

**Michigan
Law Revision Commission**

**TWENTY-FIFTH ANNUAL REPORT
1990**

**MICHIGAN
LAW REVISION COMMISSION**

Term Members:

RICHARD McLELLAN, *Chairman*
ANTHONY DEREZINSKI, *Vice Chairman*
DAVID LEBENBOM
RICHARD C. VAN DUSEN

Legislative Members:

Senators:

RUDY NICHOLS
VIRGIL SMITH, JR.

Representatives:

PERRY BULLARD
DAVID HONIGMAN

Ex Officio Member:

ELLIOTT SMITH
Director, Legislative Service Bureau
Michigan National Tower
124 West Allegan, 4th Floor
Lansing, Michigan 48909-7536

Executive Secretary

PROF. JEROLD H. ISRAEL
University of Michigan Law School
341 Hutchins Hall
Ann Arbor, Michigan 48109-1215

TABLE OF CONTENTS

Letter of Transmission from the Michigan Law Revision Commission to the Legislature	1
Resolution for Jason Honigman.	15
Resolution for Representative David Honigman	16
Resolution for Senator Rudy J. Nichols	17
Recommendations of the Law Revision Commission to the Legislature:	
Judicial Review of Administrative Action	19
Attachment 1 - Master List	47
Attachment 2 - Combined Local and State Agency Review	89
Attachment 3 - Review of State Administrative Agencies	92
Attachment 4 - Review of Local Administrative Agencies	125
Attachment 5 - Jurisdiction to Review Specified in Other than Circuit Court	133
Uniform Statutory Rule Against Perpetuities Amendment	141
History of the Michigan Law Revision Commission	153
Biographies of Commission Members and Staff	159

MICHIGAN LAW REVISION COMMISSION
Twenty-Fifth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its twenty-fifth 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 that Act, 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. Terms of the members appointed by the Legislative Council are staggered. The Legislative Council designates the Chairman of the Commission. The Vice Chairman is elected by the Commission.

Membership

The legislative members of the Commission during 1990 were Senator Rudy Nichols of Waterford; Senator Virgil C. Smith, Jr. of Detroit; Representative Perry Bullard of Ann Arbor; and Representative David Honigman of West Bloomfield. As Director of the Legislative Service Bureau, Elliott Smith was the ex-officio Commission member. The appointed members of the Commission were Anthony Derezinski, David Lebenbom, Richard McLellan, and Richard C. Van Dusen. Mr. McLellan served as Chairman. Mr. Derezinski served as Vice Chairman. Professor Jerold Israel of the University of Michigan Law School served as Executive

Secretary. Gary Gulliver served as the liaison between the Legislative Service Bureau and the Commission. Brief biographies of the 1990 Commission members and staff are located at the end of this report. One of the legislative members, Senator Rudy Nichols, left the Legislature at the end of the 1990 legislative session.

The Commission's Work in 1990

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 law of this state, civil and criminal, 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 year have been devoted primarily to three areas. First, Commission members provided information to legislative committees relating 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 without the United States (e.g., California, New York, and British Columbia). 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 found that the subjects treated had been considered by the Michigan legislature in recent legislation. 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.

Since many Commission members thought it possible that the 1990 federal census would find that the population of the city of Detroit was less than 1,000,000, the Commission entered into a contract with Clinton Canady, III for the preparation of a report on the Michigan statutory provisions that apply only to cities of 1,000,000 or more. Because the final 1990 federal census found the city of Detroit exceeded the population of 1,000,000, the Commission has made no recommendations in regard to the statutory provisions described in the report. Copies of the Canady report are available through the Commission.

Two of the topics studied by the Commission have resulted in specific legislative recommendations. Those are:

- (1) Appeals of Administrative Agency Decisions
- (2) A Revision of the Uniform Statutory Rule Against Perpetuities

Recommendations and proposed statutes on these two topics also accompany this Report. The recommendations, proposed statutory changes, and commentary concerning Appeals of Administrative Agency Decisions were the result of the work of Professor Don LeDuc of Thomas M. Cooley Law School.

Proposals for Legislative Consideration in 1991

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 1990.

(1) Uniform Transfers to Minors Act — SB302. See Recommendations of the 1984 Annual Report, page 17.

