

*40th Annual Report
2006-2007*

*Michigan
Law
Revision
Commission*

Term Members:

RICHARD D. MCLELLAN,
Chairperson

ANTHONY DEREZINSKI,
Vice Chairperson

GEORGE E. WARD

WILLIAM C. WHITBECK

Legislative Members:

SENATOR RAYMOND BASHAM

SENATOR BRUCE PATTERSON

REPRESENTATIVE EDWARD GAFFNEY

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Michigan
Law Revision Commission

FORTIETH ANNUAL REPORT
2006-2007

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This report may be downloaded from the Commission’s Internet website,
<http://council.legislature.mi.gov/mlrc.html>

MICHIGAN LAW REVISION COMMISSION
FORTIETH ANNUAL REPORT TO THE LEGISLATURE
FOR CALENDAR YEAR 2006-2007

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its fortieth annual report pursuant to section 403 of Act No. 268 of the Public Acts of 1986, MCL § 4.1403.

The Commission, created by section 401 of Act No. 268 of the Public Acts of 1986, MCL § 4.1401, consists of two members of the Senate, with one from the majority and one from the minority party, appointed by the Majority Leader of the Senate; two members of the House of Representatives, with one from the majority and one from the minority party, appointed by the Speaker of the House; the Director of the Legislative Service Bureau or his or her designee, who serves as an ex officio member; and four members appointed by the Legislative Council. The terms of the members appointed by the Legislative Council are staggered. The Legislative Council designates the Chair of the Commission. The Vice Chair is elected by the Commission.

Membership

The legislative members of the Commission during 2006 were Senator Michael D. Bishop of Rochester; Senator Hansen Clarke of Detroit; Representative Edward J. Gaffney of Grosse Pointe Farms; and Representative Stephen F. Adamini of Marquette. The legislative members of the Commission during 2007 were Senator Raymond Basham of Taylor; Senator Bruce Patterson of Canton; Representative Edward J. Gaffney of Grosse Pointe Farms; and Representative Mark Meadows of East Lansing. As Legislative Council Administrator, John G. Strand was the ex officio member of the Commission. The appointed members of the Commission were Richard D. McLellan, Anthony Derezinski, George E. Ward, and William C. Whitbeck. Mr. McLellan served as Chair and Mr. Derezinski served as Vice Chair. Gary B. Gulliver served as Executive Secretary. Brief biographies of the 2006 and 2007 Commission members and staff are located at the end of this report.

The Commission's Work in 2006-2007

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and to recommend needed reform.
2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association, and other learned bodies.
3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers, and the public generally as to defects and anachronisms in the law.

4. To recommend such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the civil and criminal law of this state into harmony with modern conditions.
5. To encourage the faculty and students of the law schools of this state to participate in the work of the Commission.
6. To cooperate with the law revision commissions of other states and Canadian provinces.
7. To issue an annual report.

The problems to which the Commission directs its studies are largely identified through an examination by the Commission members and the Executive Secretary of the statutes and case law of Michigan, the reports of learned bodies and commissions from other jurisdictions, and legal literature. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the past two years have been devoted primarily to three areas. First, Commission members provided information to legislative committees related to various proposals previously recommended by the Commission. Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the law revision commissions of various jurisdictions within and outside the United States. Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of certain uniform or model acts, the Commission sometimes found that the subjects treated had been considered by the Michigan Legislature in recent legislation and, therefore, did not recommend further action. In other instances, uniform or model acts were not pursued because similar legislation was currently pending before the Legislature upon the initiation of legislators having a special interest in the particular subject.

Proposals for Legislative Consideration in 2008

In addition to its new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 2006 and 2007:

- (1) Use of Technology to Conduct Government Meetings, 2003 Annual Report, page 9.
- (2) Governor's Power to Remove Public Officials From Office, 2003 Annual Report, page 21.
- (3) Immunity for Court-Appointed Psychologists, 2000 Annual Report, page 84.
- (4) Pre-Dispute, Contractual Venue Selection Clauses, 1998 Annual Report, page 203.
- (5) Uniform Unincorporated Nonprofit Associations Act, 1997 Annual Report, page 144.

- (6) Prison Mailbox Rule, 1997 Annual Report, page 137.
- (7) Uniform Conflict of Laws-Limitations Act, 1997 Annual Report, page 151.
- (8) E-Mail and the Freedom of Information Act, 1997 Annual Report, page 133.
- (9) Uniform Putative and Unknown Fathers Act, 1994 Annual Report, page 117.
- (10) Motorcycles and the No-Fault Insurance Act, 1993 Annual Report, page 131.
- (11) Tortfeasor Contribution under MCL 600.2925a(5), 1992 Annual Report, page 21.
- (12) International Commercial Arbitration, 1991 Annual Report, page 31.
- (13) Uniform Contribution among Joint Tortfeasors Act, 1991 Annual Report, page 19.
- (14) Uniform Statutory Rule against Perpetuities, 1990 Annual Report, page 41.
- (15) Standardization of Condemnation Powers Provisions, 1989 Annual Report, page 15.
- (16) Consolidated Receivership Statute, 1988 Annual Report, page 72.

Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Codification of economic development laws
- (2) Review of laws regulating burials and embalming
- (3) Review of emergency preparedness laws
- (4) Dual registration for real estate brokers
- (5) Review of ecclesiastical corporation laws
- (6) Review of limits on amounts of fines assessed for violations of property association's bylaws
- (7) Review of ethics laws

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are at Michigan State University College of Law, East Lansing, Michigan 48824. The current Executive Secretary of the Commission is Gary Gulliver, who was responsible for the publication of this report. By using faculty members at several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate on a budget substantially lower than that of similar commissions in other jurisdictions. At the end of this report, the Commission provides a list of more than 120 Michigan statutes passed since 1967 upon the recommendation of the Commission.

The Legislative Council Administrator handles the fiscal operations of the Commission under procedures established by the Legislative Council.

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Richard D. McLellan, Chair
Anthony Derezinski, Vice Chair
George E. Ward
William C. Whitbeck
Senator Raymond Basham
Senator Bruce Patterson
Representative Edward J. Gaffney
Representative Mark Meadows
John G. Strand

MICHIGAN ECONOMIC DEVELOPMENT CODE PROJECT

A Report to the Michigan Law Revision Commission

Submitted by Professor Gina Torielli and Jeffrey Cuthbertson, Thomas M. Cooley Law School,
and approved by the Michigan Law Revision Commission

MICHIGAN ECONOMIC DEVELOPMENT CODE PROJECT

Over the course of Michigan's history, many statutes have been enacted granting governmental entities the power to take actions intended to spur economic development. Pursuant to a legislative request for a review and survey of the currently effective laws having such a purpose, the Michigan Law Revision Commission commissioned Professor Gina Torielli and Jeffrey Cuthbertson, both of the Thomas M. Cooley Law School, to prepare a report containing such a review and survey. After the Commission's review and comment on the authors' draft report, the following final report was approved by the Commission for inclusion in its 2006-2007 Annual Report. Under the auspices of the Commission, Professor Torielli is now preparing draft legislation to codify, consolidate, and classify the laws identified in the review and survey.

The report first creates a working definition of the term "economic development" and then presents a historical perspective on the economic development laws enacted by the Michigan Legislature. Next, the report delineates the basis for the inclusion or possible exclusion of the text of specified classes of statutes from the proposed codification. Lastly, the report briefly discusses the framework of the drafted legislation being prepared pursuant to the report, followed by several appendices containing a list of the classes of statutes noted above, a detailed framework for the draft legislation, a list of the State of Michigan entities responsible for economic development activities, and a list of the principal Executive Reorganization Orders impacting the economic development statutes.

Introduction and Report of the Michigan Law Revision Commission

At the request of Representative Bill Huizenga, the Michigan Law Revision Commission undertook a review and survey of current laws in the State of Michigan having the purpose of encouraging economic development within the State into one act to be entitled the “Michigan Economic Development Code.” The Commission’s objectives include harmonizing and consolidating this body of laws. This would permit easier access to, and understanding of, available legislatively created economic development tools. The results of this study and a status report on a draft of a proposed new Code framework follow.

I. Economic Development Defined

In order to determine which laws to include within an integrated economic development code, the Commission first developed a working definition of “economic development.”

A collection of various definitions that show the full scope of meaning of the term “economic development” is available at the website www.SiteLocationAssistance.com; however, there is no official definition of the term. According to the United States Economic Development Administration, “economic development” fundamentally involves enhancement of the factors of productive capacity - land, labor, capital, and technology - of a national, state or local economy. The International Economic Development Council and some academics separate “economic development” into two aspects: (1) a set of objectives, most commonly the creation of jobs and wealth and the improvement of quality of life; and (2) a process that influences the growth and restructuring of an economy to enhance the economic well-being of a community. Laws promoting economic development clearly fall under this latter aspect. “Economic development” as the term is used in Michigan law consists of the “efforts to increase employment opportunities by getting new businesses to relocate in a community or existing businesses to expand” - which is how the Texas Workforce Commission (Career Development Resources unit) defines the term.

II. Historical Perspective on Michigan Economic Development Laws

Laws presently in force in the Michigan Compiled Laws cover more than 65 years of efforts by the Legislature to use the powers of government to spur economic development. The current statutory landscape reveals dozens of laws spread widely across the books enacted in a seemingly stratified manner as the Legislature acted within economic cycles. Discussion of these periods is organized as follows:

The World War II Era

The oldest relevant statute in effect is Act 250 of the Public Acts of 1941, the Urban Redevelopment Corporations Law, a pre-World War II, depression-era law designed to

provide for the creation of urban redevelopment corporations for the purpose of clearing, replanning, rehabilitating, modernizing, beautifying, and reconstructing substandard and insanitary areas....

In the immediate post-war area, the Legislature acted to promote a specific industry with the enactment of Act 106 of the Public Acts of 1945, the Michigan Tourism Policy Act designed to

enhance the economic viability of the state through development, improvement, and promotion of the travel, tourism, and convention industry of the state....

The 1950s was a time of massive economic expansion in Michigan due to the post-war boom. There was little in the way of statutes enacted in the 1950s to address economic development issues and no new acts enacted in the 1950s to address the issues remain in effect.

The 1960s Expansion

The 1960s was an era which ushered in the adoption of Michigan's Constitution of 1963 and the strengthening of state governments. This included the beginning of more robust state-authorized economic development strategies.

In 1963, the Legislature created a new Department of Economic Expansion which replaced a pre-existing Department of Economic Development and a Commission of Economic Development. These were the first of many examples of a continual change in the names of state economic development agencies to reflect the interests or create an identification with a new generation in power in the Legislature or the Governor's Office. The 1963 economic development agency was, within two years, consolidated into the new Department of Commerce when it was created in 1965 as part of the implementation of the new Constitution.

Also during this period, the state authorized principal shopping and business improvement districts with assessments on businesses. It also initiated the use of industrial development revenue bonds and authorized county-level economic development commissions.

The geographic scope of the Legislature's approach grew in this period as well. In 1963, the Michigan Legislature focused for the first time on international matters and authorized the creation of foreign trade zones in Michigan pursuant to a 1934 federal law. In 1968, the Legislature established the first state agencies focused on export development and foreign trade for agricultural projects. A 1968 law authorized the Department of Commerce to "serve as the focal point of the state for international activity."

The 1970s Reorganization

The 1970s was also a period of active economic development legislation. The enactment of the Economic Development Corporations Act in 1974 created a tool widely used for local economic activity. The Act included a wide-ranging findings clause covering the prevention of unemployment, assistance of industrial and commercial enterprises, promotion of forest and agricultural economic activity, reducing urban sprawl, reducing the costs of production, and development of renewable energy (MCL 125.1602). The value of this act is demonstrated by the fact that it has been amended multiple times to keep it up to date, most recently with amendments enacted in 2004.

Another statute with long-standing impact is the act popularly known as the "Downtown Development Authority Act" enacted in 1975. This law, too, has been subject to multiple amendments, most recently in 2007. The Downtown Development Authority Act also introduced large-scale tax increment financing projects to local governments. Many of the tax increment finance plans enacted pursuant to this statute in the 1970s and 1980s remain in force today and have massive revenue implications for taxing jurisdictions who did not opt out or otherwise limit their participation in what have become seemingly perpetual plan renewals.

The Commercial Redevelopment Act was created in 1978 to grant certain tax exemptions, but in 1984 the Legislature prohibited exemptions after 1985 while leaving the law on the books. The 1970s also saw the enactment of laws to give state financial support to Michigan's short-haul commercial railroads and to modernize Michigan's port authority law.

The 1980s and Depression

As an outgrowth of Michigan's deep depression in the early 1980s, the 1980s was a period of active legislation creating a number of new legislative economic development programs, including the:

- Tax Increment Financing Authority;
- Two separate laws allowing for assessments on transient hotel rental for convention and tourism marketing;
- Creation of an urban land assembly fund;
- Creation of a state research fund in 1982, a precursor to much more active state investment in research;
- Creation of business and industrial training funds;
- Assisting in technology park development;
- Creating a Business Incubation Act;
- Enterprise Zone Act;
- Local Development Financing Act;
- Michigan Export Development Act;
- Resort District Rehabilitation Act;
- Michigan BIDCO Act;
- Transportation Economic Development Fund; and,
- Regional Tourism Market Act.

But the major political vehicle for economic development was Governor James Blanchard's "Michigan Strategic Fund Act" which authorized, but did not fund, a wide range of direct assistance programs designed to bring about economic change. Since its enactment in 1984, this Act and the Strategic Fund have been used by three governors as the primary vehicle for a state economic development agency. Governor John Engler used the Strategic Fund to receive Indian gaming revenues for economic development purposes and later to transfer a wide range of other economic development programs to the Fund and then transfer administration of the programs outside state government through creation of the Michigan Economic Development Corporation (MEDC).

Governor Jennifer Granholm retained both the Strategic Fund and the MEDC and used those vehicles to direct the allocation of \$400 million in revenue received from the securitization of tobacco settlement revenues.

The 1990s Growth Continued

The 1990s saw further activity by the Legislature and the Governor to create economic development tools, including the:

- Michigan Farm Export Act;
- Stadia and Convention Facility Development Act;
- Land Reclamation and Improvement Authority Act;
- Forest Finance Authority Act;
- Michigan Economic Growth Authority Act;
- Empowerment Zone Development Corporation Act;
- Brownfield Redevelopment Act; and,
- Michigan Renaissance Zone Act.

The 21st Century

The beginning of the 21st Century has shown no letup in Michigan's search for new economic development tools with the creation or adoption of:

- Agricultural products value-added programs;
- Michigan Film Office and direct assistance for film production in Michigan;
- Michigan Next Energy Authority and Renewable Fuels Commission, promoting alternative energy industry;
- Michigan Broadband Development Authority, designed to provide assistance in broadband deployment;
- Michigan Early Stage Venture Investment Act, providing tax benefits for venture capital investments;
- Land Bank Fast Track Act and Tax Reverted Clean Title Act designed to get tax reverted property into productive use on an expedited basis; and,
- Commercial Rehabilitation Act.

III. Statutes Identified and Categories Excluded

As is evident from the definitions above, there are many factors of productive capacity that could be enhanced in order to induce business location and growth. These include: workforce attraction and development; land assembly and preparation; tax incentives and overall tax structure; subsidies for expenses of doing business; opportunities for pooling resources for industry promotion, sales or acquisitions; immunity from liability for business activity; strong educational and research institutions; and communities attractive to prospective key employees.

