer shall not claim a credit under this section for any of the following:

- (a) A direct expenditure, or qualified personnel expenditure, for which the production company claims a credit under section [17455 of this Code](#).
- (b) A direct expenditure, or qualified personnel expenditure, for which the [production](#) company claims a credit under section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.
- (c) A direct expenditure, or qualified personnel expenditure, for which another taxpayer claims a credit under this section, a credit under section [17455 of this Code](#), or a credit under section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.

(3) An eligible production company intending to produce a qualified production in this state, or that initiated production of a qualified production after February 29, 2008 and before the effective date of the



amendatory act that added this section, may submit an application to enter into an agreement under this section to the Michigan film office. Except for a qualified production for which production was initiated after February 29, 2008 and before the effective date of the amendatory act that added this section, direct production expenditures and qualified personnel expenditures incurred prior to approval of an agreement under this section are not eligible for the credit under this section. The request shall be submitted in a form prescribed by the Michigan film office and shall be accompanied by a \$100.00 application fee and all of the information and records requested by the office. An application fee received by the office under this subsection shall be deposited in the Michigan film promotion fund. The office shall not process the application until it is complete. As part of the application, the [production](#) company shall estimate direct production expenditures and qualified personnel expenditures for an identified qualified production. If the office, with the concurrence of the state treasurer, determines to enter into an agreement under this section, the agreement shall provide for all of the following:

- (a) A requirement that the eligible production company commence work in this state on the identified qualified production within 90 days of the date of the agreement or else the agreement shall expire. However, upon request submitted by the [production](#) company based on good cause, the office may extend the period for commencement of work in this state for up to an additional 90 days.
- (b) A statement identifying the [production](#) company and the qualified production that the [production](#) company intends to produce in whole or in part in this state.
- (c) A unique number assigned to the qualified production by the office.
- (d) A requirement that the qualified production not depict obscene matter or an obscene performance.
- (e) If the qualified production is a long-form narrative film production, a requirement that the qualified production include an acknowledgement that the qualified production was filmed in this state.
- (f) A requirement that the [production](#) companies provide the office with the information and independent certification the office and the department deem necessary to verify direct production expenditures, qualified personnel expenditures, and eligibility for the credit under this section.
- (g) If determined to be necessary by the office and the state treasurer, a provision for addressing expenditures in excess of those identified in the agreement.

(4) In determining whether to enter into an agreement under this section, the Michigan film office and the state treasurer shall consider all of the following:

- (a) The potential that in the absence of the credit the qualified production will be produced in a location other than this state.
- (b) The extent to which the qualified production may have the effect of promoting this state as a tourist destination.
- (c) The extent to which the qualified production may have the effect of promoting economic development or job creation in this state.
- (d) The extent to which the credit will attract private investment for the production of qualified productions in this state.
- (e) The record of the eligible production company in completing commitments to engage in a qualified production.

(5) If the Michigan film office determines that an eligible production company has complied with the terms of an agreement entered into under this section, the office shall issue a postproduction certificate to the [production](#) company. The [production](#) company shall submit a request to the office for a postproduction certificate on a form prescribed by the office, along with any information or independent certification the office or the department deems

necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing a postproduction certificate of completion and need not issue the postproduction certificate until satisfied that direct production expenditures, qualified personnel expenditures, and eligibility are adequately established. The additional information requested may include a report of direct production expenditures and qualified personnel expenditures for the qualified production audited and certified by an independent certified public accountant. Each postproduction certificate of completion shall be signed by the Michigan film commissioner and shall include the following information:

- (a) The name of the eligible production company.
- (b) The name of the certified production produced in whole or in part in this state.
- (c) The eligible production company's direct production expenditures and qualified personnel expenditures for the qualified production.
- (d) The date of completion for the qualified production in this state.
- (e) The unique number assigned to the qualified production project by the Michigan film office under subsection (3).
- (f) The eligible production company's federal employer identification number or Michigan treasury number.
- (g) Any independent certification required by the department of treasury or the Michigan film office.

(6) Information, records, or other data received, prepared, used, or retained by the Michigan film office under this section that are submitted by an eligible production company and considered by the taxpayer and acknowledged by the office as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Information, records, or other data shall only be considered confidential to the extent that the information or records describe the commercial and financial operations or intellectual property of the production company, the information or records have not been publicly disseminated at any time, and disclosure of the information or records may put the production company at a competitive disadvantage.

(7) An eligible production company shall submit a postproduction certificate of completion issued under subsection (5) to the department of treasury. If the credit allowed under this section exceeds the tax liability of the production company for the tax year or if the production company claiming the credit does not have a tax liability under the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601, for the tax year, the department of treasury shall refund the excess or pay the amount of the credit to the production company. The credit under this section shall be claimed after all other credits under the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601,.

(8) An eligible production company may assign all or a portion of a credit under this section to any assignee. An assignee may subsequently assign a credit or any portion of a credit assigned under this subsection to 1 or more assignees. A production company may claim a portion of a credit and assign the remaining credit amount. A credit assignment under this subsection is irrevocable. The credit assignment under this subsection shall be made on a form prescribed by the department of treasury. The qualified taxpayer shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made and shall attach a copy of the form to the return on which the credit is claimed.

(9) The amount of the credit under this section shall be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed, which shall be deducted from the credit otherwise payable to the taxpayer claiming the credit and be deposited by the department in the Michigan film promotion fund.

(10) A taxpayer that willfully submits information under this section that the taxpayer knows to be fraudulent or false shall, in addition to any other penalties provided by law, be liable for a civil penalty equal to the amount of the taxpayer's credit under this section. A penalty collected under this section shall be deposited in the Michigan film promotion fund.

(11) Not later than March 1 of each year after 2008, the Michigan film office shall submit to the governor, the president of the Michigan strategic fund, the chairperson of the senate finance committee, and the house tax policy committee an annual report concerning the operation and effectiveness of the credit under this section. The requirements of section 28(1)(f) of 1941 PA 122, MCL 205.28, do not apply to disclosure of tax information required by this subsection. The report shall include all of the following:

- (a) A brief assessment of the overall effectiveness of the credit under this section at attracting qualified productions to this state during the immediately preceding calendar year.
- (b) The number of qualified productions for which the eligible production company applied for a tax credit under this section during the immediately preceding year, the names of the qualified productions produced in this state for which credits were begun or completed in the immediately preceding year, and the locations in this state that were used in the production of qualified productions in the immediately preceding calendar year.
- (c) The amount of money spent by each eligible production company identified in subdivision (b) to produce each qualified production in this state and a breakdown of all production spending by all companies classified as goods, services, or salaries and wages in the immediately preceding calendar year.
- (d) An estimate of the number of persons employed in this state by eligible production companies that qualified for the credit under this section in the immediately preceding calendar year.
- (e) The value of all tax credit certificates of completion issued under this section in the immediately preceding calendar year.