(2) Uniform Law on Notarial Acts. Passed by the Senate in 1988 (SB77). See Recommendations of the 1985 Annual Report, page 17.

(3) Elimination of References to Abolished Courts. HB4787 to 4792, passed by the House; SB402 to 405, 407, and 409-417, passed by the Senate. See Recommendations of the 1985 Annual Report, page 12; 1986 Annual Report, pages 128, 129, 132, 134, 141, 151, 153-155, 157, and 158; 1987 Annual Report, page 80; and 1988 Annual Report, pages 149 and 151-157.

(4) Uniform Determination of Death Act, 1987 Annual Report, page 13.

(5) Uniform Fraudulent Transfer Act, 1988 Annual Report, page 13.

(6) Consolidated Receivership Statute, 1988 Annual Report, page 72.

Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Assumed Names (Statewide Registration by Individuals and Partnership)
- (2) Contribution Among Joint Tortfeasors
- (3) Usury Statutes

- (4) Medical Practice Privileges in Hospitals (Procedures for Granting and Withdrawal)
- (5) Health Care Consent for Minors
- (6) Health Care Information, Access and Privacy
- (7) Public Officials — Conflict of Interest and Misuse of Office
- (8) Reproduction Technology
- (9) Elimination of References to Abolished Courts
- (10) Uniform Anatomical Gift Act
- (11) Uniform Premarital Agreement Act
- (12) Uniform Trade Secrets Act
- (13) Uniform Real Estate Tax Apportionment Act
- (14) Uniform Statutory Power of Attorney
- (15) Uniform Putative and Unknown Fathers Act
- (16) Uniform Custodial Trust Act
- (17) Uniform Commercial Code — Proposed Amendments for Articles 2A, 4A and 6
- (18) Laws Addressing the Powers of County Executives
- (19) International Commercial Arbitration
- (20) Implementation of Report on Judicial Review of Administrative Action

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are in the University of Michigan Law School, Ann Arbor, Michigan 48109-1215. By using faculty members at the several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate at a budget substantially lower than that of similar commissions in other jurisdictions.

The Legislative Service Bureau, through Mr. Gary Gulliver, its Director of Legal Research, has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

Prior Enactments

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 the 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 Meeting	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 Rights 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 Proceedings 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 Corporation 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 Policies 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 By-Laws	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 References 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 Court Judgments	1980, p. 37	412

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 R.J.A. 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 Statutory Rule Against Perpetuities	1982, p. 9	113
Transboundary Pollution	1986, p. 16	417, 418
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

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

Respectfully submitted,

Richard D. McLellan, Chairman
 Anthony Derezinski, Vice Chairman
 David Lebenbom
 Richard C. Van Dusen
 Sen. Rudy Nichols
 Sen. Virgil C. Smith, Jr.
 Rep. Perry Bullard
 Rep. David Honigman
 Elliott Smith

Date: January 31, 1991



A RESOLUTION HONORING MR. JASON HONIGMAN

Whereas, With the passing of Jason Honigman, Michigan has lost one of its most respected and influential leaders in the legal community. His strong, positive influence on many aspects of the law, including his public service on the Michigan Law Revision Commission, left a legacy to the people of Michigan that will be felt for generations; and

Whereas, Jason Honigman's life was truly a study in hard work and integrity and a script consistent with the American dream. Born in Russia in 1904, he came to New York with his mother in 1911 to join his father, a tailor who had come earlier to the New World to seek liberty and opportunities for himself and his children and their descendants. The young Jason Honigman worked his way through college as a barber and studied at Detroit Junior College before going to the University of Michigan, where he graduated first in his law school class in 1926. With determination, honesty, and genuine respect for both the spirit and the particulars of the law, Mr. Honigman accumulated both success and expertise in his career; and

Whereas, Along with Mr. Milton Miller, he founded the law firm of Honigman, Miller, Schwartz, and Cohn, that is today one of Michigan's largest and most respected. The firm's reputation for excellence, however, encompasses only part of Jason Honigman's contributions to the legal community. As vice-chairman in 1966 and as chairman from 1967 to 1980 of the Michigan Law Revision Commission, he contributed his remarkable leadership and his profound insights to achieving the laudable goals of this body. It should be noted that the very existence of the Commission is in large part a result of Jason Honigman's persistence in the 1960's, as he convinced the legislature and legal community of the need for such a body. Clearly, his impact will long be felt throughout our state; now, therefore, be it

Resolved, That the members of the Michigan Law Revision Commission hereby express our accolade of tribute to one of Michigan's most influential and revered attorneys and to a man whose vision greatly aided in the creation of this body; and be it further

Resolved, That a copy of this resolution be reprinted in the 25th Annual Report of the Michigan Law Revision Commission.