Arguably, all tax, environmental, health, housing, land use and education laws impact economic development efforts in some way. Although clearly important to the business climate of the State, the Commission has left aside, for the sake of manageability of the project, laws in the areas of: agriculture (except for laws creating incentives for development of agricultural product processing businesses); primary, secondary, and higher education; aeronautics; and public and privately provided health care. The Commission felt that these areas are discrete and better addressed as a whole, rather than attempting to tease out the economic development aspect of the areas into a separate Code.

To maintain a workable scope for this project, the Commission has included statutes whose purposes evidence a primary intent to attract business location or expansion in Michigan. Generally, these laws involve the use of economic development tools such as taxes or tax exemption; loans, grants, or guarantee funds; lower-cost bond financing; product development and export assistance; and assistance with planning and easing business regulation burdens.

In addition to economic development laws directed toward business in general, laws exist that are directed toward expansion of business in a specific industry or of businesses owned by specific categories of persons. Current industry-specific laws involve tourism, forestry, film, agricultural value-added products, and renewable energy. These laws are included in the Commission's survey and will be included in the draft Code. There are also laws directed at specific categories of persons; the possible inclusion of which in the draft Code is discussed further below.

Using its working definition of economic development, the Commission identified almost 60 separate statutes with economic development purposes. The fact that the identified laws sometimes overlap and are widely scattered across the Michigan Compiled Laws is itself evidence of the need for the project Representative Huizenga requested. Moreover, several gubernatorial executive reorganization

orders made changes in State government with respect to economic development activities, but have also had the effect of obfuscating state agency powers and responsibilities. Appendices A and G, respectively, to this report list the 58 statutes and the five principle executive reorganization orders the Commission identified, along with a description of their purposes and year of enactment or promulgation. Additionally, the Commission has recognized a number of statutes which underlie the functioning of economic development statutes, but are not included within the scope of the effort. Examples include the Home Rule City Act, Act 279 of the Public Acts of 1909 and the Urban Cooperation Act, Act 7 of the Public Acts of 1967 (ex session).

During the pendency of the Commission's work, several developments impacted the Commission's ability to expeditiously draft a complete Code. First, in the summer of 2006, the Legislature adopted and the Governor signed legislation to eliminate the State Single Business Tax (the "SBT"), effective December 31, 2007. The SBT is Michigan's primary tax on business operations; consequently, many tax incentives directed at economic development involve SBT exemptions and credits. At the time this report was drafted, replacement tax legislation had not been finalized. Therefore, Appendix B to this report notes the existence and location in statute of these SBT exemptions, but the draft Code will not include this language involving business operations tax incentives. Work in this area is better left until the Legislature completes its work on any business tax replacement.

Second, in the November 2006 elections, voters adopted ballot initiative State Proposal 06-2, a Constitutional amendment to prohibit public institutions both from discriminating against and from giving preferential treatment to groups or individuals based on their race, gender, color, ethnicity or national origin for public employment, education or contracting purposes. As was mentioned earlier, Michigan has laws whose purpose is to assist development of businesses owned by specific classes of persons, specifically women and "minorities" (defined in one statute as persons who are "black, Hispanic, oriental, Eskimo or American Indian").

In the Commission's review of these laws, it appears there are some (but relatively few) economic development provisions with language that may involve contracting problematic under State Proposal 06-2. Appendix C to this report notes the existence and location of such laws. The Commission recommends the Legislature review these provisions and determine whether the provisions should and need be redrafted to preserve existing programs within the spirit of Proposal 06-2. In the process of drafting the new Code, the Commission will continue its study in this area, taking into account actions by the Legislature and the courts with respect to Proposal 06-2.

Finally, in the November 2006 elections, voters adopted ballot initiative State Proposal 06-4, a Constitutional amendment to restrict use of eminent domain powers. The Legislature adopted and the Governor signed Acts 367 and 368 of the Public Acts of 2006 amending MCL 213.23, which further defined eminent domain powers in anticipation of the enactment of the Constitutional amendment. Nine statutes on the Commission's list, as well as approximately 350 statutory provisions spread across the Michigan Compiled Laws, involve the power of the state and local governments to take property using the power of eminent domain or condemnation. Indeed, the use of eminent domain for land assembly and the elimination of blight as a method of improving the economic climate in Michigan have been the subject of numerous statutes on the Commission's survey of economic development laws. Appendix D to this report notes the existence and location of laws involving the use of eminent domain in the context of economic development.

The Commission reviewed economic development statutes that included a grant of condemnation authority (see Appendix D) to determine if any conflict existed with the Constitutional Amendment. A clarification of the language in such statutes is warranted in order to conform to recent case law and the approved State Proposal 06-4, which restricts condemnation powers to property taken for a

“public use.” Such clarification would take the form of an insertion in the Land Reclamation and Improvement Authority Act, and an amendment of the other statutes, to clarify that the grant of condemnation power contained in the act is restricted to instances of “public use,” recognizing that achieving the “public benefit” standard currently in those statutes may not satisfy the “public use” requirement of the State Constitution. If condemnation authority is referenced, but not granted, in the statute, a modification is not warranted. The Commission notes, however, that the original purpose for granting the condemnation power under many of the acts may be frustrated by the narrowing of what is a constitutional condemnation. In the process of drafting the new Code, the Commission will continue its study in this area and will refine, as needed, language involving the use of eminent domain in light of State Proposal 06-4, and Acts 367 and 368 of the Public Acts of 2006.

The Commission also notes that legislation often assigns economic development functions and powers to a specific state entity. Subsequent legislation or executive order may shift these functions or powers to another entity. For purposes of the draft Code, the Commission tracked legislative changes in the location of powers, but will not conform state statutory law as it existed at the end of 2006 to functions shifted through executive order. Appendix F includes a list of State-level entities and agencies that existed at the end of 2006 having economic development responsibilities under the statutes the Commission had identified for inclusion in the draft Code.

IV. Draft Economic Development Code Framework

In drafting a consolidated Economic Development Code framework, the Commission was faced with numerous choices. The Commission addressed these choices using an overall principle that it would not recommend significant changes in policy as reflected in current law. Rather, the Commission attempted to consolidate and harmonize existing law without making substantive changes.

To assist in the Legislature’s consideration of a consolidated economic development statute, the draft Code framework contains references to the law that is the source of its proposed content, along with cross-references to other similar provisions in the statutes.

Articles in the proposed Code framework are used to divide state and local activities within functional areas, with additional articles directed at the specific industries for which current law contains special economic development programs. Appendix E is a suggested overall structure for a Michigan Economic Development Code, including a list of chapters to be included in the Code and the source statutes for the materials in each division.

One point of note is the inclusion of a purposes section in Article XII - Financing Michigan Economic Development. While purposes clauses are generally disfavored in modern statutory drafting, one will be added here to support bond finance activity. Following Dillon’s rule, during the process of preparing a bond issue, bond counsel must conclude that the bonds being issued comply with a statutorily enumerated or necessarily implied power. As courts construe statutes granting powers to governmental entities narrowly, a clear purposes clause for such statutes assists bond counsel in issuing the necessary opinions to support legislatively sanctioned bond issuance.

V. Draft Economic Development Code and Bill Proposal

Suggested Code language is currently being developed and comprehensive statutory language in the form of a proposed bill will be delivered in 2008. As indicated above, Appendix E contains the primary existing statutes making up the body of each proposed article. These statutes will be consolidated into the new Code. As the Commission works to draft the new Code, it is guided by several principles. First, the 21st Century Trust Fund strategies adopted in 2005 and 2006 will be

preserved as the core of the State's current economic development activities. Second, changes in existing law will be minimized and any suggested change will be transparent. Third, suggested changes will come from a position of increasing transparency, modernity and accountability in the State's economic development activities.

We look forward to providing further updates on this progress as appropriate.



MICHIGAN LAW REVISION COMMISSION

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APPENDIX A: Statutes Identified For Inclusion in a New Economic Development Code

#	<u>MCL</u>	<u>PA</u>	<u>Year</u>	<u>Act Name</u>	<u>Location In Proposed MEDC</u>
1	324.50501-324.50522	451	1994	Natural Resources and Environmental Protection Act - Forest Finance Authority Act	Agricultural Economy
2	285.301-285.304	322	2000	Julian-Stille Value-Added Act	Agricultural Economy
3	207.823	593	2002	Michigan Next Energy Authority Act	Energy Source Development
4	290.581-290.586	272	2006	Renewable Fuels Commission Act (Sunsets 1/1/2010)	Energy Source Development
5	205.54cc	657	2007	Use Tax Exemption	Film Industry Activity
6	399.721-399.722	63	2001	History, Arts, and Libraries Act (Excerpt)	Film Industry Activity
7	125.1251-125.1267	62	1963	Industrial Development Revenue Bond Act of 1963	Financing Michigan Economic Development
8	125.1801-125.1830	450	1980	The Tax Increment Finance Authority Act	Financing Michigan Economic Development
9	125.1951-125.1956	175	1982	State Research Fund	Financing Michigan Economic Development
10	125.2151-125.2174	281	1986	The Local Development Financing Act	Financing Michigan Economic Development
11	125.2231-125.2263	296	2003	Michigan Early Stage Venture Investment Act of 2003	Financing Michigan Economic Development

12	474.51-474.70	295	1976	State Transportation Preservation Act of 1976	Infrastructure Development
13	207.701-207.718	385	1984	Technology Park Development Act	Infrastructure Development
14	247.901-247.914	231	1987	Transportation Economic Development Fund	Infrastructure Development
15	484.3201-484.3225	49	2002	Michigan Broadband Development Authority Act	Infrastructure Development
16	447.1-447.3	154	1963	Foreign Trade Zones	International Trade Development
17	447.101-447.103	24	1968	Division of International Commerce	International Trade Development
18	447.121-447.123	23	1968	Foreign Trade Branch of Department of Agriculture	International Trade Development
19	120.101-120.130	639	1978	Hertel-Law-T. Stopczynski Port Authority Act	International Trade Development
20	447.151-447.168	157	1986	Michigan Export Development Act	International Trade Development
21	447.201-447.207	359	1990	Michigan Farm Export Act	International Trade Development
22	125.1851-125.1861	171	1981	Michigan Urban Land Assembly Act	Land Assembly
23	211.1021-211.1026	260	2003	Tax Reverted Clean Title Act	Land Assembly
24	125.2781-125.2797	146	200	Obsolete Property Rehabilitation Act	Land Rehabilitation
25	125.2451-125.2488	173	1992	Land Reclamation and Improvement Authority Act	Land Rehabilitation
26	125.2651-125.2672	381	1996	Brownfield Redevelopment Financing Act	Land Rehabilitation
27	124.751-124.774	258	2003	Land Bank Fast Track Act	Land Use Assembly
28	125.981-125.990m	120	1961	Principal Shopping Districts and Business Improvement Districts	Local Commercial Development
29	125.1651-125.1681	197	1975	Downtown Development Authority	Local Commercial Development
30	207.651-207.668	255	1978	Commercial Redevelopment Act	Local Commercial Development

31	125.2201-125.2219	59	1986	Resort District Rehabilitation Act	Local Commercial Development
32	324.79501-324.79508	451	1994	Natural Resources and Environmental Protection Act (Excerpt)	Local Commercial Development
33	125.2871-125.2898	280	2005	Corridor Improvement Authority Act	Local Commercial Development
34	207.841-207.856	210	2005	Commercial Rehabilitation Act	Local Commercial Development
35	125.1601-125.1636	338	1974	Economic Development Corporations Act	Local Economic Revitalization Authorities
36	207.551-207.572	198	1974	Plant Rehabilitation and Industrial Development Districts	Local Industrial Redevelopment
37	125.1571-125.1586	198	1984	Michigan Business Incubation Act	Michigan Jobs Development
38	125.1201-125.1208	116	1963	Economic Expansion	Planning Michigan Economic Development
39	125.1231-125.1237	46	1966	County or Regional Economic Development Commission	Planning Michigan Economic Development
40	487.1101-487.2001	89	1986	Michigan BIDCO Act	Planning Michigan Economic Development
41	125.2561-125.2591	75	1995	Empowerment Zone Development Corporation Act	Planning Michigan Economic Development
42	141.881-141.889	383	1980	Convention and Tourism Marketing Act	Promotion as Convention Destination
43	141.871-141.880	395	1980	Community Convention or Tourism Marketing Act	Promotion as Convention Destination
44	207.621-207.640	106	1985	State Convention Facility Development Act	Promotion as Convention Destination
45	207.751-207.759	180	1991	Stadia or Convention Facility Development	Promotion as Convention Destination
46	141.1401-141.1414	203	1999	The Convention Facility Authority Act	Promotion as Convention Destination
47	2.101-2.108	106	1945	Michigan Tourism Policy Act	Promotion of Tourism
48	141.891-141.900	244	1989	Regional Tourism Marketing Act	Promotion of Tourism

49	125.2001-125.2094	270	1984	Michigan Strategic Fund Act	State Strategic Fund
50	125.1971-125.1972	317	2006	Michigan Strategic Fund Centers	State Strategic Fund
51	207.801-207.810	24	1995	Michigan Economic Growth Authority Act	State Venture Capital
52	12.257	489	2000	21 st Century Jobs Trust Fund Act	State Venture Capital
53	125.1221-125.1225	165	1975	Division of Minority Business Enterprise	Tbd
54	125.901-125.922	250	1941	Urban Redevelopment Corporations Law	Urban Redevelopment
55	125.801-125.814	56	1980	Neighborhood Assistance and Participation Act	Urban Redevelopment
56	125.2101-125.2123	224	1985	Enterprise Zone Act	Urban Redevelopment
57	125.2681-125.2696	376	1996	Michigan Renaissance Zone Act	Urban Redevelopment
58	421.221-421.229	48	1982	Michigan Business and Industrial Training Act	Workforce Development



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APPENDIX B: Economic Development Statute Sections Impacted by the Single Business Tax (SBT) Repeal

Section	Name Of Currently Existing Act
MCL 125.803	Neighborhood Assistance and Participation Act (Excerpt)
MCL 125.2007	Michigan Strategic Fund Act (Excerpt)
MCL 125.2063	Michigan Strategic Fund Act (Excerpt)
MCL 125.2068	Michigan Strategic Fund Act (Excerpt)
MCL 125.2069a	Michigan Strategic Fund Act (Excerpt)
MCL 125.2247	Michigan Early Stage Venture Investment Act of 2003 (Excerpt)
MCL 125.2249	Michigan Early Stage Venture Investment Act of 2003 (Excerpt)
MCL 125.2253	Michigan Early Stage Venture Investment Act of 2003 (Excerpt)
MCL 125.2652	Brownfield Redevelopment Financing Act (Excerpt)
MCL 125.2689	Michigan Renaissance Zone Act (Excerpt)
MCL 125.2690	Michigan Renaissance Zone Act (Excerpt)
MCL 125.2790	Obsolete Property Rehabilitation Act (Excerpt)
MCL 207.561	Plant Rehabilitation and Industrial Development Districts (Excerpt)
MCL 207.712	Technology Park Development Act (Excerpt)
MCL 207.751	Stadia or Convention Facility Development (Excerpt)
MCL 207.806	Michigan Economic Growth Authority Act (Excerpt)
MCL 207.809	Michigan Economic Growth Authority Act (Excerpt)
MCL 207.825	Michigan Next Energy Authority Act (Excerpt)
MCL 445.2011	Executive Reorganization Order (E.R.O.) No. 2003-1 (Excerpt)



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APPENDIX C: Economic Development Statute Sections Referencing Programs Possibly Impacted by State Proposal 06-2 (Prohibiting Certain Racial and Gender Preferences)

Section	Name Of Currently Existing Act
MCL 125.1221- MCL 125.1225	Division of Minority Business Enterprise
MCL 125.807	Neighborhood Assistance and Participation Act (Excerpt)
MCL 125.2007	Michigan Strategic Fund Act (Excerpt)
MCL 125.2025	Michigan Strategic Fund Act (Excerpt)
MCL 125.2034	Michigan Strategic Fund Act (Excerpt)
MCL 125.2061- MCL 125.2069a	Michigan Strategic Fund Act (Excerpt)
MCL 125.2249	Michigan Early Stage Venture Investment Act of 2003 (Excerpt)



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APPENDIX D: Economic Development Statute Sections Referencing Eminent Domain Powers Possibly Impacted by State Proposal 06-4

Section	Name Of Currently Existing Act
MCL 125.2466	Land Reclamation and Improvement Authority Act (Excerpt)
MCL 125.1608	Economic Development Corporations Act (Excerpt)
MCL 125.1820	The Tax Increment Finance Authority Act (Excerpt)
MCL 125.2587	Empowerment Zone Development Corporation Act (Excerpt)
MCL 125.2627	Enterprise Community Development Corporation Act (Excerpt)
MCL 120.102	Hertel-Law-T. Stopczynski Port Authority Act (Excerpt)
MCL 125.2159	The Local Development Financing Act (Excerpt)
MCL 125.2660	Brownfield Redevelopment Financing Act (Excerpt)
MCL 125.2688b	Michigan Renaissance Zone Act (Excerpt)



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APPENDIX E: Michigan Economic Development Code (MEDC) Framework

Michigan Economic Development Code (MEDC)

Article I - General Provisions

Division I - Title

Division II - Legislative Findings

Division III

Short Title.