**Sec. 17453. Qualified film and digital media infrastructure project; tax credit.** [\(From PA 86 of 2008, Amending Michigan business tax act of 2007, 2007 PA 26, by adding section 457, MCL 208.1457\)](#)

(1) Until September 30, 2015, the Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with a taxpayer providing the taxpayer with a credit against the tax imposed by the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601, for an investment in a qualified film and digital media infrastructure project, as provided under this section. To qualify for the credit under this section, a taxpayer shall meet all of the following requirements:

- (a) Before January 1, 2009, invest and expend at least \$100,000.00 for a qualified film and digital media infrastructure project in this state; after December 31, 2008, invest and expend at least \$250,000.00 for a qualified film and digital media infrastructure project in this state.
- (b) Enter into an agreement as provided in this section.
- (c) Receive an investment expenditure certificate from the office under subsection (5).
- (d) Submit the investment expenditure certificate issued by the office under subsection (5) to the department under subsection (7).
- (e) Shall not be delinquent in a tax or other obligation owed to this state or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state.

(2) For investment expenditures made by a taxpayer for all qualified film and digital media infrastructure projects in this state, an agreement under this section may provide for the taxpayer to claim a tax credit equal to 25% of the taxpayer's base investment. The credit under this section shall be reduced by any credit claimed by the taxpayer under section 437 of the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1437, for the same base investment. No more than \$20,000,000.00 in total credits under this section shall be authorized in a tax year. If all or a portion of a qualified film and digital media infrastructure project is a facility that may be used for purposes unrelated to production or postproduction activities, then the project is eligible for the credit only if the department determines that the facility will support and be necessary to secure production or postproduction activity for the production and postproduction facility and the taxpayer agrees to both of the following:

(a) The facility will be used as a state of the art production or postproduction facility or as support and component of the facility for the useful life of the facility.

(b) A credit will not be claimed under this section until the facility is complete.

(3) A taxpayer seeking a credit under this section may submit an application to enter into an agreement under this section to the Michigan film office. The application shall be submitted in a form prescribed by the Michigan film office and shall be accompanied by a \$100.00 application fee and all of the information and records requested by the office. An application fee received by the office under this subsection shall be deposited in the Michigan film promotion fund. The office shall not process the application until it is complete. If the office, with the concurrence of the state treasurer, determines to enter into an agreement under this section, the agreement shall provide for all of the following:

(a) A requirement that construction on the qualified film and digital media infrastructure project commence within 180 days of the date of the agreement or else the agreement shall expire. However, upon request submitted by the taxpayer based on good cause, the office may extend the period for commencement of work for up to an additional 90 days.

(b) A unique number assigned to the qualified film and digital media infrastructure project.

(c) A detailed description of the qualified film and digital media infrastructure project.

(d) A detailed business plan and market analysis for the qualified film and digital media infrastructure project.

(e) A projected budget for the qualified film and digital media infrastructure project.

(f) Estimated start date and completion date for the qualified film and digital media infrastructure project.

(g) A requirement that the taxpayer not file a claim for the credit under this section until at least 25% of the base investment in the qualified film and digital media infrastructure project identified in the agreement has been expended.

(h) A requirement that the taxpayer provide the office with the information and independent certification the office and the department deem necessary to verify investment expenditures and eligibility for the credit under this section.

(i) A requirement that if the cost of tangible assets described in subsection (11)(a) was paid or accrued in a tax year beginning after December 31, 2007, the taxpayer shall repay an amount equal to 25% of the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 of the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1301 through 208.1311, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 of the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1301 through 208.1311, from the sale or other disposition reflected in federal

taxable income and minus the gain from the sale or other disposition added to the business income tax base in section 201 of the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1201.

(4) In determining whether to enter into an agreement under this section, the Michigan film office and the state treasurer shall consider all of the following:

- (a) The potential that in the absence of the credit the qualified film and digital media infrastructure project will be constructed in a location other than this state.
- (b) The extent to which the qualified film and digital media infrastructure project may have the effect of promoting economic development or job creation in this state.
- (c) The extent to which the credit will attract private investment for the production of motion pictures, videos, television programs, and digital media in this state.
- (d) The extent to which the credit will encourage the development of film, video, television, and digital media production and postproduction facilities in this state.

(5) If the Michigan film office determines that a taxpayer has complied with the terms of an agreement entered into under this section, the office shall issue an investment expenditure certificate to the taxpayer. The taxpayer shall submit a request to the office for an investment expenditure certificate on a form prescribed by the office, along with any information or independent certification the office or the department deems necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing an investment expenditure certificate and need not issue the investment expenditure certificate until satisfied that investment expenditures and eligibility are adequately established. The additional information requested may include a report of expenditures audited and certified by an independent certified public accountant. Each investment expenditure certificate shall be signed by the Michigan film commissioner and shall include the following information:

- (a) The name of the taxpayer.
- (b) A description of the qualified film and digital media infrastructure project.
- (c) The taxpayer's eligible investment expenditures for the qualified film and digital media infrastructure project.
- (d) The unique number assigned to the qualified film and digital media infrastructure project by the office under subsection (3).
- (e) The taxpayer's federal employer identification number or Michigan treasury number.
- (f) Any independent certification required by the department or the Michigan film office.

(6) Information, records, or other data received, prepared, used, or retained by the Michigan film office under this section that are submitted by an eligible production company and considered by the taxpayer and acknowledged by the office as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Information, records, or other data shall only be considered confidential to the extent that the information or records describe the commercial and financial operations or intellectual property of the company, the information or records have not been publicly disseminated at any time, and disclosure of the information or records may put the company at a competitive disadvantage.