A RESOLUTION HONORING REPRESENTATIVE DAVID M. HONIGMAN

Whereas, It is a pleasure for the members of the Michigan Law Revision Commission to honor former State Representative and current State Senator David M. Honigman for his outstanding service on the Commission. His distinguished efforts for the Commission began in January 1987, and extended until December 31, 1990; and

Whereas, As a veteran lawmaker, Mr. Honigman understood the necessity for an effective Michigan Law Revision Commission. Since its establishment in 1965, the Commission has worked diligently to examine common law, statutes, judicial rulings, and similar legal documents for defects, anachronisms, and needed reforms. It has further considered suggestions for changes in the law and made recommendations for changes to bring the law into harmony with modern conditions. With David Honigman's dedication and understanding of the legislative process, he has brought a wealth of knowledge to the Commission that has proved enormously beneficial; and

Whereas, In a changing world, it is vital that our laws reflect the reality of life and our society today. The Michigan Law Revision Commission provides this necessary service and does so with the advice and decision-making ability of several exceptional individuals. As an attorney and a member of the House Committee on Judiciary, Representative Honigman was able to provide insight that has improved the recommendations of the Commission and has, thus, enhanced the quality of many people's lives. We salute him for his dedication to human need and the laws that are meant to protect and preserve the rights of our people; now, therefore, be it

Resolved, That the members of the Michigan Law Revision Commission hereby express our gratitude to Commissioner David M. Honigman in acknowledgment of his fine work. May he know in what high regard we hold his superb service; and be it further

Resolved, That a copy of this resolution be reprinted in the 25th Annual Report of the Michigan Law Revision Commission.

A RESOLUTION HONORING SENATOR RUDY J. NICHOLS

Whereas, In grateful recognition of his distinguished service to this Commission, the members of the Michigan Law Revision Commission are pleased to honor former State Senator Rudy J. Nichols. His distinguished efforts for the Commission began in February 1987, and extended until December 31, 1990; and

Whereas, As an attorney, Mr. Nichols understands the necessity for an effective Law Revision Commission. Since its establishment in 1965, the Commission has worked diligently to examine common law, statutes, judicial rulings, and similar legal documents for defects, anachronisms, and needed reforms. It has further considered suggestions for changes in the law and made recommendations for such changes to bring the law into harmony with modern conditions. With Commissioner Nichols' legal expertise and understanding of the legislative process, he has brought a wealth of knowledge to the Commission that has proved enormously beneficial; and

Whereas, In a changing world, it is vital that our laws reflect the reality of life and our society today. The Michigan Law Revision Commission provides this necessary service and does so with the advice and decision-making ability of several exceptional individuals. In his capacity as Chairman of the Senate Judiciary Committee, Senator Nichols was able to provide a level of leadership to both the Senate and on the Commission that has enhanced the quality of many people's lives. We salute him for his dedication to human need and the laws that are meant to protect and preserve the rights of our people; now, therefore, be it

Resolved, That the members of the Michigan Law Revision Commission hereby express our gratitude to Commissioner Rudy J. Nichols in acknowledgment of his fine work. May he know in what high regard we hold his superb service; and be it further

Resolved, That a copy of this resolution be reprinted in the 25th Annual Report of the Michigan Law Revision Commission.

MICHIGAN LAW REVISION COMMISSION
REPORT AND RECOMMENDATIONS ON
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Prepared By Don LeDuc¹
Professor of Law
Thomas M. Cooley Law School
Consultant to the Commission

I. Introduction

Focus of Study--During its study of the Michigan Administrative Procedures Act (APA), which resulted in the development of a proposed Revised Administrative Procedures Act (See the Report of the Michigan Law Revision Commission, 1989 Annual Report), the Commission became aware of the difficulties confronting citizens and lawyers who seek to challenge the outcome of decisions and actions by Michigan's state and local administrative agencies. That awareness led to recommendations in the proposed new APA regarding access to judicial review.