Repeal of Statute; Effect.

Heading or Title; Effect.

Members of Predecessor Agency; Powers.

Existing Rules; Effect.

Orders; Effect.

Editorial Changes; Effect; Intent.

Division IV - Definitions

Division V - Office of Chief Compliance Officer

Statutes:

1. PA 270 of 1984 - Michigan Strategic Fund Act (Excerpt) - Sec. 88i

Article II - State Michigan Strategic Fund To Promote Economic Competitiveness

Division I - State Strategic Fund

Statutes:

1. PA 270 of 1984 - Michigan Strategic Fund Act
2. PA 317 of 2006 - Michigan Strategic Fund Centers

Article III - Promoting the Michigan Agricultural Economy

Division I - State Promotion of Agricultural Value-Added Products

Statutes:

1. PA 322 of 2000 - Julian-Stille Value-Added Act
2. PA 451 of 1994 - Forest Finance Authority Act - Natural Resources and Environmental Protection Act (Excerpt MCL 324.50501)

Division II - Other State Activities Promoting the Agricultural Economy

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

Article IV - Michigan Land Use Revitalization

Division I - Land Rehabilitation and Blight Reduction

Statutes:

1. PA 146 of 2000 - Obsolete Property Rehabilitation Act
2. PA 381 of 1996 - Brownfield Redevelopment Financing Act
3. PA 173 of 1992 - Land Reclamation and Improvement Authority Act
4. Portions of Statutes Included Elsewhere in the Code Involving Rehabilitation and Blight Reduction

Division II - 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 V - Michigan International Trade Development

Division I - 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 II - 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 - State Encouragement of Alternative Energy Development

Statutes:

1. PA 593 of 2002 - Michigan Next Energy Authority Act
2. PA 272 of 2006 - Renewable Fuels Commission Act (Sunset 1/1/2010)

Division II - 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 - Promotion of Tourism

Part A: State Activities

Statutes:

1. PA 106 of 1945 - Michigan Tourism Policy Act

Part B: Local Activities

Statutes:

1. PA 244 of 1991 - Regional Tourism Marketing Act

Division II - 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
2. PA 383 of 1980 - Convention and Tourism Marketing Act
3. PA 203 of 1999 - Community Convention or Tourism Marketing Act

Division III - State Activities Promoting Film Industry Activity in Michigan

Statutes:

1. PA 63 of 2001 - History, Arts and Libraries Act
(Excerpt MCL 399.721-399.722)
2. PA 657 of 2006 - Use Tax Exemption for Motion Picture Industry Activities in Michigan

Article VIII - Local Economic Revitalization Authorities

Division I - Local Economic Development Corporations

Statute:

1. PA 338 of 1974 - Economic Development Corporations Act

Division II - Local Commercial Development Authorities

Statutes:

1. PA 197 of 1975 - Downtown Development Authority Act
2. PA 280 of 2005 - Corridor Improvement Authority Act
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
7. PA 210 of 2005 - Commercial Rehabilitation Act

Division III - Local Industrial Redevelopment Authorities

1. PA 198 of 1974 - Plant Rehabilitation and Industrial Development Districts

Division IV - Urban Redevelopment

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

Article IX - Michigan Infrastructure Development for Economic Growth

Statutes:

1. PA 385 of 1984 - Technology Park Development Act
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 X - Michigan Workforce Development

Statutes:

1. PA 489 of 2000 - 21st Century Jobs Trust Fund Act
2. PA 48 of 1982 - Michigan Business and Industrial Training Act

Article XI - Planning Michigan Economic Development

Statutes:

1. PA 46 of 1966 - County or Regional Development Commission
2. PA 116 of 1963 - Economic Expansion
3. PA 224 of 1985 - Enterprise Zone Act
4. PA 123 of 1995 - Enterprise Community Development Corporation Act
5. PA 75 of 1995 - Empowerment Zone Development Corporation Act
6. PA 89 of 1986 - Michigan BIDCO Act

Article XII - Financing Michigan Economic Development

Division I - Purposes

Division II - State Venture Capital

1. PA 198 of 1984 - Michigan Business Incubation Act
2. PA 24 of 1995 - Michigan Economic Growth Authority Act
3. PA 296 of 2003 - Michigan Early Stage Investment Act of 2003
4. PA 175 of 1982 - State Research Fund
5. PA 489 of 2000 - 21st Century Jobs Trust Fund Act
6. 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
2. PA 281 of 1986 - The Local Development Finance Act
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 XIII - Michigan and the Knowledge Economy - Reserved

Article XIV - Michigan Forest Economy - Reserved

Article XV - Michigan Affordable Health Care - Reserved

Article XVI - Repealer Section



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APPENDIX F: Currently Existing State Entities With Responsibility for Economic Development Activities

Agencies and Authorities Within State Government as of December 2006

- Michigan Department of Agriculture
 - Renewable Fuels Commission
 - Agricultural Export Marketing
 - Michigan Agricultural Tourism Commission
- Michigan Department of Environmental Quality
 - Brownfield Redevelopment Board
- Michigan Department of Labor and Economic Growth
 - State Research Fund
 - Michigan Travel Commission
 - Michigan Broadband Authority
- Michigan Department of Management and Budget
 - Next Energy Authority
- Michigan Department of Natural Resources
 - Forest Finance Authority
- Michigan Department of Transportation
 - Transportation Economic Development Fund
- Michigan Department of History, Arts, and Libraries
 - Michigan Film Office
- Michigan Strategic Fund (MSF)
 - Michigan Export Development Authority (functions merged into MSF)
 - Michigan Economic Growth Authority (functions merged into MSF)
 - Michigan Strategic Fund Centers

Public Bodies Corporate

- Michigan Next Energy Authority - by statute - in Department of Management and Budget
- Michigan Economic Development Corporation
 - Strategic Economic Investment and Commercialization Board
 - 21st Century Job Fund
 - Michigan Life Science Pipeline
 - Travel Michigan

Nonprofits Created Pursuant to Statute

- Michigan Early Stage Venture Investment Corporation



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APPENDIX G: Principal Executive Reorganization Orders Impacting the Original Legislative Organization of Economic Development Functions

Section	Executive Order Year and Number
447.212	EXECUTIVE REORGANIZATION ORDER No. 1994 - 3
445.2001	EXECUTIVE REORGANIZATION ORDER No. 1996 - 2
408.40	EXECUTIVE REORGANIZATION ORDER No. 1999 - 1
445.2011	EXECUTIVE REORGANIZATION ORDER No. 2003 - 1
125.1991	EXECUTIVE REORGANIZATION ORDER No. 2006 - 1

**TRIBAL-STATE AGREEMENTS:
THE LEGISLATURE'S ROLE IN CONTRACTING WITH INDIAN TRIBES**

A Report to the Michigan Law Revision Commission

Submitted by Christina Barcroft, Michigan State University College of Law,
and approved by the Michigan Law Revision Commission

TRIBAL-STATE AGREEMENTS THE LEGISLATURE'S ROLE IN CONTRACTING WITH INDIAN TRIBES

Following recent court decisions regarding the power of the Michigan Executive and Legislative Branches in contracting with Indian tribes and a legislative request for a review of the legal basis and structure of Tribal-State agreements, the Commission authorized the preparation of a draft report on that subject by Christina Barcroft of Michigan State University College of Law. After the Commission's review of that draft report and its comments on the report, the following final report was prepared by Ms. Barcroft.

The report first discusses the general background under which Michigan Indian tribes and the State of Michigan have entered into agreements in the past, reviews the two recent Michigan Supreme Court cases ("TOMAC I" and "TOMAC II") that discussed the interplay of the powers of the Michigan Legislature and Governor in regard to some specific Tribal-State agreements, and details the framework of possible future legislation on the topic of Tribal-State agreements. Lastly, the report summarizes the Commission's recommendations for such future legislation.

I. INTRODUCTION

Senator Jason Allen of the 37th District has requested that the Michigan Law Revision Commission (MLRC) address the future of Tribal-State agreements¹ between the State of Michigan and federally-recognized Indian tribes in Michigan.² Specifically, Senator Allen has requested that the MLRC evaluate the legal basis and structure of Tribal-State agreements after the Michigan Supreme Court's ruling in *Taxpayers of Michigan Against Casinos v. Michigan*, 471 Mich. 306, 685 N.W.2d 221 (2004) (TOMAC I).³ Since Senator Allen made his request, the Supreme Court has issued another decision in this case in May 2007, which further impacts Tribal-State agreements in Michigan (TOMAC II).⁴

In order to understand the Legislature's capability and authority to negotiate, approve, and execute agreements with Indian tribes, it is essential to understand the legal relationship between states and Indian tribes. Michigan is fortunate to have a cooperative system of government-to-government⁵ relations between the State Government and Tribal Governments. Michigan has made important advances in its relationships with the tribes in the last few decades which have fostered more open inter-government communication that will allow Michigan and the tribes to work together more successfully. Through a cooperative spirit, Michigan's Legislature can utilize its maximum authority to achieve mutually beneficial agreements with the Indian tribes. This report will provide a brief background for understanding how the Legislature is currently involved in making agreements with tribes and provide recommendations for more structured and effective mechanisms.

II. BACKGROUND

In order to understand how the State may enter into agreements with Indian tribes, it is crucial to understand Indians' unique status in society. Michigan may have only a .6%⁶ American Indian⁷ population, but that small percentage of the current total population⁸ has a heritage that extends long before Michigan existed. The first state government in Michigan was formed under the 1835 Michigan Constitution,⁹ but it was not until two years later that Michigan became an official State by

¹ For purposes of this document, the term "agreements" and "contracts" in reference to government-to-government accords are used interchangeably.

² An "agreement" between Michigan and the tribes is a contract between the two sovereigns where neither sovereign has the power to impose its will on the other unilaterally. *See* Letter from Senator Jason Allen to the Michigan Law Revision Commission (Feb. 5, 2007).

³ *Taxpayers of Michigan Against Casinos v. Michigan*, 471 Mich. 306, 685 N.W.2d 221 (2004) [hereinafter TOMAC I].

⁴ *See Taxpayers of Michigan Against Casinos v. Michigan*, ___N.W.2d___ 2007 WL 155583 (Mich. 2007) [hereinafter TOMAC II].

⁵ Government-to-Government relationships in this report are meant as contracts and relationships between two sovereign entities: the state of Michigan and the tribe(s).

⁶ 2000 U.S. Census of Population and Housing for places; updated every 10 years, <http://factfinder.census.gov> (last visited May 17, 2007).

⁷ American Indian: a person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment. *See supra* note 5.

⁸ Compare to 1% Native Americans of total United States population. *Id.* Michigan has held the tenth highest Indian population of any state in the nation for years. *Id.*

⁹ M.C.L.A. Organic Laws, Art. 1, §§ 1 to 2, p. 121 Enabling Acts (West 2003) (prefacing 5 U.S. Stat. At Large 49).

an Act of Congress in 1837.¹⁰ Indians, however, have lived in Michigan for over 10,000 years.¹¹ Tribes were sovereign nations long before 1837 and the State of Michigan has never had sovereignty over most Tribal lands within the state.¹² In fact, The Northwest Ordinance¹³ recognized Indian authority over land in stating that:

“[t]he utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they shall never be invaded or disturbed unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.”¹⁴

This establishing governmental principal tried to erase some of the “local ill feeling” which made the state’s inhabitants the “deadliest enemies” of a tribe.¹⁵ Ever since settlement in the state began by Jacques Marquette in 1668, the state’s inhabitants tried to take over land which Indians rightfully possessed.¹⁶ Because of the historical clash in sovereignty, there has been a general feeling of resentment towards Indians as the State faced obstacles in acquiring Indian lands.¹⁷

The resentment and hardships the tribes faced during Michigan’s past has left the Tribal and State governments in a more difficult position when trying to work together in the present. Indian citizens are unique because they typically hold a kind of triple citizenship, being citizens of the United States, residents of a state, and members of a tribe. Tribes, on the other hand, have overlapping sovereignty in that they are sovereign nations, but are subject to the federal government’s sovereignty as well. The federal government’s plenary authority over the Indian tribes further complicates the relationship between Tribal and State governments.¹⁸

The U.S. Constitution includes only two explicit references to Indians, and both have been interpreted to provide Congress plenary power over the tribes. The first is in Article I, § 2, cl. 3, “Representatives and direct Taxes shall be apportioned among the several States...according to their respective Numbers...excluding Indians not taxed...”¹⁹ The second reference establishes the federal plenary power over Indians and is aptly named the Indian Commerce Clause (ICC). It reads, “the Congress shall have the power to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes.”²⁰ The effect of the ICC is to give the federal government the exclusive governing power over relations between Indians and non-Indians, specifically and purposefully

¹⁰ *Id.*

¹¹ “Native Americans have lived in the area called Michigan since the last ice age glacier retreated about 10,000 years ago.” Michigan FAQ available at http://www.michigan.gov/hal/0,1607,7-160-15481_20826_20829-54118--,00.html (last visited July 3, 2007).

¹² *Id.*

¹³ The Northwest Ordinance established the government of the territory of the United States northwest of the Ohio River which included what are now the states of Michigan, Indiana, Illinois, Wisconsin, Ohio and part of Minnesota.

¹⁴ Northwest Ordinance of 1787, art. III; printed in M.C.L.A. Organic Laws, Art. 1, §§ 1 to 2, p. 110 (West 2003).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *United States v. Kagama*, 118 U.S. 375, 384 (1886).

¹⁸ *Johnson v. McIntosh*, 21 U.S. 543 (1823).

¹⁹ U.S. CONST. Art. I, § 2, cl. 3.