(7) To claim a credit under this section, a taxpayer shall submit an investment expenditure certificate issued under subsection (5) to the department. If the credit allowed under this section exceeds the amount of taxes owed by the taxpayer under the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601, for a tax year, that portion of the credit that exceeds the tax liability of the taxpayer for the tax year shall not be refunded but may

be carried forward to offset tax liability under the Michigan business tax of 2007, 2007 PA 36, MCL 208.1101 to 208.1601, in subsequent tax years for a period not to exceed 10 tax years or until used up, whichever occurs first.

(8) The credit under this section shall be claimed after all other credits under the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601. A taxpayer eligible to claim a credit under this section may assign all or a portion of a credit under this section to any assignee. An assignee may subsequently assign a credit or any portion of a credit assigned under this subsection to 1 or more assignees. A taxpayer may claim a portion of a credit and assign the remaining credit amount. A credit assignment under this subsection is irrevocable. The credit assignment under this subsection shall be made on a form prescribed by the department of treasury. A taxpayer claiming a credit under this section shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made and shall attach a copy of the form to the return on which the credit is claimed.

**[Drafters Comment – How does this language interact with the credit provided by what was 2008 PA 77, Section 455 of the MBT, now section 17451 of this Code.? Is this credit still the last to be used after section 17453 and 17455 of this Code?]**

(9) The amount of the credit under this section shall be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed, which shall be deducted from the credit otherwise payable to the taxpayer claiming the credit and be deposited by the department in the Michigan film promotion fund.

(10) A taxpayer that willfully submits information under this section that the taxpayer knows to be fraudulent or false shall, in addition to any other penalties provided by law, be liable for a civil penalty equal to the amount of the taxpayer's credit under this section. A penalty collected under this section shall be deposited in the Michigan film production promotion fund.

**Sec.17455. Eligible production company; tax credit.** (from MCL 208.1459, Michigan Business Tax Act, PA 74 of 2008 )

(1) Until September 30, 2015, the Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with an eligible production company providing the company with a credit against the tax imposed by the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601, for qualified job training expenditures, as provided under this section. To qualify for the credit under this section, a company shall meet all of the following requirements:

- (a) Make qualified job training expenditures for a state certified qualified production.
- (b) After completion of the production of the state certified qualified production in this state, submit to the office an application in a form determined by the office with information regarding the qualified job training expenditures, including employment, salary, and related information required by the office.
- (c) Receive a qualified job training expenditures certificate from the office under subsection (5).
- (d) Submit the qualified job training expenditure certificate issued by the office under subsection (5) to the department under subsection (7).
- (e) Shall not be delinquent in a tax or other obligation owed to this state or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state.

(2) For a qualified job training expenditure made by a company, the company may claim a tax credit equal to 50% of the qualified job training expenditure. A company shall not claim a credit under this section for any of the following:

- (a) A direct expenditure, or qualified personnel expenditure, for which the company claims a credit under section 17451 of this Code.

(b) A direct expenditure, or qualified personnel expenditure, for which the company claims a credit under section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.

(c) A direct expenditure, or qualified personnel expenditure, for which another taxpayer claims a credit under this section, a credit under section 17451 of this Code, or a credit under section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.

(3) A taxpayer seeking a credit under this section may submit an application to enter into an agreement under this section to the Michigan film office. The application shall be submitted, prior to making qualified job training expenditures, in a form prescribed by the Michigan film office and shall be accompanied by a \$100.00 application fee and all of the information and records requested by the office. An application fee received by the office under this subsection shall be deposited in the Michigan film promotion fund. The office shall not process the application until it is complete. If the office, with the concurrence of the state treasurer, determines to enter into an agreement under this section, the agreement shall provide for all of the following:

(a) A unique number assigned to the state certified qualified production for which qualified job training expenditures were incurred by the company.

(b) A detailed description of the state certified qualified production and the qualified job training expenditures.

(c) A requirement that the company provide the office with the information and independent certification the office and the department deem necessary to verify qualified job training expenditures and eligibility for the credit under this section.

(4) In determining whether to authorize a credit under this section, the Michigan film office and the state treasurer shall consider all of the following:

(a) The extent to which the state certified qualified production and qualified job training expenditure may have the effect of promoting economic development or job creation in this state.

(b) The extent to which the credit may assist in attracting additional private investment for the production of motion pictures, videos, television programs, and digital media in this state.

(c) The extent to which the credit will encourage the development of film, video, television, and digital media production and postproduction expertise in this state.

(5) If the Michigan film office determines that a company has complied with the terms of an agreement entered into under this section, the office shall issue a qualified job training expenditure certificate to the company. The company shall submit a request to the office for a qualified job training expenditure certificate on a form prescribed by the office, along with any information or independent certification the office or the department deems necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing a certificate and need not issue the certificate until satisfied that qualified job training expenditures and eligibility are adequately established. The additional information requested may include a report of expenditures audited and certified by an independent certified public accountant. Each qualified job training expenditure certificate shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the taxpayer.

(b) A description of the state certified qualified production and the qualified job training expenditures.

(c) The amount of the company's qualified job training expenditures for the state certified qualified production.

(d) The date on which production of the state certified qualified production began in this state, the date on which production of the state certified qualified production ended in this state, the total number of production days in this state, and the approximate total crew size for the state certified qualified production.

(e) The unique number assigned to the state certified qualified production by the office under subsection (3).

(f) The company's federal employer identification number or Michigan treasury number.

(g) Any independent certification required by the department or the Michigan film office.

(6) Information, records, or other data received, prepared, used, or retained by the Michigan film office under this section that are submitted by an eligible production company and considered by the taxpayer and acknowledged by the office as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Information, records, or other data shall only be considered confidential to the extent that the information or records describe the commercial and financial operations or intellectual property of the company, the information or records have not been publicly disseminated at any time, and disclosure of the information or records may put the company at a competitive disadvantage.

(7) To claim a credit under this section, a company shall submit a qualified job training expenditure certificate issued under subsection (5) to the department of [treasury](#). If the credit allowed under this section exceeds the amount of taxes owed by the company under [the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601](#), for a tax year, that portion of the credit that exceeds the tax liability of the company for the tax year shall not be refunded but may be carried forward as a credit against tax liability under [the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601](#), in subsequent tax years for a period not to exceed 10 tax years.

(8) The credit under this section shall be claimed after all other credits under [the Michigan business tax act of 2007, 2007 PA 36, MCL 208.1101 to 208.1601](#). The amount of the credit under this section shall be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed, which shall be deducted from the credit otherwise payable to the taxpayer claiming the credit and be deposited by the department in the Michigan film promotion fund.