However, the Administrative Procedures Act is an inadequate vehicle for complete reform in this area, mainly because it is limited to state agencies. The Commission recommended broadening the coverage of the APA review provisions to all forms of administrative "action," and included a restructuring of the scope of judicial review language in section 306. Because the Commission believed that the revised APA would only partially address the issue of judicial review, this study was undertaken.

¹. I wish to acknowledge the contribution of Marco Menezes to the development of this report. The section of the paper which reviews current judicial review practice in Michigan is based on, and in large part taken from, a paper entitled "Judicial Review of Administrative Action in Michigan: Forms of Action," which was written by Mr. Menezes under my supervision while he was a student at Cooley Law School as part of the requirements for a seminar on Michigan Administrative Law. Mr. Menezes served as a research assistant for the Law Revision Commission's Revised Administrative Procedures Act project, as well as for this project on Judicial Review. I would like to thank Mr. Menezes for his contribution, along with the other research assistants who worked on this project: Steven Curtis, Kathryn McGinn, and Carola Aubuchon.

From its earlier inquiry, the Commission was able to formulate an overall goal: to make judicial review of administrative agency action readily available in as simple and uniform a manner as is consistent with sound public policy. Article VI, Section 28 of the Michigan Constitution of 1963 guarantees judicial review of all judicial and quasi-judicial decisions, findings, rulings and orders of state and local administrative agencies, "as provided by law." Full implementation of that provision has not yet occurred, because gaps remain in the procedural structure controlling review. The Commission's goal is to assure that the constitutional guarantee is met.

To achieve this goal, the Commission identified six objectives:

- (1) To make the Michigan Administrative Procedures Act the vehicle for judicial review, whenever possible.
- (2) To make the method of review as simple and uniform as possible.
- (3) To make the time limits for seeking review as uniform as possible.
- (4) To make the court with jurisdiction to review as consistent as possible.
- (5) To make the venue provisions as uniform as possible.
- (6) To make the scope of judicial review as uniform as possible.

Methodology of Study--in order to complete this study, the Commission sought to:

(1) Summarize current practices in Michigan judicial review. An analysis of current practice has been made. It reflects the confusion, inconsistency, complexity and potential pitfalls which bedevil this area.

(2) Identify all judicial review provisions in the Michigan statutes. Because the volume of legislation is enormous and the methods of research are cumbersome, two separate approaches were used--(1) the identification of the different legislative subject matters in which judicial review provisions were likely to appear; and (2) the sifting of the statutes according to key words, such as appeal and petition. The provisions were more numerous and less coherent than originally contemplated, and conflicts among statutory provisions and voids in the law surfaced. A master list has been compiled which has nearly 200 entries (see the attachments), but the Commission is certain that a significant number of statutes have not yet been identified.

In the attachments, the statutes have been sorted according to various categories reflecting review of state, local, or both state and local action, as well as those which place judicial review in other than the circuit court.

(3) Develop proposed amendments to the current APA. The proposed revised APA language is quite close to what we propose here. Should the proposed revised APA be enacted, the recommendation concerning the APA in this report will need only minor adjustment. The Commission could identify no hurdles in regard to the use of the APA as the basic vehicle for unification of judicial review of state agency action.

(4) Identify all statutes, including the Revised Judicature Act, suited to the goals of this project which present no policy considerations. As will be discussed below, this was not so easy as it first appeared. Many statutes include no judicial review language at all; others have provisions which are actually at odds with the current APA provisions; some contain judicial review provisions which are illogical. Many statutes will require further analysis before a determination can be made that their amendment presents no policy considerations.

However, we believe that the Revised Judicature Act (RJA) should be amended in two respects in order to implement the overall goal. The RJA currently provides for review of agency decisions that are not covered by other review provisions. It is a good general jurisdictional statute, but it has two limitations: (1) it is limited to review of decisions of only those agencies that have rulemaking power, and (2) it does not cover review of local administrative decisions. The Commission would add amendments to the RJA to broaden its application. Thus, the actions of all state agencies exempt from the application of the APA would still be subject to review through the RJA and a new vehicle to permit review of local administrative agency decisions would be made available. Also, language should be added which would change the form of review to a petition, make the time to file 60 days, and apply the APA scope of review when the RJA is the method of review used.