²⁰ U.S. CONST. Art. I, § 8, cl. 3.

excluding the states from exercising authority. In combination with the Supremacy Clause,²¹ which gives the federal government the power to preempt any conflicting state laws, the ICC does not allow the state to exercise authority over Indian territory unless the federal government has expressly abrogated its own authority or given approval of state action. Limited state authority over Indian tribes has created problems for governing Indian affairs within state borders. The federal government, tribes, and states have clashed over the years regarding the federal power and state and tribal sovereignty in resolving Indian issues and problems, and this clash is what gives rise to the need for Michigan's Legislature to establish uniform practices for making contracts with the tribes.²² The essence of successful Tribal-State agreements is that both governments find a basis for cooperation that protects their legitimate interests.²³

In recent years, Michigan has taken steps toward achieving a strong and mutually beneficial relationship with Indian tribes. In 2004, Governor Jennifer Granholm issued Executive Directive No. 2004-5 concerning Tribal-State Relations which formally acknowledges Michigan's twelve federally-recognized Indian tribes.²⁴ Furthermore, the Directive acknowledges the sovereignty of Indian tribes and establishes the framework for a trust relationship between the State of Michigan and the Indian tribes residing therein. This Directive is just one example of many initiatives Michigan has undertaken to improve Tribal-State relations.²⁵ These advances, however, have been primarily the product of the *Executive* branch of the State's government. It was not until the TOMAC I decision in 2004 that the Michigan Supreme Court formally recognized the *Legislature's* primary authority to negotiate, approve, and execute contracts with Indian tribes. After TOMAC I, the authority of the Legislature to effectuate such agreements became more definitive. In order to continue improving and strengthening Tribal-State relationships in Michigan, the Legislature should utilize its authority to make mutually beneficial contracts with tribes.

III. TOMAC I & II

Before 2004, the Legislature was left with relatively little guidance in understanding the constitutional boundaries of its authority to negotiate, approve, and execute agreements with Indian tribes. TOMAC I began to establish some boundaries for the Legislature, but also noted the breadth of authority the Legislature has to make such agreements. In TOMAC II, the Court further refined the Legislature's authority to contract with the tribes. When read together, the TOMAC decisions provide the essential framework for the Legislature's proper role in relation to Indian tribes. Taking into

²¹ "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. Art. VI, cl. 2.

²² *Worcester v. Georgia*, 31 U.S. 515, 559 (1832).

²³ National Conference of State Legislatures Commission on State Tribal Relations, HANDBOOK ON STATE-TRIBAL RELATIONS (American Indian Law Center, 1983).

²⁴ Michigan's twelve recognized tribes are: Bay Mills Indian Community, Hannahville Indian Community, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Little Traverse Bay Bands of Odawa Indians, Nottawaseppi Huron Band of Potawatomi Indians, Saginaw Chippewa Indian Tribe of Michigan, Grand Traverse Band of Ottawa and Chippewa Indians, Keweenaw Bay Indian Community, Little River Band of Ottawa Indians, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Pokagon Band of Potawatomi Indians, Sault Ste. Marie Tribe of Chippewa Indians. *See* Intergovernmental Accord to Expand Joint Economic Activities, May 2006.

²⁵ Other examples of initiatives Michigan has undertaken to improve Tribal-State relations include the 2004 Intergovernmental Accord Concerning the Protection of Shared Water Resources, May 2006 Intergovernmental Accord to Expand Joint Economic Activities, and the establishment of the Indian Affairs Commission via MCL 16.714. *See* Letter from Senator Jason Allen to the Michigan Law Revision Commission (Feb. 5, 2007).

consideration the extent of the Legislature’s authority over contracts and recognizing the importance of the issues to Michigan and the tribes, the Legislature may choose to exercise the full scope of its power to negotiate, approve, and execute agreements with tribes. Below, the facts and holdings in the TOMAC cases are provided as well as the framework for recommending the appropriate procedures for the Legislature in making government-to-government contracts with tribes.

A. TOMAC I

The most frequent (and most publicized) Tribal-State agreements involve Indian Gaming. TOMAC I addresses the constitutionality of gaming compacts²⁶ entered into by Governor John Engler and four Indian tribes in 1997 which were later approved by the Legislature through House Concurrent Resolution (HCR) 115.²⁷ The validity of HCR 115 was challenged through several lawsuits.²⁸ The Plaintiffs in TOMAC I argued that HCR 115 amounted to legislation, and that the Legislature was therefore required to enact it by bill rather than approve it by resolution.²⁹ The Court addressed three issues, the most important being whether HCR 115, the Legislature’s approval by resolution of Tribal-State gaming compacts, constituted “legislation” and therefore violated Art. IV, § 22 of the Michigan Constitution.³⁰

The Court began its decision by acknowledging that the federal government has “expressly provided for Tribal-State negotiations regarding class III gaming.”³¹ HCR 115 explicitly governed only class III gaming and, therefore, the State had proper authority to negotiate with tribes on this issue. The Legislature’s primary duty is the enactment of laws and the Court recognized the hallmark of legislation as the unilateral imposition of legislative will to alter legal rights and responsibilities.³² But, not everything that alters legal rights and responsibilities can be considered legislation; some are altered through contracts which do not require unilateral action. In the case of HCR 115, the Legislature could not have “unilaterally exerted its will over the tribes involved,” so the compacts could not possibly be legislation. Rather, the compacts were valid contracts.³³ States can only acquire regulatory power over Indian gaming through tribal consent via compact.³⁴ Since the compacts by their nature required consent from the tribes, they could not be legislation, even though they altered the legal rights and responsibilities of the parties involved.

After determining that the compacts were contracts not requiring legislation, the Court began to examine the contractual nature of compacts. More specifically, the Court found dispositive that HCR 115 does not apply to the citizens of Michigan as a whole, and since it only binds the two parties to the compact, it is definitely not legislation.³⁵ The fact that the Legislature’s approval of Tribal-State compacts does not create any affirmative state obligations, create any state agencies, or impose any regulatory obligation on the state further proves that it is not legislation at all.³⁶

²⁶ Hereinafter referred to collectively as “compacts.”

²⁷ 471 Mich. at 316, 685 N.W.2d at 225.

²⁸ *Id.*

²⁹ 471 Mich. at 317, 685 N.W. 2d at 226.

³⁰ Article IV, § 22 of the Michigan Constitution of 1963 reads, “All legislation shall be by bill and may originate in either house.” 471 Mich. at 312, 685 N.W.2d at 223.

³¹ 471 Mich. at 325, 685 N.W.2d at 225.

³² 471 Mich. at 318, 685 N.W.2d at 226.

³³ 471 Mich. at 319, 685 N.W.2d at 226.

³⁴ 471 Mich. at 319, 685 N.W.2d at 228.

³⁵ 471 Mich. at 324, 685 N.W.2d at 229.

³⁶ 471 Mich. at 326, 685 N.W.2d at 230.

TOMAC I did not provide specifically *how* the Legislature may approve and negotiate contracts with tribes. It did, however, outline the plenary power and inherent right the Legislature has to contract with the tribes. The Court held, “our Constitution contains no limits on the Legislature’s power to bind the state to a contract with a tribe; therefore, because nothing prohibits it from doing so, given the Legislature’s residual power, we conclude that the *Legislature has the discretion to approve contracts by resolution.*”³⁷ In a footnote, the Court stated that concurrent resolution is common, but never in the decision does the Court hold that approval by concurrent resolution is necessary. Rather, the Court emphasized the inherent right of the Legislature to contract with tribes by leaving the Court out of it entirely. “[B]ecause our Legislature had the discretion to approve the compacts by resolution rather than by bill, the courts cannot interfere with that legitimate exercise of legislative discretion.”³⁸

In short, the Michigan Supreme Court held that legislation is not required in Tribal-State agreements, and that the Legislature has nearly unfettered authority to negotiate and bind the State in contracts with Indian tribes. The Court acknowledged that approval of such agreements through concurrent resolution is constitutional, but did not limit constitutional approval to concurrent resolution. The Court leaves the Legislature with little guidance as to the proper procedure for making Tribal-State agreements, stating only, “the form of the approval is within the discretion of the Legislature.”³⁹

B. TOMAC II

TOMAC II was a continued examination of an issue left undecided in TOMAC I. The issue in TOMAC II was whether the amendatory provision in the compacts discussed in TOMAC I and the exercise of that provision by the Governor violated the Separation of Powers Clause of the Michigan Constitution.⁴⁰ The “amendatory provision” discussed in TOMAC II is a provision in the original compact which states that the compact may be amended by mutual agreement between the tribes and the State by submitting proposed revisions to the Governor who acts for the state by either approving the revisions or rejecting them.⁴¹ The amendatory provision essentially gives the Governor the power to unilaterally change the compact with consent of the tribes involved.

Governor Granholm and the Little Traverse Bay Band of Odawa Indians agreed to amend the compact in several ways.⁴² The amendatory provision allowed the Governor to act for the State. The Legislature reviewed the language of the amendatory provision, approved the amendment procedure, and allowed the Governor broad discretion to amend the compacts.⁴³ As stated in TOMAC I, a resolution was sufficient for legislative approval of the compacts and “[s]imilarly, the resolution also amounted to sufficient approval for the amendatory provision within the compacts.”⁴⁴

Because the Legislature has nearly unfettered power to contract with Indian tribes, it also has the authority to delegate that power to the Executive branch in as wide or narrow circumstances as it sees fit. The Court in TOMAC II stated that the Legislature properly delegated their negotiating power to the Governor through approving the amendment procedure by concurrent resolution. Since there is

³⁷ 471 Mich. at 328, 685 N.W.2d at 232 (emphasis added).

³⁸ 471 Mich. at 329, 685 N.W.2d at 232.

³⁹ 471 Mich. at 333, 685 N.W.2d at 234.

⁴⁰ “The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” MICH. CONST., Art. III, § 2. *Taxpayers of Michigan Against Casinos v. Michigan*, __N.W.2d__ 2007 WL 155583, at *1 (Mich., May 30, 2007).

⁴¹ *Id.* at *2.

⁴² *Id.* at *2.

⁴³ *Id.* at *3.

⁴⁴ *Id.* at *3.

“no limitation in Michigan’s Constitution on the Legislature’s power to bind the state to a compact with a tribe,” there is similarly no limitation on the Legislature’s power to delegate its authority as it desires.⁴⁵ The court held that the amendatory provision was properly approved by legislative resolution and the Governor’s use of the amendatory provision was exercised within the limits of Michigan’s Constitution.⁴⁶

After TOMAC I & II, the Court has made it clear that the Legislature has plenary power to negotiate, approve, and execute agreements with Indian tribes. The Legislature may delegate all or part of that power as it sees fit through legislative action. However, it still remains unclear *how* the Legislature should best make government-to-government contracts with tribes.

IV. FRAMEWORK FOR THE LEGISLATURE

Now that the TOMAC decisions have outlined the Legislature’s authority to enter into Tribal-State agreements, the crucial issue becomes what is the best form of legislative approval for Tribal-State agreements. This section will provide possible solutions and recommendations for the Legislature to contract with the tribes on behalf of the State. Next, this section will outline the MLRC’s recommended procedure for the Legislature’s role in government-to-government contracts between the State and tribes.

A. Contracting With the Tribes

The National Council for State Legislatures (NCSL) has published materials which outline steps states can make toward achieving ideal Tribal-State relationships.⁴⁷ Michigan has already taken many of these steps including creating the Michigan Commission on Indian Affairs (whose powers are now exercised by the Department of Civil Rights), entering into an Accord which formally recognizes the tribes in the state and sets forth a cooperative relationship, and assigning a position in the Governor’s office to deal specifically with the concerns of Indian tribes. However, there are still steps Michigan can take to achieve better relationships. The product of a good relationship with Indian tribes is the ability to enter into effective and efficient agreements with the tribes.

There are three essential steps which must occur to make a binding, valid contract between the State of Michigan and an Indian tribe:

- Negotiation of an agreement between an authorized representative of a tribe and a person or persons authorized to negotiate on behalf of the State.
- Approval or agreement to the terms of the agreement by the Legislature or persons or agencies authorized by the Legislature.
- Execution of the agreement by an officer of the State authorized to execute the approved agreement.

The TOMAC I & II decisions make it clear that the Legislature has plenary authority to approve contracts with the tribes. In the case of the original Indian gaming compacts, the Governor negotiated on behalf of the State, the Legislature approved the terms and the Governor executed the final compacts. Under the compact in question in TOMAC II, the Governor alone negotiated, approved and

⁴⁵ *Id.* at *4.

⁴⁶ *Id.* at *5.

⁴⁷ National Conference of State Legislatures, STATES AND TRIBES: BUILDING NEW TRADITIONS 70 (NCSL Task Force 1995).

executed the compact amendment, but she was acting under procedures and with authority delegated by the Legislature.

However, it is *how* the Legislature makes contracts that is essential to create a more efficient government-to-government structure. The Legislature, with its plenary authority, has the power to both establish the process for negotiating Tribal-State agreements and to determine the ultimate terms of any agreement. But, as with many areas within its ultimate authority, the Legislature may allocate to others within State government a role in developing Tribal-State relations and agreements.

There are three basic ways the Legislature can either exercise its full powers in contracting with the tribes or delegate its power to the Executive branch:

- Action by the Legislature as a whole through a vote of both houses.
- Action by an agency or officials of the legislative branch through delegation by the Legislature.
- Action by the Governor or an inferior officer or agency of the executive branch through delegation by the Legislature.

As discussed below, the Legislature may grant any combination of the negotiation, approval, or execution powers to legislative or executive officials or retain the power itself. Each of these three broad courses of action will be discussed in the following sections.

1. Action by the Legislature as a Whole

The full Legislature, acting through the House and Senate,⁴⁸ has the power to negotiate, approve, and execute any and all contracts with the Indian tribes. The Legislature, as a whole, would not be bound to approve Indian agreements with the formality of legislation established in Article IV, Section 15 of the Michigan Constitution.⁴⁹ However, the Legislature could establish joint rules to establish procedures for handling Indian agreements.

The negotiation of agreements between two independent sovereigns is unlikely to be effective if there are 148 separate negotiators on the side of the State dealing with an Indian tribe. The established legislative procedures of committees, hearings, etc., are designed to structure negotiations within the Legislature. Different procedures need to be implemented to streamline external negotiations.

It is likely that if the Legislature wants to reserve to itself the approval of Indian agreements it will still delegate to others, either to a negotiating committee of legislators⁵⁰ or the executive branch, the actual negotiations with a tribe or tribes.

⁴⁸ The legislative power of the State of Michigan is vested in a senate and a house of representatives. MICH. CONST., Art. IV, § 1.

⁴⁹ “There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate funds for the council’s operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall periodically examine and recommend the legislature revision of various laws of the state.” MICH. CONST., Art. IV, § 15 (1963).

⁵⁰ “[T]he legislature may establish joint committees.” MICH. CONST., Art. IV, § 16.

The Legislature has the power to determine its own method of approving Indian agreements so long as it involves the action of both houses. Indian agreements may be approved by concurrent resolution or by motion or other process adopted by the Legislature.

With respect to the vote required, the Legislature may follow the existing rule whereby a majority of a quorum voting for a resolution is sufficient or it could by rule require that there be a majority vote of those elected and serving in each house.

Action by the whole Legislature makes sense for major agreements⁵¹ such as gaming compacts. But this method may be too cumbersome and cause delay in contracting with the tribes on less significant matters, e.g., a cooperative agreement between the State Police and tribal police. First, negotiating contracts of this type would be a difficult task for the bicameral Legislature to undertake. This method would likely cause frustration on behalf of the Tribal Chairs as they would have no singular person to whom they could address concerns and questions they may have about a potential contract.