**[Drafters Comment – How does this language interact with the credit provided by what was 2008 PA 77, Section 455 of the MBT, now section 17451 of this Code? Is this credit still the last to be used after section 17453 and 17455 of this Code?]**

(9) A taxpayer that willfully submits information under this section that the taxpayer knows to be fraudulent or false, shall, in addition to any other penalties provided by law, be liable for a civil penalty equal to the amount of the taxpayer's credit under this section. A penalty collected under this section shall be deposited in the Michigan film production promotion fund.

## **Subpart 2. Income Tax Incentives**

**Sec. 17457. State certified qualified production; tax credit.** (PA 79 of 2008, adds MCL 206.367 to Michigan Income Tax Act of 1967.)

(1) An eligible production company may claim a credit for a state certified qualified production against the tax deducted and withheld under this article equal to the amount of the credit the eligible production company is eligible to claim for the state certified qualified production under section 17451 of this Code. An eligible production company shall not claim a credit under this section for any of the following:

(a) A credit or portion of a credit the eligible production company claims under section 17451 of this Code.



(b) A credit or portion of a credit that another taxpayer claims under this section or under section 17451 of this Code.

(2) The credit allowed under this section shall not exceed the tax liability of the eligible production company under the income tax act of 1967, 1967 PA 281, for the tax year. The credit under this section shall be claimed after all other credits under the income tax act of 1967, 1967 PA 281.

(3) The amount of the credit under this section shall be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed, which shall be paid by the taxpayer claiming the credit and be deposited by the department in the Michigan film promotion fund.

(4) To the extent not withheld by a professional services corporation or professional employer organization, payments to the professional services corporation or professional employer organization for the services of a performing artist or a crew member that qualify for the credit under this section or section 17451 of this Code, are subject to withholding by the eligible production company as provided under section 351 of the income tax act of 1967, 1967 PA 281, MCL 206.351.

### **Subpart C. Michigan Economic Growth Authority Incentive**

#### **Sec. 17459 Film and Digital Media Production as an Eligible Business under the Michigan Economic Growth Authority Act, 1995 PA 24, MCL 207.801 to 207.810,**

Film and digital media production as defined by section \_\_\_\_\_ of this code, (formerly section 3 of the Michigan Economic Growth Authority Act, 1995 PA 24, MCL 207.803, is an eligible business under division II of article XIV of this code, formerly the Michigan Economic Growth Authority Act, 1995 PA 24, MCL 207.801 to 207.810.

### **PART C. FILM INDUSTRY ACCESS INCENTIVES**

#### **Sec. 17463. Film production located in state; use of state property; information about potential film locations; definitions. (MCL 18.1125 of Management and Budget Act, 2008 PA 76.)**

(1) The director of the department of management and budget may authorize a person engaged in the production of a film in this state to use without charge property owned by or under the control of the department of history for the purpose of producing a film under terms and conditions established by the director. The economic and other benefits to this state of film production located in this state shall be considered to be the value received by this state in exchange for the use of property under this section.

(2) The director of the department of management and budget shall not authorize the use of property owned by or under the control of the department of the department of management and budget for the production of a film that includes obscene matter or an obscene performance or for a production for which records are required to be maintained with respect to any performer under 18 USC 2257.

(3) The department of management and budgets hall cooperate with the Michigan film office in providing the office with information about potential film locations owned by or under the control of the department of management and budget and the use of property owned by or under the control of the department.

#### **Sec.17465. Use of property for production of film; authorization; prohibited use; cooperation with Michigan film office; definitions. [PA 81 of 2008, Section 337, MCL 32.737, of Michigan Military Act]**

(1) The adjutant general may authorize a person engaged in the production of a film in this state to use without charge property owned by or under the control of the department of military and veterans affairs for the purpose of producing a film under terms and conditions established by the adjutant general. The economic and other benefits to this state of film production located in this state shall be deemed to be the value received by this state in exchange for the use of property under this section.

(2) The adjutant general shall not authorize the use of property owned by or under the control of the department of military and veterans affairs for the production of a film that includes obscene matter or an obscene

performance or for a production for which records are required to be maintained with respect to any performer under 18 USC 2257.

(3) The department of military and veterans affairs shall cooperate with the Michigan film office in providing the office with information about potential film locations owned by or under the control of the department of military and veterans affairs and the use of property owned by or under the control of the department of military and veterans affairs.

**Sec.17467. Film production located in state; authorization by director or commission to use property; exception; cooperation with Michigan film office; definitions.** [\[PA 82 of 2008, adding section 512, as 324.512 to the Natural Resources and Environmental Protection Act\]](#)

(1) The director of the department of natural resources may authorize a person engaged in the production of a film in this state to use without charge property owned by or under the control of the department of natural resources for the purpose of producing a film under terms and conditions established by the director of the department of natural resources. The economic and other benefits to this state of film production located in this state shall be considered to be the value received by this state in exchange for the use of property under this section.

(2) The director of the department of natural resources or the commission of natural resources shall not authorize the use of property owned by or under the control of the department of natural resources for the production of a film that includes obscene matter or an obscene performance or for a production for which records are required to be maintained with respect to any performer under 18 USC 2257.

(3) The department of natural resources shall cooperate with the Michigan film office in providing the office with information about potential film locations owned by or under the control of the department of natural resources and the use of property owned by or under the control of the department of natural resources.

**Sec. 17469 Film production located in state; authorization by director or commission to use property; exception; cooperation with Michigan film office; definitions.** [\[From PA 83 of 2008, which adds Section 6b the State Transportation Commission Act, MCL 247.806b\]](#)

(1) The director of the department of transportation or the state transportation commission may authorize a person engaged in the production of a film in this state to use without charge property owned by or under the control of the state transportation commission for the purpose of producing a film under terms and conditions established by the director of the department of transportation or the state transportation commission. The economic and other benefits to this state of film production located in this state shall be deemed to be the value received by this state in exchange for the use of property under this section.

(2) The director of the department of transportation or the state transportation commission shall not authorize the use of property owned by or under the control of the commission for the production of a film that includes obscene matter or an obscene performance or for a production for which records are required to be maintained with respect to any performer under 18 USC 2257.