2. Legislature Delegates to Less Than the Full Legislature

The Legislature may delegate the task of negotiating with tribes to subsections of the full Legislature. The delegation of negotiating authority could include the power to approve agreements or only the power to negotiate and recommend to the full Legislature the terms of a proposed negotiated agreement. This method would reduce some of the conflicts, delays, and practical difficulties that would result from an entire legislative system of contracting. Two methods for delegating this power within the legislative branch include the Legislative Council or through a special joint committee.

a. Legislative Council

The Legislature may choose to grant some of their plenary power in Tribal-State agreements to the Legislative Council. The Legislative Council is a bipartisan, bicameral body of legislators established in Article IV, Section 15 of the Constitution of Michigan.⁵² The Speaker of the House and the Senate Majority Leader each appoint six members of their chamber, at least two of each body must be members of the minority party, and three alternates each.⁵³ Because the Legislative Council is an already established, working unit of the full Legislature, it may be an avenue through which to negotiate, approve, and execute agreements. Negotiation could occur between this twelve-person group and tribal representatives. But it is unlikely that, save for the most important agreements, the Legislative Council, composed of the busiest legislative leaders, could dedicate the time necessary for face-to-face negotiations with tribes.

Making Tribal-State contracts through the Council, however, may be a preferred method for effective and efficient Tribal-State agreements because the Council is a well-established unit of the full Legislature.

b. Special Joint Committee

Another option for utilizing a unit of the full Legislature to contract with tribes is to set up a special joint committee which would be responsible for any of the three contracting steps. As an example,

⁵¹ Including major amendments to compacts.

⁵² *Supra* n. 48.

⁵³ <http://council.legislature.mi.gov/> (last visited June 17, 2007).

Oklahoma uses a Joint Committee on Tribal-State Relations to approve agreements with tribes.⁵⁴ Oklahoma has been credited for having successful Tribal-State relations. In 2002, Oklahoma passed a statute which outlines its procedures for contracting with tribes.⁵⁵ The statute names the Governor, or named designee, to negotiate and enter into cooperative agreements on behalf of the State which become effective upon approval by the Joint Committee.⁵⁶ For example, the Secretary of the Interior in Oklahoma's Executive Branch is designated to negotiate any agreements involving trust responsibilities.⁵⁷ Likewise, any agreements involving surface water or groundwater resources become effective only upon the approval by the full Oklahoma Legislature.⁵⁸ The default procedure is approval by the Joint Committee, with the Governor's additional approval required for some contracts.⁵⁹ Oklahoma has not only altered who can negotiate based on the subject matter of the agreement, but also alters who can approve and execute contracts based on the subject matter.

Oklahoma's Legislature granted to the Joint Committee the full authority to delegate negotiation, approval, and execution duties while retaining some of the powers itself. Through this procedure, Oklahoma has streamlined the contracting process and has avoided delegating too much of the Legislature's power to the Executive Branch. It can effectively manage negotiations through this smaller group of focused legislators, and appropriately delegates this power when necessary based on the subject matter of the contract. This structure is both efficient and formalized and, most importantly, it respects tribes' needs to contract with the appropriate level of government, whether it be Tribal Chairman-to-Governor, or another like relationship.

Michigan could create a like committee to formally handle government-to-government contracts with tribes. This smaller special, joint committee could choose to retain all three contracting powers or choose to delegate negotiation, approval, or execution as it sees fit. This could be done based on the subject matter of the contract. For example, the committee could delegate all child welfare negotiations to the Department of Human Services if desired. Rationally relating the subject matter of a contract to the most appropriate authority makes efficient contracting.⁶⁰ Using a joint committee, a smaller unit of the full bicameral Legislature, may be one of the most organized and efficient ways to contract with Indian tribes.

3. Delegate to Executive Branch Any of the Three Steps

In addition to having the ability to retain the negotiation, approval, and execution powers, the Legislature also has the ability to delegate any of these powers to the Executive branch. Delegation to the Executive Branch could mean delegation to the Governor, but could also mean delegation to any executive agency or executive official within that branch or permitting the Governor to sub-delegate. The Legislature can utilize any combination of delegation and retention in contracting with the tribes.

The Urban Cooperation Act (UCA) allows Executive agencies to enter into certain agreements with Indian tribes. The UCA demonstrates that the Legislature did not reserve the contracting power to

⁵⁴ National Conference of State Legislatures, *Promoting Effective State-Tribal Relations: A Dialogue, Proceedings of a Session held in Tulsa, OK with Speakers Yvonne Kauger (OK Supreme Court), Richard Du Bey, Wilma Mankiller (Chief Mankiller)*, (Aug. 1989) at 19.

⁵⁵ Okla. Stat. tit. 74, §1221 (2007).

⁵⁶ *Supra* note 48.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ For a complete list of the areas in which Michigan has exercised legislative action in Indian law, please see: Michigan Law Revision Commission, *Study Report: Michigan's Legislative Power Over Its Native American Population*, in 28th Annual Report 1993, Ann Arbor, Mich.: West Publishing Co., 1993.

itself, and it appears to provide Executive branch agencies the power to enter into agreements with gubernatorial approval. The UCA provides, in part, as follows:

M.C.L. 124.504 Joint exercise of powers

A public agency of this state may exercise jointly with any other public agency of this state, with a public agency of any other state of the United States, with a public agency of Canada, or with any public agency of the United States government any power, privilege, or authority that the agencies share in common and that each might exercise separately.

The Legislature included Tribal-State or local government-tribal agreements through a 2002 amendment that provided:

124.502 Definitions.

As used in this act:

(e) “Public agency” means a political subdivision of this state or of another state of the United States or of Canada, including, but not limited to, a state government; a county, city, . . . school district, . . .; an agency of the United States government; or a similar entity of any other states of the United States and of Canada. As used in this subdivision, agency of the United States government includes an Indian tribe recognized by the federal government before 2000 that exercises governmental authority over land within this state, except that this act or any intergovernmental agreement entered into under this act shall not authorize the approval of a class III gaming compact negotiated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467. (emphasis added)⁶¹

The language including an Indian tribe within the scope of “agency of the United States government” was added by Act 439 of the Public Acts of 2002, with immediate effect on June 13, 2002.

The UCA limits interlocal agreements to those in which parties “exercise jointly with any other [party] . . . any power, privilege, or authority which such [parties] share in common and which each might exercise separately.”⁶² Thus, the Legislature has not delegated all of its Indian contracting power to the Governor. In fact, the Legislature has delegated only a limited amount of its contracting power.

The possible combinations of delegation are discussed below:

a. Delegation to the Governor

In TOMAC II, the Court approved a process where the Legislature delegated to the Governor all three powers, negotiation, approval, and execution, in the context of amending already-passed gaming compacts. Under the UCA, the Governor can act for the state in entering into agreements with tribes concerning any power, privilege, or authority that the state shares in common with a tribe and that each might exercise separately.

⁶¹ M.C.L. 124.502.

⁶² M.C.L. 124.504.

The Legislature could formalize and implement this process, granting the negotiation power to the Governor in the Executive Branch and allowing the Governor to negotiate contracts in additional subject matter areas or to negotiate all contracts.

Delegation to the Governor can occur through resolution or by bill. If delegation is by statute, the Legislature cannot later change that delegation unilaterally because changing statutory delegation requires the Governor's signature or, at least, gubernatorial involvement. Therefore, the Legislature should be cautious when considering delegation power to the Executive branch.

Tribal Chairmen seek to negotiate and make contracts with like officials in the State government. In this respect, delegating negotiation powers to the Governor is well accepted by the tribes. However, delegating to the Governor all three powers, as in TOMAC II, gives away the Legislature's inherent authority to contract.

b. Delegation to Executive Agency or Officer

The Legislature could grant its negotiation and contract approval powers to an officer or agency of the Executive branch with expertise in the subject matter of the agreement. An example of such an existing law is the following:

M.C.L. 205.30(c) Voluntary disclosure agreement

(1) The state treasurer, or an authorized representative of the state treasurer, on behalf of the department, may enter into a voluntary disclosure agreement pursuant to subsections (2) to (11) or an agreement with a federally recognized Indian tribe within the state of Michigan pursuant to subsections (12) and (13).

When the Legislature exercises its plenary power, there is no reason it cannot delegate any part of its power to an inferior officer or agency within the Executive branch. Any such delegation would be subject to the Constitutional provision that "the executive power is vested in the governor."⁶³

The Executive branch may generally be best suited for the execution of contracts. The NCSL recommends this method, but does not provide a framework through which delegating authority to agencies might work.⁶⁴ Michigan already has such legislation, but it is limited to areas where Indians and the State must jointly exercise their powers. The Legislature may want to identify a state agency to coordinate the activities of state governments relative to Tribal-State relations.

No matter what method Michigan chooses to implement, the Legislature should establish clear processes by which negotiating, approving, and executing agreements with the tribes can be adopted.⁶⁵

c. Delegation to Local Government

Because the Legislature has *plenary* power to negotiate, effectuate, and implement contracts, that power could also be delegated to local governments. Such delegation is not necessarily recommended, but because of the depth of power the Legislature holds in contracting, it is important to understand that such delegation power exists.

⁶³ MICH. CONST., Art. V, § 1.

⁶⁴ *Supra* note 47 at 75.

⁶⁵ *Id.*

4. Execution of Agreements

However an agreement is negotiated and approved, it is necessary for the agreement to be documented and signed or executed by a person or persons authorized to execute the document on behalf of the State. A related issue is the requirement that an official agreement of the State be properly filed and recorded so that it is accessible.

Within the Legislature, existing procedures generally call for the Secretary of the Senate and the Clerk of the House to sign official documents on behalf of their respective bodies. Executive orders of the Governor, some of which have the force and effect of law, are signed by the Governor and the signature is attested to by the Secretary of State. A wide range of officials in the Executive branch are authorized to execute contracts, although many contracts must first be approved by the State Administrative Board.

With respect to filing and recording Indian tribal agreements, the Legislature may want to consider legislation to formalize the procedure for maintaining records of tribal agreements in the state archives. These are agreements between sovereigns and should be recorded under a higher standard than the normal day-to-day agreements within government.

B. Recommendation

The MLRC recommends the following:

1. The Legislature should strive to implement a method for making and passing such agreements that will be both constitutional and efficient. An optimal combination of delegation and retention of this plenary contracting power will yield effective, efficient contracting between the tribes and the state.
2. Delegation of the Legislature's negotiation power should be done on a subject-matter basis.
3. Because of the tribes' desire to negotiate and interact with appropriate levels of governmental officials, at least some of the Legislature's negotiating powers should be delegated to the Governor. If the Governor has negotiated an agreement with the tribe, it should be the Legislature who approves the agreement either through concurrent resolution or another form of approval.
4. In other subject areas, it is better for the Legislature, or a unit thereof, to negotiate and pass the agreement itself. The Legislature must be careful in determining when to grant negotiating authority to the Executive branch.
5. A legislative unit such as the Legislative Council could be an efficient and effective way for the Legislature to retain its contracting power.
6. The full Legislature is not well-suited for the demands of negotiating with Indians, but the full Legislature may be best suited for approving contracts.
7. There needs to be a designated person or group of people whom Indians may rely upon when seeking to execute contracts.

8. Michigan should maintain and improve the State recognition of tribal sovereignty.⁶⁶ Michigan needs to continue to strive for mutual respect between the State and the tribes, especially in its government-to-government relationship. It is essential that Michigan respect Tribal needs to interact with appropriate levels of government and recognize the importance of utilizing the Governor as a negotiator when best suited.⁶⁷ Finally, all these considerations must take place with the continual understanding and refinement of how each government – tribal, state, federal – works.⁶⁸

⁶⁶ *Id.* at 7.

⁶⁷ *Id.*

⁶⁸ *Id.* at 19.

TIMELY FILING OF MEDICAL MALPRACTICE ACTIONS

The intricacies of Michigan's malpractice law have been explored in several Michigan appellate court decisions. See, e.g., the cases mentioned in the fifth item of "A Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature," a later section of this Annual Report. The following brief study report discussing issues raised by certain provisions of the Michigan malpractice laws and the cases addressing those provisions was prepared by Commissioner William C. Whitbeck, Chief Judge of the Michigan Court of Appeals, and was adopted by reference as part of the Commission's deliberations on the item identified above.

Timely Filing of Medical Malpractice Actions

I. Overview

In general, an injured person must commence a medical malpractice action within two years of when the claim accrued, or within six months of when he or she discovered or should have discovered the claim, whichever is later.¹ An exception applies when the injured person dies and that deceased person's personal representative brings a medical malpractice wrongful death claim.² Another exception is dependent on when the injured person files his or her notice of intent to file a claim. Exceptions to the general rule are made for persons with certain "disabilities," including infancy and insanity.³ Generally,⁴ no medical malpractice claim shall be commenced later than six years after the date of the act or omission that is the basis for the claim.⁵ Failure to satisfy the applicable time limit will bar the suit.

II. Notice of Intent to File a Claim

All plaintiffs alleging medical malpractice must wait at least 182 days after giving notice of intent to sue before they may file a complaint.⁶ But under "the notice tolling provision,"⁷ if that 182-day waiting period extends beyond the date when the applicable limitations period is set to expire, then the filing of the notice of intent will serve to toll the limitations period for a period not longer than 182 days.

Tacking or addition of successive 182-day periods is not allowed.⁸ Further, the filing of a notice of intent after the statute of limitations has already expired will not save the action. Moreover, even if timely filed, a notice of intent that fails to sufficiently satisfy several substantive requirements⁹ will not serve to commence or toll the action.¹⁰

III. Affidavit of Merit

All plaintiffs alleging medical malpractice must file with the complaint an affidavit of merit (by which a health professional attests to the merits of the complaint).¹¹ Failure to file the affidavit of merit with the complaint renders the complaint ineffective and will not stop the limitations period clock from running.¹² If the limitations period has not yet run, the appropriate remedy is to dismiss the action without prejudice.¹³

¹ MCL 600.5805(1) and (6), 600.5827, 600.5838a(2).

² MCL 600.5852.

³ MCL 600.5851.

⁴ Two specific exceptions are set forth in MCL 600.5851(7) and (8).

⁵ MCL 600.5838a(2).

⁶ Under certain circumstances, this 182-day period may be shortened to 154 or 91 days. See MCL 600.2912b(3), (8).

⁷ MCL 600.5856(c).

⁸ MCL 600.2912b(6).

⁹ MCL 600.2912b(4).

¹⁰ MCL 600.2912b(1); see *Roberts v Mecosta Co Gen Hosp*, 466 Mich. 57, 59, 67, 70-71 (2002).

¹¹ MCL 600.2912d.

¹² See *Scarsella v Pollak*, 461 Mich. 547 (2000).

¹³ *Holmes v Michigan Capital Med Ctr*, 242 Mich. App. 703, 706-707 (2000).

The filing of an affidavit of merit after the statute of limitations has already expired will not save the action.¹⁴ Moreover, even if timely filed, an affidavit of merit that fails to sufficiently satisfy several substantive requirements will not serve to commence or toll the action.

IV. Personal Representatives

Generally, the statute of limitations for a wrongful death action stemming from a claim of medical malpractice is two years. But a “wrongful death savings provision” applies if the deceased died either before or within 30 days after the period of limitations ended. In that event, under the savings provision,¹⁵ the personal representative of the estate may begin a lawsuit within two years after letters of authority are issued to him or her, as long as the lawsuit is brought within three years after the general two-year period of limitations ended.