(3) The department of transportation and the state transportation commission shall cooperate with the Michigan film office in providing the office with information about potential film locations owned by or under the control of the state transportation commission and the use of property owned by or under the control of the state transportation commission.

**Sec. 17471. Local Government Filming Location Access; Use of property for production of film; authorization by local unit of government; exception; cooperation with Michigan film office.** [\[From Local Government Filming Location Access Act, as created by PA 84 of 2008, MCL 123.1191-95\]](#)

(1) Except as provided under subsection (2), a local unit of government may authorize a person engaged in the production of a film in this state to use, without charge, property owned by or under the control of the local unit of government for the purpose of producing a film under the terms and conditions established by the local unit of government. The economic and other benefits to the local unit of government and this state of film production

located in the local unit of government or this state shall be considered the value received by the local unit of government and this state in exchange for the use of the property owned by or occupied by the local unit of government under this section.

(2) A local unit of government shall not authorize the use of property owned by or under the control of the local unit of government for the production of a film that includes obscene matter or an obscene performance or that requires that individually identifiable records be created and maintained for every performer as provided in 18 USC 2257.

(3) A local unit of government shall cooperate with the Michigan film office by providing the film office with information about potential film locations within the local unit of government and the use of property owned by or under the control of the local unit of government.

## **MICHIGAN ECONOMIC DEVELOPMENT CODE (MEDC)**

**[Editor's note: the draft of ARTICLE XII is included in this document. To assist in orienting the reader, remaining articles of the draft Michigan economic development code, including source statutes, are outlined in a separate document.]**

### **ARTICLE XII – MICHIGAN WORKFORCE DEVELOPMENT**

**[Compiler's notes: The text of this article comes from the 21ST CENTURY JOBS TRUST FUND ACT, the MICHIGAN BUSINESS AND INDUSTRIAL TRAINING ACT, and the MICHIGAN WORKS ONE-STOP SERVICE CENTERS ACT (See citations below). Section numbering has been changed, but sections are annotated as to their source. Note dated references to departments of labor and commerce have been updated to department of labor and economic growth.]**

#### **DIVISION I. DEFINITIONS**

##### **Sec. 12101 Definitions.**

As used in this article:

- (a) "Chief elected official" means a chief elected official of a unit of general local government. [MSOCA, MCLA 408.113(a).]
- (b) "Education advisory group" means an education advisory group described in section 12323. [MSOCA, MCLA 408.113(c).]
- (c) "Employer" means a Business that employs or plans to employ skilled workers. [MBITA, MCLA 421.222.].
- (d) "Job upgrading" means the specialized training that is given to an identified level of employees to enable them to advance to a higher level of employment. [MBITA, MCLA 421.222.].
- (e) "Local workforce development board" means a local workforce investment board established as provided in section 12309. [MSOCA, MCLA 408.113(h).]
- (f) "Michigan works agency" means an entity designated to be the administrator for workforce development activities in a local Michigan works area under the guidance of the local workforce development board. [MSOCA, MCLA 408.113(d).]
- (g) "Michigan works area" means a geographic area that the governor designates as a local workforce investment area under section 116 of the workforce investment act, 29 USC 2831, including an area designated and recognized under that act before the effective date of this act. [MSOCA, MCLA 408.113(e).]
- (h) "Michigan works one-stop service center" means a facility designated to provide access to services delivered under the Michigan works one-stop service center system and certified as meeting standards established by the department of labor and economic growth. [MSOCA, MCLA 408.113(f).]
- (i) "Michigan works one-stop service center system" means the integrated and coordinated system of local boards, agencies, service centers, and advisory groups described in section 12305 to deliver workforce development services and implement federal and state law. [MSOCA, MCLA 408.113(g).]

(j) "Training" means custom-designed training given to prospective employees of new businesses and industries within this state; to employees, prospective employees, or both, of expanding businesses and industries within this state; and to employees, prospective employees, or both, of businesses and industries within this state that possibly would relocate without this training. [MBITA, MCLA 421.222.]

(k) "Training Program" means the Michigan business and industrial training program established pursuant to section 12103. [MBITA, MCLA 421.222.]

(l) "Residual tobacco settlement revenue" means any residual interests, as defined by the Michigan tobacco settlement finance authority act, that are received by this state. [21<sup>st</sup> C JTF, MCLA 12.252(e).]

(m) "Tobacco settlement revenue" means money received by this state that is attributable to the master settlement agreement incorporated into a consent decree and final judgment entered into on December 7, 1998 in *Kelly Ex Rel. Michigan v Philip Morris Incorporated, et al.*, Ingham county circuit court, docket no. 96-84281CZ, including any rights to receive money attributable to the master settlement agreement that has been sold by this state. [21<sup>st</sup> C JTF, MCLA 12.252(f).]

(n) "21st century jobs trust fund" means the 21st century jobs trust fund established in section 12207. [21<sup>st</sup> C JTF, MCLA 12.252(g).]

(o) "Workforce investment act" means the workforce investment act of 1998, 29 USC 2801 to 2945. [MSOCA, MCLA 408.113(i).]

## **DIVISION II. WORKFORCE DEVELOPMENT PROGRAMS**

### **PART A: Business and Industrial Training Program.**

#### **Sec. 12103. Establishment of Business and Industrial Training Program**

The department of labor and economic growth, in cooperation with the department of education, shall develop a Michigan business and industrial training program. The program shall emphasize employee training specifically designed to accommodate the needs of individual employers. The program shall encourage the expansion of existing businesses and industries within this state, promote retention of existing jobs within this state, prevent out of state business and industrial migration, and assist in the in-migration of out of state businesses and industries. [MBITA, MCLA 421.223.]

#### **Sec. 12104. Job training; criteria.**

The program shall train persons for jobs that are characterized by the following criteria: skill demand, wage for the area commensurate with the skill required for the job, feasibility and desirability for location within this state. [MBITA, MCLA 421.224.]

#### **Sec. 12105. Powers of program.**

The program may do all of the following:

- (a) Perform a job skills analysis and design a training curriculum for a requesting employer.
- (b) Recruit and refer trainee applicants to an employer.
- (c) Provide off site preemployment training, or on site preemployment training if off site preemployment training is not practical, to prospective employees of a new or expanding business or industry.
- (d) Enter into an on the job training agreement with an employer.

- (e) Retrain employees in response to a technological change.
- (f) Provide job upgrading training if the training will increase the employer's total work force.
- (g) Contract with persons, public or private educational institutions, agencies, or other bodies for training or consultative services for an employer.
- (h) Provide materials and supplies used in the training process, instructors with specialized skills, instructional training aids and equipment, consultative services relative to highly specific or technical data, and other services.
- (i) Assist a foreign employer locating or expanding in this state by familiarizing the employer's foreign personnel with the work attitudes, work methods, expectations, customs, and life style of employees who work within this state.
- (j) Reimburse a foreign employer for travel and per diem expenses incurred in the training of key personnel from this state at a home facility of the employer, and for instructional time of foreign personnel within this state.
- (k) Take other action that is considered to be necessary or desirable for the furtherance of the establishment of training programs under this division. [MBITA, MCLA 421.225.]

**Sec. 12106. Training services; primary concern; community college or area vocational educational center to be given initial consideration as provider.**

- (1) The primary concern in the provision of training services shall be the needs and type of services identified by the employer.
- (2) A community college or area vocational education center shall be given initial consideration to provide any training, job upgrading, or job upgrading training. [MBITA, MCLA 421.226.]

**Sec. 12107. Marketing and promotion of program.**

- (1)The department of labor and economic growth shall market and promote the program. [MBITA, MCLA 421.227.]

**Sec. 12108. Utilization of federal money.**

- (1)The program shall utilize federal money, when possible, to implement this division. [MBITA, MCLA 421.228.]

**PART B: 21<sup>st</sup> Century Jobs Trust Fund.**

**Sec. 12207. 21st century jobs trust fund; establishment; investment; money remaining at close of fiscal year; deposit of interest and earnings; deposit of Michigan tobacco settlement revenue.**

- (1) The 21st century jobs trust fund is established in the department of treasury. The 21st century jobs trust fund shall consist of donations of money made to the 21st century jobs trust fund from any source and both of the following:
  - (a) To the extent provided in section 8(1) of the Michigan tobacco settlement finance authority act, 2005 PA 226, MCL 129.268, the net proceeds of the sale of tobacco settlement revenues to the tobacco settlement finance authority under the Michigan tobacco settlement finance authority act, 2005 PA 226, MCL 129.261 to 129.279.

(b) Amounts appropriated from the general fund in [section 89b\(1\) of the Michigan strategic fund act, 1984 PA 270, MCL 125.2089b](#)

(2) The state treasurer shall direct the investment of the 21st century jobs trust fund, which may be invested as part of the common cash of this state under 1967 PA 55, MCL 12.51 to 12.53, but shall be separately accounted for by the state treasurer. The state treasurer may invest the funds or assets of the 21st century jobs trust fund in any investment authorized under 1855 PA 105, MCL 21.141 to 21.147, for surplus funds of this state, in obligations issued by any state or political subdivision or instrumentality of the United States, or in any obligation issued, assumed, or guaranteed by a solvent entity created or existing under the laws of the United States or of any state, district, or territory of the United States, which are not in default as to principal or interest. In addition, the state treasurer shall comply with the divestment from terror act in making investments under this section.

(3) Except as provided in subsection (4), money in the 21st century jobs trust fund at the close of a fiscal year shall remain in the 21st century jobs trust fund and shall not revert to the general fund.

(4) Interest and earnings from investment of the 21st century jobs trust fund shall be deposited in the general fund.

(5) Beginning in fiscal year 2008 and through fiscal year 2015, each year \$75,000,000.00 of the tobacco settlement revenue received by this state that is not considered a TSR as that term is defined under the Michigan tobacco settlement finance authority act, 2005 PA 226, MCL 129.261 to 129.279, shall be deposited into the 21st century jobs trust fund.

(6) For the fiscal year ending September 30, 2016 only, \$30,000,000.00 of the tobacco settlement revenue received by this state that is not considered a TSR as that term is defined under the Michigan tobacco settlement finance authority act, 2005 PA 226, MCL 129.261 to 129.279, shall be deposited into the 21st century jobs trust fund. . [21<sup>st</sup> C JTF, MCLA 12.257]

#### **Sec. 12208. Transfer and disbursement of funds; purpose.**

(1) Upon request from the fund board as defined in [section 88a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2088a](#), except as provided in subsection (2), the state treasurer shall transfer and disburse appropriated funds from the 21st century jobs trust fund only for the purpose of carrying out and at the specified time and as necessary to implement [part 8A of article II of this code, formerly the Michigan strategic fund act, 1984 PA 270, MCL 125.2088 to 125.2088p](#).

(2) The state treasurer shall transfer and disburse the amounts described in 1220 7(1)(b) for the purposes described in [part 8B of article II of this code, formerly the Michigan strategic fund act, 1984 PA 270, MCL 125.2089 to 125.2089d](#), as provided by an appropriation.

### **PART C: Michigan Works One-Stop Service Center System.**

#### **Sec. 12305. Michigan works one-stop service center system; creation**

(1) The Michigan works one-stop service center system is created to provide an integrated and coordinated system for delivery of workforce development programs and services tailored to local needs, including, but not limited to, portions of services and programs regulated or funded under all of the following state and federal laws:

(a) Title I of the workforce investment act, Public Law 105-220.

(b) The Wagner-Peyser act, 29 USC 49 to 49c and 49d to 49l-2.

(c) Section 221 of the trade act of 1974, 19 USC 2271.

(d) Section 57f of the social welfare act, 1939 PA 280, MCL 400.57f.

(e) Section 6(d)(4) of the food stamp act of 1977, 7 USC 2015.

(f) Reed act transfers under 42 USC 1101 to 1110.

(2) The system consists of the local workforce development board in each Michigan works area, Michigan works agencies, Michigan works one-stop service centers, and education advisory groups. [MSOCA, MCLA 408.115.]

**Sec. 12307. Designation of Michigan works areas.**

(1) The governor shall designate Michigan works areas in the state in accordance with section 116 of the workforce investment act, 29 USC 2831. [MSOCA, MCLA 408.117.]

**Sec. 12309. Local workforce development board; appointment; certification**

(1) The chief elected official in each Michigan works area shall appoint and the governor shall certify a local workforce development board for that Michigan works area in accordance with section 117 of the workforce investment act, 29 USC 2832. [MSOCA, MCLA 408.119.]

**Section 12311. Local workforce development board; members.**

All of the following apply to a local workforce development board:

(a) A majority of the members of a local workforce development board shall be representatives of the private sector appointed from a list of individuals nominated by local business organizations and business trade associations.