A. Notice of Intent and Personal Representatives

In *Waltz v Wyse*,¹⁶ the Michigan Supreme Court held that the notice tolling provision¹⁷ does not operate to toll the two-year filing period available under the wrongful death savings provision. The rationale for this holding is that the plain statutory language of the notice tolling provision makes clear that it only applies to statute of limitation or repose, *not* savings provisions.

Thus, a personal representative may utilize either the notice tolling provision or the wrongful death savings provision, but not both.¹⁸

B. Disabilities

In *Vance v Henry Ford Health System*,¹⁹ the Michigan Court of Appeals held that the wrongful death savings provision provides the appropriate measure for the latest filing when a personal representative sues on behalf of a deceased minor under eight years of age. The rationale for this holding is that a deceased minor under eight years of age does not continue to age and will never reach his or her 10th birthday.

C. Successor Personal Representatives

For various reasons, a successor personal representative sometimes replaces a personal representative. And sometimes disputes over the successor personal representative’s ability to file suit arise when the two-year wrongful death savings period afforded to the initial personal representative expires.

In *Eggleston v Bio-Medical Applications of Detroit, Inc.*,²⁰ the Michigan Supreme Court held that a successor personal representative has two years after issuance of *his or her* letters of authority to file an action on behalf of the estate, as opposed to having to rely on when the letters of authority were issued to the initial personal representative. But numerous cases since *Eggleston* have continued to question a successor personal representative’s ability to pursue an action, dependent on whether and when the initial personal representative filed suit.

¹⁴ *Holmes, supra*.

¹⁵ MCL 600.5852.

¹⁶ *Waltz v Wyse*, 469 Mich. 642 (2004).

¹⁷ MCL 600.5856(c).

¹⁸ See *Farley v Advanced Cardiovascular Health Specialists, PC*, 266 Mich. App. 566 (2005).

¹⁹ *Vance v Henry Ford Health System*, Docket No. 262465, Released October 17, 2006.

²⁰ *Eggleston v Bio-Medical Applications of Detroit, Inc.*, 468 Mich. 29; 658 NW2d 139 (2003).

If the initial personal representative did not file an action, some cases find the reason for the lack of filing significant, i.e., death or lack of diligence. Other cases find the mere lack of filing to be the relevant factor, regardless of the reason.

If the initial personal representative did file an action, some cases hold that a successor personal representative cannot rely on or revive an untimely action that was filed before her appointment because, as provided under the probate code,²¹ there would be no benefit to ratifying an untimely action. Relying on *Eggleston* and the plain language of the wrongful death savings provision, other cases hold that a successor personal representative may file a new action to overcome a predecessor's filing of an untimely action. While still other cases refer back to the probate code and hold that a successor personal representative cannot file a new action to overcome a predecessor's filing of an untimely action because a successor personal representative must be substituted into the previously-filed untimely action.²² And still other cases allow a successor personal representative to file a new action if the initial personal representative filed an action but was not authorized to do so.

Additionally, in *Braverman v Garden City Hosp.*,²³ the Michigan Court of Appeals held that a successor personal representative must file his or her own notice of intent, regardless whether the initial personal representative filed one, and where the successor personal representative does not so file a new notice of intent, the action must be dismissed without prejudice. However, the Court's conclusion was only reluctantly based on a prior decision of this Court,²⁴ which the *Braverman* panel was bound to follow.²⁵

²¹ See MCL 700.3701 (“A personal representative may ratify and accept an act on behalf of the estate done by another if the act would have been proper for a personal representative.”).

²² MCL 700.3613.

²³ *Braverman v Garden City Hosp.*, Docket Nos. 264029 and 264091, Released August 15, 2006.

²⁴ *Verbrugge v Select Specialty Hosp-Macomb Co, Inc*, 270 Mich. App. 383; 715 NW2d 72 (2006).

²⁵ MCR 7.215(J).

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 in 2006 urging legislative action. That review identified four decisions for which the Commission recommends legislative action or review and three decisions for which the Commission makes no recommendation. The seven decisions examined by the Commission are:

In re Certified Question of the United States Bankruptcy Court, 477 Mich. 1210 (2006)

Cameron v. Auto Club Ins. Ass'n, 476 Mich. 55 (2006)

Liptow v. State Farm Mutual Auto Ins. Co., 272 Mich. App. 544 (Ct App 2006)

Farm Bureau Ins. v. City of Detroit, 475 Mich. 874 (2006)

Reid v. City of Detroit, 474 Mich. 1116 (2006)

Wold Architects & Engineers v. Strat, 474 Mich. 223 (2006)

Ward v. Siano, 272 Mich. App. 715 (Ct App 2006)

Mullins v. St. Joseph Mercy Hosp., 271 Mich. App. 503 (Ct App 2006)

Mazumder v. Univ. of Michigan Bd. of Regents, 270 Mich. App. 42 (2006)

Braverman v. Garden City Hosp., 272 Mich. App. 72 (Ct App 2006)

Drake v. Citizens Ins. Co., 270 Mich. App. 22 (2006)

I. Consequence of Register of Deeds to Maintain Entry Books

A. Background

MCL 565.24 requires each register of deeds to “keep an entry book of deeds and an entry book of mortgages.” Further, MCL 565.25(4) provides that an instrument shall be considered recorded at the time it is noted in the entry book. In concurring in a decision to decline to answer a question certified by the United States Bankruptcy Court, Justice Corrigan noted that, notwithstanding the requirement of MCL 565.24, “the registers of deeds in several Michigan counties, including Wayne, Oakland, Macomb, and Kalamazoo counties, do not keep entry books.” *In re Certified Question of the United States Bankruptcy Court*, 477 Mich. 1210, 1211 (Corrigan, J., concurring). This failure prompted the certified question from the Bankruptcy Court as to “when [, under Michigan law,] an instrument should be deemed recorded where the register of deeds has failed to maintain an entry book.” *Id.* In her concurrence with the decision to decline to answer the certified question, Justice Corrigan further noted that “[a] possible solution to this problem may lie with the Legislature,” recognizing that “[a]n argument may exist that the mandatory use of entry books is an outdated means of recordation in light of technological advances in the ability to gather and store information.” *Id.* at 1212. Justice Young, in his concurrence, “urge[d] the state Legislature and county commissions to investigate [this matter] and take the necessary steps.” 477 Mich. 1213 (Young, J., concurring).

(Since the time of this decision, the Bankruptcy Court for the Eastern District of Michigan has held that “even absent the maintenance of an entry book by a county register of deeds, under Michigan law a mortgage is recorded at the time it is received by the county register of deeds for recording, provided it is in recordable form when received and the statutory recording fee was paid when the mortgage was left for record.” In re Schmiel, __B.R.__, 2007 WL 588628 (Bankr. E.D. Mich. Feb. 27, 2007)(NO. 03 66533, 04 4023). That holding was then applied by the Bankruptcy Court in In re Grelick, __B.R.__, 2007 WL 1062914 (Bankr. E.D. Mich. Mar. 27, 2007)(NO. 05-43982-R, 05-5164).)

B. Question Presented

Should MCL 565.24 (and the corresponding provisions of MCL 565.25(4)) be amended either to specify when a mortgage is recorded if no entry books are maintained or to eliminate the provisions requiring the keeping of entry books with or without replacing the requirement for maintenance of entry books with a requirement of the maintenance of a modern method of recording instruments?

C. Recommendation

The Commission recommends legislative review of this issue, particularly concerning the methods by which counties now maintain official records, but makes no recommendation of specific legislative action.

II. Applicability of Tolling Provisions of the Revised Judicature Act to the “One-Year Back Rule” of the No-Fault Act

A. Background

In Cameron v. Auto Club Ins. Ass’n, 476 Mich. 55 (2006), the Michigan Supreme Court affirmed the Court of Appeals’ decision granting summary judgment to an insurer on an action brought for an injury incurred by a minor more than one year before the action was filed, notwithstanding the tolling provisions of the Revised Judicature Act. In doing so, the Court found that the minority/insanity tolling provision of the Revised Judicature Act (MCL 600.5851(1)) did not apply to the “one-year back rule” in MCL 500.3145(1) of the no-fault act, under which recovery is limited to losses incurred during the one year preceding commencement of the action. Justice Markman’s concurrence “respectfully urge[d] the present Legislature to review the opinions in this case and to ascertain whether the Court’s holding is consistent with the Legislature’s present intentions.” Id. at 86.

In Liptow v. State Farm Mutual Auto Ins. Co., 272 Mich. App. 544, 556(Ct App 2006), Judge Fitzgerald in concurring in the decision to reverse the trial court’s decision, which had found Cameron not to be applicable to an action brought on behalf of a minor, repeated the statement he had made in a concurring opinion in the Court of Appeals’ decision in Cameron v. Auto Club Ins. Ass’n, 263 Mich. App. 95, 103-04, aff’d in part and vacated in part, 476 Mich. 55 (2006), namely: “I do not believe that the Legislature intended this result [that the tolling provision of the Revised Judicature Act not apply] and, therefore, I urge the Legislature to amend § 5851(1).”

B. Question Presented

Should state law be amended to provide that the tolling provisions of the Revised Judicature Act apply to the “one-year back rule” of the No-Fault Act?

C. Recommendation

The Commission makes no recommendation, but notes that the specific issue raised by this case and the last case discussed below are only part of a larger issue involving ambiguities in the No-Fault Act or in the interplay of that act with other Michigan statutes.

III. Governmental Immunity for Negligent Maintenance of Property

A. Background

In Reid v. City of Detroit, 474 Mich. 1116 (2006), the Michigan Supreme Court denied an application for leave to appeal in a case involving loss suffered by a property owner caused by the negligent maintenance of adjoining property owned by a city and the city's failure to abate a nuisance on the basis of governmental immunity because the governmental immunity statute contains no exception for the tort of trespass-nuisance. Justice Markman's concurrence in the decision and in the decision to deny an application for leave to appeal in the sister case of Farm Bureau Ins. v. City of Detroit, 475 Mich. 874 (2006), urged the Legislature to consider whether "further legal remedies are warranted for property owners in these circumstances." Reid, at 1116; Farm Bureau Ins., at 874.

B. Question Presented

Should the Governmental Immunity Act be amended to permit recovery for a private property owner whose property is damaged due to the negligent maintenance of adjoining property owned by a governmental unit?

C. Recommendation

The Commission makes no recommendation.

IV. Unilateral Revocation of Common-Law Arbitration Agreements

A. Background

After noting that the arbitration agreement in question was a common-law arbitration agreement (because the agreement did not provide that an award by an arbitrator under the agreement must be the basis of the judgment of the circuit court), that the common-law permits the unilateral revocation of such common-law arbitration agreements, and that the Michigan Arbitration Act does not pre-empt the common-law on that point, the Michigan Supreme Court in Wold Architects & Engineers v. Strat, 474 Mich. 223 (2006), affirmed the Court of Appeals' decision, which had reversed the trial court's grant of summary judgment to the party seeking to enforce the arbitration award. Justice Corrigan, while concurring, "urge[d] the Legislature to consider the wisdom of retaining the common-law unilateral revocation in its current form." Id. at 250.

B. Question Presented

Should common-law arbitration agreements remain unilaterally revocable?

C. Recommendation

The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.

V. Effect of Medical Malpractice Litigant's Filing of a Notice of Intent on the Wrongful Death Savings Period, Especially for Filings Made Before Waltz v. Wyse

A. Background

The Michigan Supreme Court, in Waltz v. Wyse, 469 Mich. 642 (2004), held that the filing by a medical malpractice litigant of a notice of intent does not toll the wrongful death savings period and that its holding had retroactive effect. (See the attached report on the Timely Filing of Medical Malpractice Actions for more detail on this point.)

Since the time the decision in Waltz was issued, the courts have struggled with the decision’s application in cases such as Ward v. Siano, 272 Mich. App. 715 (Ct App 2006). In the decision in that case, Judge O’Connell, while concurring in the decision of the special panel of the Michigan Court of Appeals that conflicting decisions of the Court of Appeals should be resolved by finding that the retroactive application of Waltz cannot “coexist with application of the doctrine of equitable tolling” and the doctrine cannot apply in such a case, “respectfully request[ed] that the Supreme Court or the Legislature take the necessary measures to repair the damage caused by this major misstep[, the retroactive application of Waltz].” Id. at 744, n. 20 (O’Connell, Judge, concurring). Likewise, Judge Cooper, in dissenting from the holding in Mullins v. St. Joseph Mercy Hosp., 271 Mich. App. 503 (Ct App 2006), app granted 477 Mich. 1066 (2007), based upon the retroactivity of Waltz, asked “the Legislature to speak more plainly as to its intent in the morass of statutes that govern plaintiffs’ procedure in bringing wrongful death and medical malpractice claims.” Id. at 550-51. Lastly, Judge Neff, writing on behalf of the court in Mazumder v. Univ. of Michigan Bd. of Regents, 270 Mich. App. 42, 63 (2006), which had found that equitable principles dictated that the court not follow Waltz in the case at bar, wrote: “We urge the Legislature to respond legislatively to restore the two-year savings period for a wrongful death cause of action to eliminate confusion.”

B. Question Presented

Should state law be amended to provide that the filing of a notice of intent in a medical malpractice action tolls the wrongful death savings period?

C. Recommendation

The Commission makes no recommendation on this issue, but notes that the issues raised by this case and that discussed below are only part of a larger issue involving ambiguities or conflicts in the Michigan statutes regarding medical malpractice actions.

VI. Commencement of Two-Year Savings Period in Medical Malpractice Actions

A. Background

Braverman v. Garden City Hosp., 272 Mich. App. 72 (Ct App 2006), addressed very specific aspects of medical malpractice law, namely, the “wrongful death savings provision.” (See the attached report on Timely Filing of Medical Malpractice Actions.) The court held, in this case, that the two-year savings period began when the letter of authority was issued to the successor personal representative rather than when a letter of authority was issued to her predecessor, but remanded the case “because the successor personal representative *herself*” had not filed the notice of intent under MCL 600.2912b(1), the notice tolling provision. Id. at 73. Judge Neff, writing for the court, addressed the medical malpractice law much more broadly, “urg[ing] the Legislature to consider revisions to the statutory scheme that would provide litigants and the courts with clear guidance to carry out the Legislature’s intent in this area of law,” as it is “fraught with peril for even the most careful practitioner.” Id. at 88.

B. Question Presented

Should either the requirements of the notice tolling provision, the wrongful death savings provision, or the entire medical malpractice statutory scheme be revised?

C. Recommendation

The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action and notes that the issues raised by this case and that discussed above are only part of a larger issue involving ambiguities or conflicts in the Michigan statutes regarding medical malpractice actions.

VII. Transportational Function Test for Parked Vehicle Exception Under the No-Fault Act

A. Background

Drake v. Citizens Ins. Co., 270 Mich. App. 22 (2006) concerned the interaction of the transportational function test created in McKenzie v. Auto Club Ins Co., 458 Mich. 214 (1998), pursuant to MCL 500.3105, for application of the No-Fault Act, and the parked vehicle exceptions under the No-Fault Act, MCL 500.3106. (The transportational function test, in line with MCL 500.3105, prohibits recovery for an injury unless the injury arose out of ownership, operation, maintenance, or use of a motor vehicle *as a motor vehicle*, regardless of whether or not the vehicle was parked at the time, while MCL 500.3106 permits recovery for an injury if one of the parked vehicle exceptions is applicable without requiring that the vehicle was being operated, maintained, or used as a motor vehicle at the time.)