(b) A local workforce development board shall include representatives of education, the department of human services, the department of labor and economic growth, vocational rehabilitation providers, organized labor, economic development organizations, and community-based organizations. Representatives of government agencies shall be nominated by the department of labor and economic growth.

(c) Members of a local workforce development board shall be appointed for fixed and staggered terms.

(d) The chairperson of the local workforce development board shall be an individual from the private sector elected by the board. [MSOCA, MCLA 408.121.]

**Sec. 12313. Local workforce development board; duties.**

A local workforce development board shall do all of the following in cooperation with the chief elected officials in the Michigan works area:

(a) Develop and submit to the governor a plan for coordinating local workforce development services for employers and job seekers in the area. The plan shall provide for access to designated core services with no fees or charges and shall provide services beyond the core services based on eligibility criteria.

(b) Award competitive grants or contracts to eligible providers.

(c) Develop a budget.



- (d) Employ staff necessary to carry out the duties of the board.
- (e) Solicit and accept grants and donations.
- (f) Oversee the operation of the one-stop delivery of services through the Michigan works one-stop service center system.
- (g) Establish local performance standards through negotiation with the department of labor and economic growth for evaluating and improving the Michigan works one-stop service center system.
- (h) Coordinate workforce development activities with other economic development activities and strategies in the Michigan works area.
- (i) Promote private sector employer participation in the Michigan works one-stop service center system.
- (j) Make available connecting, brokering, and coaching activities through intermediaries to help meet employer hiring needs.
- (k) Appoint an education advisory group and its chair.
- (l) Conduct business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and make information available to the public concerning performance of its duties or other information requested under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (m) Any other duties, functions, or responsibilities required of the board to implement the workforce investment act or state or federal law. [MSOCA, MCLA 408.123.]

**Sec. 12315. Conflict of interest.**

- (1) A local workforce development board and each member of the board shall avoid a conflict of interest with duties of the board. Except as provided in subsection (2), an individual shall not be appointed to or serve on a local workforce development board if he or she has an ownership interest in or is employed by an organization that receives money under the direct control of the board or if the individual engages in any other activity that creates a conflict of interest or what would appear to a reasonable person to be a conflict of interest.
- (2) An individual who has an interest in or is employed by an entity that receives money under the partial or complete control of the local workforce development board may be appointed to or continue to serve on the board if the individual does not hold a policy-making position with the entity and would not receive other than a remote or incidental benefit from the board's decisions.
- (3) The exception to the strict conflict of interest policy provided in subsection (2) applies to allow local workforce development board representation from entities such as a school that enrolls students with tuition paid from funds under the control of the board, a government agency from which representation is required, and an employer that accepts compensation for extraordinary costs of providing on-the-job training from funds under the board's control. [MSOCA, MCLA 408.125.]

**Sec. 12317. Designation of entities to perform administrative functions**

The local workforce development board and local officials in each Michigan works area shall designate an entity to perform administrative functions. The entity shall be 1 of the following:

- (a) A public office or agency of a local unit of government within the Michigan works area.

- (b) A private nonprofit agency servicing 1 or more units of local government within the Michigan works area.
- (c) A nonprofit organization exempt from tax under section 501(c)(3) of the internal revenue code, 26 USC 501.
- (d) An entity organized under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536. [MSOCA, MCLA 408.127.]

**Sec. 12319. Administrator; service; activities; direct services; approval of governor; pilot or demonstration projects.**

(1) An administrative entity designated under section 12317 shall serve as the administrator for state and federal funding provided to the workforce development board for workforce development services and activities in the Michigan works area. Subject to subsection (2), an administrative entity designated under section 12317 may engage in any activity necessary to fulfill the intent of this act, including, but not limited to, the following:

- (a) Informing the state, units of local government, private agencies and organizations, and the general public of the nature and extent of the need for workforce development services for businesses and individuals within the Michigan works area.
- (b) Developing and administering local workforce development programs within the Michigan works area.
- (c) Conducting pilot and demonstration projects to research the effectiveness of innovative approaches to reduce unemployment, improve services, and utilize resources.
- (d) Providing and advocating for training and technical assistance to public and private agencies, community groups, and local units of government to better define problems, improve services, and facilitate citizen participation.
- (e) Increasing interagency coordination and cooperation in serving businesses and individuals.
- (f) Entering into agreements with federal, state, and local public and private agencies and organizations if necessary to carry out the purposes of this act.
- (g) Receiving and accepting grants or gifts to support or promote the activities authorized by this act.
- (h) Implementing and operating Michigan works one-stop service centers.
- (i) Engaging in any other activity necessary to fulfill the intent of this act.

(2) Except for incumbent worker training and business services, an administrative entity designated under section 12317 shall not provide workforce development services directly to job seekers and individual trainees without the approval of the governor.

(3) The department of labor and economic growth shall establish criteria and procedures for approving all pilot or demonstration projects described in subsection (1)(c) that are funded by the department. [MSOCA, MCLA 408.129.]

**Sec. 12321. Service providers; competitive procurement process; agreement to deliver services.**

(1) Except as provided in subsection (2), an administrative entity designated under section 12317 shall provide state or federally funded workforce development services to program applicants and participants only through service providers selected by a competitive procurement process established in accordance with department policy and applicable state law.

(2) An administrative entity designated under section 12317 may provide state or federally funded services directly to program applicants and participants without contracting with a service provider, if the department of labor and economic growth determines after a competitive procurement process that no other provider is capable of providing the required services within the limits of available funding and cost-to-benefit analysis.

(3) Except as otherwise provided in this section, an administrative entity designated under section 12317 may enter into any agreement necessary to deliver services under this act. [MSOCA, MCLA 408.131.]

**Sec. 12323. Education advisory group.**

(1) A local workforce development board shall appoint an education advisory group to operate in the Michigan works area and serve in an advisory capacity to the board on educational issues. The board shall appoint the chairperson of that group.

(2) An education advisory group appointed under this section shall include local workforce development board members and representatives of employers, labor representatives, local school districts, postsecondary institutions, intermediate school districts, career and technical educators, public school parents, and academic educators. An education advisory group member shall be employed in the sector he or she represents.

(3) The conflict of interest provisions in section 12315 do not apply to the members of an education advisory group appointed under this section. [MSOCA, MCLA 408.133.]