Drake involved an injury sustained while the injured person was attempting to unclog a grain delivery truck's auger system, while the truck was stopped. The court affirmed the trial court's grant of summary disposition for the injured person, noting that "McKenzie controls the analysis of no-fault coverage in this case." Id. at 29. In writing for the court, Judge Neff, however, indicated that the transportational function test was inconsistent with the No-Fault Act in regard to the parked vehicle exceptions and wrote: "Given the practical difficulties in applying McKenzie and its eviscerating effect on MCL 500.3106, we urge that it be reconsidered by the Supreme Court or that the Legislature clarify the parked vehicle exceptions." Id. at 39.

B. Question Presented

Should the Legislature amend either or both MCL 500.3105 and MCL 500.3106 to clarify whether in an instance in which a parked vehicle exception applies, there must be a determination of whether the injury arose out of the ownership, operation, maintenance, or use of the parked vehicle as a motor vehicle?

C. Recommendation

The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action. The Commission notes that the specific issue raised by this case and the second case discussed above are only part of a larger issue involving ambiguities in the No-Fault Act or in the interplay of that act with other Michigan statutes.

PRIOR ENACTMENTS PURSUANT TO
MICHIGAN LAW REVISION COMMISSION RECOMMENDATIONS

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases amendments thereto by the Legislature:

1967 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Original Jurisdiction of Court of Appeals	1966, p. 43	65
Corporation Use of Assumed Names	1966, p. 36	138
Interstate and International Judicial Procedures	1966, p. 25	178
Stockholder Action Without Meetings	1966, p. 41	201
Powers of Appointment	1966, p. 11	224
Dead Man's Statute	1966, p. 29	263

1968 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Possibilities of Reverter and Right of Entry	1966, p. 22	13
Stockholder Approval of Mortgage of Corporate Assets	1966, p. 39	287
Corporations as Partners	1966, p. 34	288
Guardians Ad Litem	1967, p. 53	292
Emancipation of Minors	1967, p. 50	293
Jury Selection	1967, p. 23	326

1969 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Access to Adjoining Property	1968, p. 19	55
Recognition of Acknowledgments	1968, p. 64	57
Dead Man's Statute Amendment	1966, p. 29	63
Notice of Change in Tax Assessments	1968, p. 30	115
Antenuptial and Marital Agreements	1968, p. 27	139
Anatomical Gifts	1968, p. 39	189
Administrative Procedures Act	1967, p. 11	306
Venue for Civil Actions	1968, p. 17	333

1970 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships	1969, p. 41	90
Minor Students' Capacity to Borrow Act	1969, p. 46	107
Warranties in Sales of Art	1969, p. 43	121
Appeals from Probate Court	1968, p. 32	143
Circuit Court Commissioner Powers of Magistrates	1969, p. 57	238

1971 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Summary Proceeding for Possession of Premises	1970, p. 16	120
Interest on Judgments	1969, p. 59	135
Business Corporations	1970, Supp.	284
Constitutional Amendment re Juries of 12	1969, p. 60	HJR "M"

1973 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Execution and Levy in Proceedings Supplementary to Judgment	1970, p. 51	96
Technical Amendments to Business Corporation Act	1973, p. 8	98

1974 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Choice of Forum	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the Michigan General Corporations Act	1973, p. 37	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
Technical Amendments to the Business Corporation Act	1974, p. 30	303
Amendment to Dead Man's Statute	1972, p. 70	305
Attachment and Collection Fees	1968, p. 22	306
Contribution Among Joint Tortfeasors	1967, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Due Process in Seizure of a Debtor's Property (Elimination of Pre-judgment Garnishment)	1972, p. 7	371

1975 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Hit-Run Offenses	1973, p. 54	170
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 12	288
Disposition of Community Property Rights at Death	1973, p. 50	289
Insurance Policy in Lieu of Bond	1969, p. 54	290
Child Custody Jurisdiction	1969, p. 23	297

1976 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Due Process in Seizure of a Debtor's Property (Replevin Actions)	1972, p. 7	79
Qualifications of Fiduciaries	1966, p. 32	262
Revision of Revised Judicature Act Venue Provisions	1975, p. 20	375
Durable Family Power of Attorney	1975, p. 18	376

1978 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Juvenile Obscenity	1975, p. 133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger Service Company Act	1973, p. 48	63
Elimination of References to Abolished Courts:		
a. Township Bylaws	1976, p. 74	103
b. Public Recreation Hall Licenses	1976, p. 74	138
c. Village Ordinances	1976, p. 74	189
d. Home Rule Village Ordinances	1976, p. 74	190
e. Home Rule Cities	1976, p. 74	191
f. Preservation of Property Act	1976, p. 74	237
g. Bureau of Criminal Identification	1976, p. 74	538
h. Fourth Class Cities	1976, p. 74	539
i. Election Law Amendments	1976, p. 74	540
j. Charter Townships	1976, p. 74	553
Plats	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Supp.	369

1980 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures	1968, p. 8	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	506

1981 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to the Justice of the Peace: Sheriff's Service of Process	1976, p. 74	148
Court of Appeals Jurisdiction	1980, p. 34	206

1982 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Limited Partnerships	1980, p. 40	213
Technical Amendments to the Business Corporation Act	1980, p. 8	407

Interest on Probate Code Judgments	1980, p. 37	412
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1983 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of References to Abolished Courts:		
Police Courts and County Board of Auditors	1979, p. 9	87
Federal Lien Registration	1979, p. 26	102

1984 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Legislative Privilege:		
a. Immunity in Civil Actions	1983, p. 14	27
b. Limits of Immunity in Contested Cases	1983, p. 14	28
c. Amendments to Revised Judicature Act for Legislative Immunity	1983, p. 14	29
Disclosure of Treatment Under the Psychologist/Psychiatrist- Patient Privilege	1978, p. 28	362

1986 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Amendments to the Uniform Limited Partnership Act	1983, p. 9	100

1987 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Amendments to Article 8 of the Uniform Commercial Code	1984, p. 97	16
Disclosure in the Sale of Visual Art Objects Produced in Multiples	1981, p. 57	40, 53, 54

1988 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Repeal of M.C.L. § 764.9	1982, p. 9	113
Statutory Rule Against Perpetuities	1986, p. 10	417, 418
Transboundary Pollution Reciprocal Access to Courts	1984, p. 71	517

1990 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Procedures of Justice Courts and Municipal Courts	1985, p. 12; 1986, p. 125	217
b. Noxious Weeds	1986, p. 128; 1988, p. 154	218
c. Criminal Procedure	1975, p. 24	219
d. Presumption Concerning Married Women	1988, p. 157	220
e. Mackinac Island State Park	1986, p. 138; 1988, p. 154	221
f. Relief and Support of the Poor	1986, p. 139; 1988, p. 154	222
g. Legal Work Day	1988, p. 154	223
h. Damage to Property by Floating Lumber	1988, p. 155	224

1991 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Land Contracts	1988, p. 157	140
b. Insurance	1988, p. 156	141
c. Animals	1988, p. 155	142
d. Trains	1986, pp. 153, 155; 1987, p. 80; 1988, p. 152	143
e. Appeals	1985, p. 12	144
f. Crimes	1988, p. 153	145
g. Library Corporations	1988, p. 155	146
h. Oaths	1988, p. 156	147
i. Agricultural Products	1986, p. 134; 1988, p. 151	148
j. Deeds	1988, p. 156	149
k. Corporations	1989, p. 4; 1990, p. 4	150
l. Summer Resort Corporations	1986, p. 154; 1988, p. 155	151
m. Association Land	1986, p. 154; 1988, p. 155	152
n. Burial Grounds	1988, p. 156	153
o. Posters, Signs, and Placecards	1988, p. 157	154

p. Railroad Construction	1988, p. 157; 1988, p. 156	155
q. Work Farms	1988, p. 157	156
r. Recording Duties	1988, p. 154	157
s. Liens	1986, pp. 141, 151, 158; 1988, p. 152	159

1992 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Determination of Death Act	1987, p. 13	90

1993 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of Home Rule Villages	1989, p. 17	32
Condemnation Procedures Regarding Railroads	1989, p. 25	354
Condemnation Procedures Regarding Railroad Depots	1989, p. 26	354

1995 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures Regarding Inland Lake Levels	1989, p. 24	59
Condemnation Procedures of School Districts	1989, p. 24	289

1996 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Felony Murder and Arson	1994, p. 179	20, 21

1998 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of General Law Villages	1989, p. 16	254
Repeal of Article 6 of the Uniform Commercial Code	1994, p. 111; 1997, p. 131	489
Uniform Fraudulent Transfer Act	1988, p. 13	434
Uniform Trade Secrets Act	1993, p. 7	448
Revisions to Lemon Law (recommendation to include leased vehicles)	1995, p. 7	486

2002 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Guilty but Mentally Ill-Burden of Proof	2000, p. 85	245

2003 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Anatomical Gifts	1993, p. 53	62, 63

2004 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Governor's Power to Remove Public Officials from Office (recommendation on school board and intermediate school board members)	2003, p. 21	234

BIOGRAPHIES OF COMMISSION MEMBERS AND STAFF

RICHARD D. McLELLAN

Richard D. McLellan is Chair of the Michigan Law Revision Commission, a position he has filled since 1986 following his appointment as a public member of the Commission in 1985.

In 2007, Mr. McLellan retired as a lawyer with the law firm of Dykema Gossett PLLC where he served as the Member-in-charge of the firm's Lansing Office and as the leader of the firm's Government Policy Department.

By appointment of the Supreme Court, Mr. McLellan served two terms as a Member of the Board of Commissioners of the State Bar of Michigan.

Mr. McLellan started his career as an administrative assistant to Governor William G. Milliken and as Acting Director of the Michigan Office of Drug Abuse.

Following the 1990 Michigan elections, Mr. McLellan was named Transition Director to then Governor-elect John Engler. In that capacity, he assisted in the formation of Governor Engler's Administration and conducted a review of state programs. He was also appointed by the Governor as Chairman of the Corrections Commission, a member of the Michigan Export Development Authority, a member of the Michigan International Trade Authority, a member of the Library of Michigan Board of Trustees, a member of the Michigan Jobs Commission, a member of the McPherson Commission on Charter Schools and Chairperson of the Michigan Film Advisory Commission.

During the administration of President Gerald Ford, he served as an advisor to the Commissioner of the Food and Drug Administration as a member of the National Advisory Food and Drug Committee of the U.S. Department of Health, Education and Welfare.

In 1990, Mr. McLellan was appointed by President George Bush as a Presidential Observer to the elections in the People's Republic of Bulgaria. The elections were the first free elections in the country following 45 years of Communist rule. In 1996, he again acted as an observer for the Bulgarian national elections. And again in February 1999, he acted as an observer for the Nigerian national elections with the International Republican Institute.

Mr. McLellan is a member of the Board of Governors of the Cranbrook Institute of Science, one of Michigan's leading science museums. He helped establish and served for ten years as president of the Library of Michigan Foundation. He helped establish and served as both President and Chairman of the Michigan Japan Foundation, the private foundation providing funding for the Japan Center for Michigan Universities.

Mr. McLellan has served as a member of the Board of Trustees of Michigan State University Detroit College of Law and is a member of the Advisory Board for MSU's James H. and Mary B. Quello Center for Telecommunication Management and Law. He also serves as an adjunct professor in MSU's College of Communications Arts.

Mr. McLellan is a former Chairman of the Board of Directors of the Michigan Chamber of Commerce and is a member of the Board of Directors of the Mackinac Center for Public Policy, the Oxford Foundation, and the Cornerstone Foundation.

Mr. McLellan served as a member of the Board of Directors of the Mercantile & General Life Reassurance Company of America and is a Trustee of JNL Trust established by the Jackson National Life Insurance Company. He also served as Chairman of the Michigan Competitive Telecommunications Providers Association and as Chairman of the Information Technology Association of Michigan.

Mr. McLellan has been active in matters concerning persons with disabilities. He is a former President of the Arthritis Foundation, Michigan Chapter, a former member of the National Advocacy Committee of the Arthritis Foundation, and a former member of the National Research Committee, Arthritis Foundation.

He is a graduate of the Michigan State University Honors College and the University of Michigan Law School. He has served as an adjunct professor of international studies at Michigan State University.

ANTHONY DEREZINSKI

Mr. Derezinski is Vice Chair of the Michigan Law Revision Commission, a position he has filled since May 1986 following his appointment as a public member of the Commission in January of that year.

Mr. Derezinski is Director of Government Relations for the Michigan Association of School Boards. He also serves as an adjunct professor of law at the University of Michigan Law School and at the Department of Education Administration of Michigan State University, and previously was a visiting professor of law at the Thomas M. Cooley Law School.

He is a graduate of Muskegon Catholic Central High School, Marquette University, the University of Michigan Law School (Juris Doctor degree), and Harvard Law School (Master of Laws degree). He is married and resides in Ann Arbor, Michigan.

Mr. Derezinski is a Democrat and served as State Senator from 1975 to 1978. He was a member of the Board of Regents of Eastern Michigan University for 14 years and currently serves on the Committee of Visitors of the University of Michigan Law School. He also is a member of the Boards of Ann Arbor Blues and Jazz Festival and the Center for the Education of Women in Ann Arbor.

He served as a Lieutenant in the Judge Advocate General's Corps in the United States Navy from 1968 to 1971 and as a military judge in the Republic of Vietnam. He is a member of the Veterans of Foreign Wars, Derezinski Post 7729, the National Association of College and University Attorneys, the Michigan and National Councils of School Attorneys, and the American Bar Association.

GEORGE E. WARD

Mr. Ward is a public member of the Michigan Law Revision Commission and has served since his appointment in August 1994.

Mr. Ward was the Chief Assistant Prosecuting Attorney in Wayne County in the administration of the Honorable John D. O'Hair. Earlier in his career, he clerked for Justice Theodore Souris of the Michigan Supreme Court and for 20 years was in private civil practice in the City of Detroit. In 2001, Mr. Ward returned to private practice in Wayne County.

He is a graduate of Sts. Peter and Paul High School, Saginaw; the University of Detroit; and the University of Michigan Law School. He and his wife, Margaret, are the parents of five adult children.

Mr. Ward is an Adjunct Professor at Michigan State College of Law, Wayne State University Law School, University of Detroit Mercy Law School, and University of Michigan - Dearborn; a member of the Board of Directors of Wayne County Catholic Social Services; past President of the Incorporated Society of Irish American Lawyers; a former President of the Board of Control of Saginaw Valley State University; a former commissioner of the State Bar of Michigan; the former President of the Wayne County Home Rule Charter Commission; the former Executive Secretary of the 1971-1972 City of Detroit Charter Revision Commission; and a former member of the Board of Directors of Wayne Center.

WILLIAM C. WHITBECK

Judge William C. Whitbeck is a public member of the Michigan Law Revision Commission and has served since his appointment in January 2000.

Judge Whitbeck was born on January 17, 1941, in Holland, Michigan, and was raised in Kalamazoo, Michigan. His undergraduate education was at Northwestern University, where he received a McCormack Scholarship in Journalism. He received his LL.B. from the University of Michigan Law School in 1966, and was admitted to the Michigan Bar in 1969.

Judge Whitbeck has held a variety of positions with the state and federal governments, including serving as Administrative Assistant to Governor George Romney from 1966 to 1969, Special Assistant to Secretary George Romney at the U.S. Department of Housing and Urban Development from 1969 to 1970, Area Director of the Detroit Area Office of the U.S. Department of Housing and Urban Development from 1970 to 1973, Director of Policy of the Michigan Public Service Commission from 1973 to 1975, and Counsel to Governor John Engler for Executive Organization/Director of the Office of the State Employer from 1991 to 1993. He served on the Presidential Transition Team of President-Elect Ronald Reagan in 1980, and as Counsel to the Transition Team of Governor-Elect John Engler in 1990.

In private practice, Judge Whitbeck was a partner in the law firm of McLellan, Schlaybaugh & Whitbeck from 1975 to 1982, a partner in the law firm of Dykema, Gossett, Spencer, Goodnow and Trigg from 1982 to 1987, and a partner in the law firm of Honigman Miller Schwartz and Cohn from 1993 to 1997.

Judge Whitbeck is a member of the State Bar of Michigan, the American Bar Association, the Ingham County Bar Association, the Castle Park Association, and has served as Chair of the Michigan Historical Commission. He is a Fellow of both the Michigan State Bar Foundation and the American Bar Foundation.

Judge Whitbeck and his wife, Stephanie, reside in downtown Lansing in a 125-year-old historic home that they have completely renovated. They are members of St. Mary Cathedral.

Governor John Engler appointed Judge Whitbeck to the Court of Appeals effective October 22, 1997, to a term ending January 1, 1999. Judge Whitbeck was elected in November of 1998 to a term ending January 1, 2005. Chief Judge Richard Bandstra designated Judge Whitbeck as Chief Judge Pro Tem of the Court of Appeals effective January 1, 1999. The Supreme Court appointed Judge Whitbeck as Chief Judge of the Court of Appeals effective January 1, 2002 and reappointed him as Chief Judge effective January 1, 2004 and effective January 1, 2006.

STEPHEN F. ADAMINI

State Representative Stephen F. Adamini was a legislative member of the Michigan Law Revision Commission until the end of 2006 and had served on the Commission since January 2001.

Mr. Adamini represented the 109th House District for three terms. He served as the Democratic Vice-Chair of the House Health Policy Committee, and he also served on the House Insurance Committee and House Judiciary Committee.

Mr. Adamini has practiced law for over 35 years. He is senior partner at Kendricks, Bordeau, Adamini, Chilman & Greenlee, P.C., a Marquette law firm. He is a graduate of Negaunee High School, and received his Bachelor of Arts degree in political science from the University of Michigan in 1967 and his Juris Doctorate from the University of Michigan Law School in 1970.

Mr. Adamini has a longtime civic commitment to the Central Upper Peninsula community. From 1971 to 1976, he served on the Michigan Boundary Commission. From 1973 to 1979, he served on the Alger-Marquette Community Mental Health Board, including one term as chair and two terms as treasurer. Mr. Adamini chaired the Marquette County Democratic Party from 1986 to 1992. He served on the Michigan Transportation Commission, appointed by former Governor Jim Blanchard, from 1987 to 1991. In 1991, he served on the Marquette County Re-Appportionment Commission. From 1994 to 1999, he served on the Marquette County Airport Board, including two terms as Chairperson. From 1997 to 2000, he served on the Executive Committee of the Gwinn Area Chamber of Commerce.

Mr. Adamini and his wife Linda, a retired elementary school teacher, reside in Marquette. They have two adult children, Corrine Adamini Ricker and Stephen Jr. They also have three grandchildren, Alexandra, Marki, and Ryan.

RAYMOND BASHAM

State Senator Raymond Basham is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2007. He was elected to the State Senate in 2002 and re-elected in 2006. He currently serves on the following Senate Committees: Local, Urban and State Affairs; Natural Resources and Environmental Affairs (Minority Vice-Chair); Senior Citizens and Veterans Affairs; and Transportation (Minority Vice-Chair).

Elected State Representative in a special election in June 1997 and re-elected in 1998 and 2000, Mr. Basham served on the Taylor City Council from 1989 to 1997 and on the Taylor Planning Commission from 1993 to 1997. He has served in various other positions including being appointed Constable in 1985 and elected from 1987 to 1989, the Taylor Water Commission from 1984 to 1985, an Auxiliary Police Officer from 1979 to 1984, and a veteran of the U.S. Air Force having served from 1962 to 1966.

Mr. Basham was employed by Ford Motor Company for 30 years and was elected to serve in a variety of positions for United Auto Workers (UAW) Local 245. He has taken numerous courses in the humanities at Wayne State University, Western Michigan University, Schoolcraft College, and Wayne County Community College. His memberships include the Michigan Democratic Party, 15th District Democratic Organization, Democratic Club of Taylor, and the Wolverine Masonic Lodge (Past Master). He is also a former member of the U.S. Coast Guard Auxiliary.

Mr. Basham has lived in Taylor for the past 28 years. He and his wife, Iva, have two children, Brian and Tracy, and four grandchildren.

MICHAEL D. BISHOP

State Senator Michael D. Bishop was a legislative member of the Michigan Law Revision Commission until the end of 2006 and had served on the Commission since March 2003.

Mr. Bishop is in his final term as the State Senator representing the cities of Auburn Hills, Keego Harbor, Lake Angelus, Sylvan Lake, Pontiac, Rochester, and Rochester Hills, and the townships of Addison, Independence, Oakland, Orion, and Oxford. Before being elected to represent the citizens of Senate District 12, Mr. Bishop served two terms in the Michigan House of Representatives. Following the 2006 election, Mr. Bishop was nominated by his caucus, and chosen by his peers, to be the leader of the Senate. As head of the Republican Caucus, Mr. Bishop directs the agenda and is the lead spokesman for GOP policies in Michigan.

Mr. Bishop is currently in his second four-year term in the Senate. In the 93rd Legislature, he was Assistant Majority Leader and chaired the Banking and Financial Institutions Committee and was Vice Chair of the Gaming and Casino Oversight and Judiciary Committees. As the Senate Majority Leader, he chairs the Government Operations Committee. His new committee is charged with recommending to the full Senate whether to accept or reject Governor Granholm's appointments to state agencies and commissions.

During his four-year tenure (1999-2003) in the House, then-Representative Bishop served as Vice Chair of the Commerce Committee and as a member of the Committees on Energy and Technology, Criminal Justice and Redistricting and Elections. He was also appointed to chair the Commerce Subcommittee on Banking and Finance, the Congressional Redistricting Subcommittee, and the Joint Committee on Administrative Rules.

An attorney by trade, Mr. Bishop is licensed to practice law in the state of Michigan, the District of Columbia, and before the U.S. Supreme Court. He also has a realtor's license and served as president of his own realty firm.

Mr. Bishop resides in the city of Rochester with his wife, Cristina, and their three children, Benjamin, Gabriella, and Nathan.

HANSEN CLARKE

Mr. Clarke is a legislative member of the Michigan Law Revision Commission and served on the Commission from March 2003 until December of 2006.

Mr. Clarke was elected to the Michigan State Senate in 2002 when he defeated an incumbent state Senator. He was again elected in 2006. Mr. Clarke had previously been elected to the Michigan House of Representatives three times. Senator Clarke is Democratic Vice Chair of two Committees - Health Policy; Commerce and Tourism - and he also serves on the Judiciary, Banking and Financial Institutions, and Government Operations and Reform Committees.

Before being elected to his recent tenure in public office, Mr. Clarke was active in the nonprofit community. He is the former President of the Michigan Public Purchasing Officers Association and a former Trustee of the Michigan Housing Trust Fund. He also served on the St. John NorthEast Community Hospital Board of Trustees. As a college student, Mr. Clarke was an elected member of

the Cornell University Board of Trustees. He is currently a member of the Cornell University Council.

Mr. Clarke is the former chief of staff to Congressman John Conyers, Jr. He also served as Executive Assistant to the Wayne County Executive and as an Administrator in Wayne County Government.

Mr. Clarke graduated from Cornell University in 1984 with a Bachelor of Fine Arts degree in painting. In 1987, he graduated from Georgetown University Law Center with a Juris Doctorate degree and is licensed to practice law in Michigan. Mr. Clarke resides in Detroit with his wife, Choi.

EDWARD J. GAFFNEY

State Representative Edward J. Gaffney is a legislative member of the Michigan Law Revision Commission and has served on the Commission since February 2003. He is an attorney, practicing in Michigan for over 30 years.

Mr. Gaffney attended Michigan State University and graduated with a Master's degree in history. After graduating from MSU, he took a position with the Michigan Legislative Service Bureau working in the research division. He entered the first class at Cooley Law School. After graduating, he joined the Legislative Service Bureau's Legal Division and drafted legislation.

Mr. Gaffney left Lansing to be a legislative analyst with the American Automobile Manufacturing Association. He was promoted to a position as a regional manager and dealt with state legislatures in Michigan, Ohio, Indiana, Illinois and Kentucky. Mr. Gaffney eventually went to work for the Michigan Trucking Association where he managed a safety grant to help experienced truck drivers learn how to be safer drivers.

In 1991, Mr. Gaffney ran for Grosse Pointe Farms City Council. He won the election and eight years later was elected mayor. He was elected to the State House in 2002 and re-elected in 2004 and 2006. He currently serves on the House Health Policy and Regulatory Reform Committees.

MARK S. MEADOWS

State Representative Mark S. Meadows is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2007. He was elected to the State House in 2006 and serves on the following Committees: (Chair) State Employees Health Care Reform; (VC) Labor; Great Lakes and Environment; Intergovernmental, Urban and Regional Affairs; Judiciary; New Economy and Quality of Life; Regulatory Reform.

Mr. Meadows earned his undergraduate degree at Western Michigan University and his law degree at Michigan State University, formerly Detroit College of Law.

Mr. Meadows was appointed as an assistant attorney general in 1975 and was assigned to represent, at various times, the Department of Social Services, Mental Health, Natural Resources, and State Police; was in former Attorney General Frank Kelly's Environmental Protection Division; represented the Public Service Commission; and was general counsel to the Commission on Law Enforcement Standards. Mr. Meadows was elected Mayor of East Lansing in 1997 and re-elected in 1999, 2001, and 2003, his

final term expired in November 2005. Mr. Meadows also served as an East Lansing City Council member from 1995 to 2006.

Mr. Meadows and his wife, Pam, are the parents of four East Lansing High School graduates: Kirk, Tori, Maureen and Tara, and the grandparents of three: Cameron, Taylor and Lauren.

BRUCE PATTERSON

State Senator Bruce Patterson is in his second and final term in the Michigan Senate. His committees are: Energy Policy and Public Utilities Committee, Chair; Health Policy, Vice Chair; Government Operations and Reform, Vice Chair; Natural Resource and Environmental Affairs, Member; Judiciary, Member; Legislative Council, member; and the Michigan Commission on Uniform State Laws, member.

As Senator for the 7th District, Mr. Patterson represents the City of Northville, Northville Township, City of Plymouth, Plymouth Township, Canton Township, Van Buren Township, City of Belleville, Sumpter Township, Huron Township, Brownstown Township, Cities of Flat Rock, Gibraltar and Rockwood, Woodhaven, Trenton, and Grosse Ile Township.

Mr. Patterson served in the Michigan House of Representatives from 1999 to 2002. During his first term in office, Mr. Patterson was the first freshman in the history of the Michigan Legislature to serve as Associate Speaker Pro Tempore. In his second term, he was elected the Majority Floor Leader by his House colleagues. While in the Michigan House of Representatives, Mr. Patterson chaired the Redistricting and Elections Committee, as well as the House Oversight and Operations Committee, and was a member of the Tax Policy Committee, the House Fiscal Agency Governing Board, Television and Oversight Committee, the Veterans Affairs Committee, and the Legislative Council.

Mr. Patterson served two terms as a member of the Wayne County Commission from 1995 to 1998. Prior to holding elective office, he was an administrator at Eastern Michigan University Administration from 1991 to 1994.

Before joining Eastern Michigan University, Mr. Patterson was in the private sector. For over twenty years, he had a law practice. It included various areas of practice such as estate and financial planning, contract and commercial code law, domestic law, corporate and banking law, and general litigation. Mr. Patterson rose from the position of associate attorney to vice-president and, ultimately, president of McCabe, Middleton & Patterson, P.C., with offices in Detroit, Southfield and Plymouth, Michigan.

As a native of Wayne County, Mr. Patterson was inducted into his community's Hall of Fame in 1992 in recognition of his community service. Mr. Patterson's community service and associations, past and present, have included the Huron Valley Visiting Nurses Fund Board, the American Arbitration Association, Minute Man Foundation founder (created to support Operation Desert Storm troops), Irish-American Lawyers, President of the Canton Economic Club (1991 and 1992), Board of Directors of the Educational Excellence Foundation for the Plymouth-Canton Public Schools (1989-1997), Board of Directors of the Community Foundation, Vice President and General Counsel (inception-1996), Michigan Department of Transportation special committee for Mettetal Airport study (previous co-chair), Community Advisory Board of Directors of First of America Bank (now National City Bank), Wayne Out-County Mediation Service, various Chambers of Commerce including Northville, Plymouth, Canton, Belleville and Southern Wayne County Chamber of Commerce, Western Wayne County Salvation Army capital campaign honorary chair, Senior Citizens Kitchen Band sponsor, and Schoolcraft College Foundation Board of Trustees - elected in 1994.

Mr. Patterson holds a Bachelor of Arts degree from Wayne State University (1969) and a Juris Doctorate from the Law School at Wayne State University (1972). He has been a member of the State Bar of Michigan since 1972, as well as a member of the American Bar Association, Detroit Bar Association, and Suburban Bar Association. He was enrolled as a Fellow in the State Bar Foundation of Michigan in recognition of his commitment to the profession and the people it serves.

As a devoted father and family man, Mr. Patterson is most proud of his wife, Phyllis, and their three children: son Justin and wife Jessie and granddaughter Tannis; daughter Denise and husband Tony and daughter Lauren.

GARY B. GULLIVER

Mr. Gulliver served as Legal Counsel and Director of Legal Research for the Legislative Service Bureau from 1974 to 2004. Mr. Gulliver served as the liaison between the Michigan Law Revision Commission and the Legislative Service Bureau since May 1984. In January 2005, he was appointed Executive Secretary of the Commission.

He joined the faculty of the Michigan State University College of Law in 2004 and has taught classes in Legal Research, Writing, and Advocacy.

Mr. Gulliver is a graduate of Albion College (with honors) and Wayne State University Law School. He is married and has four children.

JOHN G. STRAND

Since January 2001, Mr. Strand, as the Legislative Council Administrator, has served as the ex-officio member of the Michigan Law Revision Commission. The following agencies fall under his supervision: Legislative Service Bureau, Legislative Council Facilities Agency, Joint Committee on Administrative Rules (staff), Michigan Law Revision Commission, State Drug Treatment Court Advisory Committee, the Michigan Commission on Uniform State Laws, the Legislative Commission on Government Efficiency, and the Legislative Commission on Statutory Mandates.

Prior to being appointed to the Legislative Council, Mr. Strand served as Chairman of the Michigan Public Service Commission since October 1993 and had been a Tribunal Judge for the Michigan Tax Tribunal from January 1993 to October 1993. He had previously served six terms as a state legislator beginning in 1981, serving in a leadership position and as vice-chairman of the Insurance and the House Oversight Committees and as a member of the Taxation and Judiciary Committees.

Mr. Strand is a member of the State Bar of Michigan. He holds a B.A. from the University of Pittsburgh in Economics and Political Science (1973) and a J.D. from Case Western Reserve University (1976). Mr. Strand, his wife, Cathy, and sons, Michael and Matthew, live in East Lansing, Michigan.