**Sec. 12325. Oversight and evaluation by department; report.**

(1) The department of labor and economic growth shall oversee and evaluate the activities of the Michigan works agencies and shall require Michigan works agencies to report information to the department to facilitate the oversight. All the reported information shall be available to the public. [MSOCA, MCLA 408.135.]

**Sources:**

4. PA 489 of 2000 - 21st Century Jobs Trust Fund Act, MCLA 12.252,257-258 (21<sup>st</sup> C JTF).
5. PA 48 of 1982 - Michigan Business and Industrial Training Act, MCLA 421.222-229 (MBITA)
6. PA 491 of 2006 - Michigan Works One-Stop Center Act, MCLA 408.111-135 (MWOCA).

## **A REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES FOR LEGISLATIVE ACTION AND RECOMMENDATIONS TO THE LEGISLATURE**

As part of its statutory charge to examine recent judicial decisions for the purpose of discovering defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issued through May 31, 2009, urging legislative action. That review identified one decision for which the Commission recommends legislative review. The decision examined by the Commission is:

*People v. Anderson*, 765 N.W.2d 341 (Mich Ct App 2009)

### **I. Elements of Crime of Torture**

#### **A. Background**

In *People v. Anderson*, 765 N.W.2d 341 (Mich Ct App 2009), the Michigan Supreme Court reviewed and denied an application for leave to appeal a judgment of the Michigan Court of Appeals, which interpreted MCL 750.85. That statutory provision penalizes the “inflict[ion of] great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control,” if inflicted “with the intent to cause cruel or extreme physical or mental pain and suffering.” MCL 750.85(1). “Custody or physical control” is defined as “the forcible restriction of a person’s movements or forcible confinement of the person so as to interfere with that person’s liberty, without that person’s consent or without lawful authority.” MCL 750.85(2)(b).

According to Justice Corrigan, in dissent, “[t]he Court of Appeals interpreted the final clause of this definition to require a prosecutor to prove that the victim was confined *either* ‘without that person’s consent’ *or* ‘without lawful authority,’ but not both.” *Anderson*, 765 N.W.2d at 341 (Corrigan, J., dissenting) (emphasis added). Justice Corrigan noting the defendant’s argument that “the statute’s use of the word ‘or’ is ambiguous” and the prosecution’s favoring of the result reached, while apparently “conced[ing] that the statute is difficult to interpret,” “urge[d] the Legislature to provide guidance to the courts concerning the proper application of this relatively new statute, perhaps by reconsidering the statute’s wording.” *Id.*

#### **B. Question Presented**

Should MCL 750.85 be amended to clarify whether, in a prosecution for the crime of torture, the prosecutor must prove both a lack of consent and a lack of lawful authority?

#### **C. Recommendation**

The Commission recommends immediate legislative review of this issue.

**H**

Supreme Court of Michigan.  
 PEOPLE of the State of Michigan, Plaintiff-Appellee,  
 v.  
 Ian Albert ANDERSON, Defendant-Appellant.  
**Docket No. 137879.**  
**COA No. 277370.**

May 29, 2009.

Prior report: 2008 WL 4923030.

**Order**

On order of the Court, the application for leave to appeal the November 18, 2008 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CORRIGAN, J. (dissenting).

I would grant leave to consider the Court of Appeals interpretation of MCL 750.85. Enacted as 2005 PA 335, effective March 1, 2006, MCL 750.85 established torture as a new felony in Michigan. An assailant commits torture if, "with the intent to cause cruel or extreme physical or mental pain and suffering, [he or she] inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control...." MCL 750.85(1). MCL 750.85(2)(b) provides: "'Custody or physical control' means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority." The Court of Appeals interpreted the final clause of this definition to require a prosecutor to prove that the victim was confined *either* "without that person's consent" *or* "without lawful authority," but not both. Defendant argues that the statute requires proof of *both* lack of consent *and* lack of lawful au-

thority. He states that, otherwise, the distinction would be largely meaningless because those with lawful authority to restrain others—such as parents or prison guards—will rarely have the consent of their charges. He further claims that the **Legislature** intended to exempt from the statute those with lawful authority to restrain others. Accordingly, he argues that the statute's use of the word "or" is ambiguous in this context and was misused as a conjunctive. See *People v. Gatski*, 260 Mich.App. 360, 365, 677 N.W.2d 357 (2004) ("It is well-established that the word 'or' is often misused in statutes and it gives rise to an ambiguity in the statute because it can be read as meaning either 'and' or 'or.' "). He claims that the context here suggests that the **Legislature** meant the statute to apply only to those who restrain another "without that person's consent *and* without lawful authority." In light of defendant's arguments, I would grant leave to appeal to consider the meaning of the statute. Indeed, although the prosecution favors the result reached by the Court of Appeals, it appears to concede that the statute is difficult to interpret. Because a majority of this Court has denied leave in this case, I urge the **Legislature** to provide guidance to the courts concerning the proper application of this relatively new statute, perhaps by reconsidering the statute's wording.

Mich., 2009.  
 People v. Anderson  
 765 N.W.2d 341

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THE SENATE  
STATE OF MICHIGAN

COMMITTEES:  
JUDICIARY, MINORITY VICE-CHAIR  
EDUCATION, MINORITY VICE-CHAIR  
FINANCE  
AGRICULTURE

May 27, 2009

Richard D. McLellan Esq., Chair  
Michigan Law Revision Commission  
Capitol View  
201 Townsend St., Suite 900  
Lansing, MI 48933

Re: Stem Cell Research Law Analysis

Dear Mr. McLellan:

As you know, in 2008 the voters adopted an amendment to Michigan's Constitution (Article I, § 27) relating to embryonic stem cell research. The consequence of this Amendment is that some, but not all, of the previous statutory restrictions on stem cell research were made inoperative by the vote of the People.

Pursuant to the charge to the Law Revision Commission in the Legislative Council Act to "examine the common law and statutes of this state... for the purpose of discovering defects and anachronisms in the law..." (MCL § 4.1403) I request that the Commission analyze the interplay between the new Constitutional language and existing statutes to set forth, as plainly as possible, what the law is today. In the event your analysis identifies sufficient "defects" in the law requiring legislative action, I would appreciate your views.

Thank you for your consideration of this matter.

Very truly yours,

Gretchen Whitmer  
State Senator  
23rd District