(5) Draft language to serve as a model for those statutes presenting no special policy problems. While it would be ideal if a single statute could be written to cover judicial review of all administrative action, a generic provision amending the current patchwork of laws will not likely survive constitutional scrutiny. This position is based on the restriction in Sections 24 and 25 of Article IV of the Michigan Constitution of 1963. In all likelihood, a separate bill will be required for the amendment of each statute with judicial review provisions. Thus, considerably more effort will be required for steps 4 and 5 than

contemplated in the methodology. Model language to guide future amendments has been included.

(6) Consider the statutes presenting unusual circumstances and propose amendments. As originally conceived, these statutes were generally thought to be those which send judicial review into the court of appeals rather than the circuit court. Two dozen of these statutes were found.

During the course of this study, many other statutes surfaced which present policy considerations regarding proper timing of review, appropriate venue, and scope of review issues. The number and variety of these statutes prevented the Commission from undertaking consideration of each statute on an individual basis. The Commission recognizes that there is a need for focused consideration of these provisions. It has therefore chosen not to recommend absolute uniformity in the approach to judicial review.

(7) Prepare a final report that includes a discussion of the current problem, makes recommendations of specific policies to be followed in considering amendments of existing law, proposes amendments to existing statutes, and identifies statutes which warrant further consideration.

II. Judicial Review of Administrative Agency Action In Michigan

Background and Nature of Current Problem--Judicial review of administrative action in Michigan is made available through a complex, sometimes bewildering, system of constitutional, statutory and court rule provisions. Depending upon the nature of the underlying agency action, judicial review is available through: (1) the underlying statute which authorized the agency action or which created the agency; or (2) under Chapter 6 of the Michigan Administrative Procedures Act [MCL 24.301-.306; MSA 3.560(201)-(206)]; or (3) via section 631 of the Revised Judicature Act (MCL 600.631; MSA 27A.631); or (4) through actions for Declaratory Judgment under sections 63 and 64 of the Michigan Administrative Procedures Act (MCL 24.263-64; MSA 3.560(163)-(164)); or (5) through an array of other provisions under the Michigan Rules of Court. These provisions, including the Michigan Rules of Court, result in wide variety in the method by which review is sought (e.g., petition, appeal, certiorari, superintending control), in granting both jurisdiction and venue to specific courts (e.g., circuit or appeals, Ingham county alone, or a choice of two or three different circuit courts), in the time limits for seeking judicial review, and in defining the scope of review that the reviewing court must utilize in assessing the agency's action.

As a starting point, however, it may be said that any inquiry into how to proceed should begin with an analysis of the nature of the administrative action for which judicial review is sought. Then, the underlying statute or statutes must be checked to determine whether they control judicial review. If the statute is silent, or if its review provisions are incomplete, then, depending upon the nature of the agency action and whether it is a state or local agency, the APA may control review, or it may be subject to the RJA. If the statute is silent, and if the action is local or if it is state agency action not covered by the APA or the RJA, it is possible that the action is challengeable based upon one of the actions defined in the court rules, such as superintending control or injunction. However, it is possible that the array of choices will not provide any avenue for judicial review, although it is much more likely that local action will not have a remedy. The Michigan Constitution contains language that seems to guarantee review of all administrative agency action, state or local, that is judicial or quasi-judicial, but decisions of our courts have held that this language is not self-executing and does not by itself constitute a basis for judicial review. Finally, assuming that authority for review is found among these choices, the procedural provisions of the Michigan Rules of Court must be followed.

Constitutional Right to Review--Two provisions in Article VI of the Michigan Constitution of 1963 provide for review of administrative agency action. Section 13 grants appellate jurisdiction and superintending and general

power over inferior tribunals to the circuit court. Section 28 guarantees that "[a]ll final decisions of administrative agencies which are judicial or quasi-judicial and affect private rights shall be subject to direct review by the courts as provided by law."

An argument could be made that the former provision guarantees review-- "[a] party has substantive rights under the Constitution . . . to appeal to circuit court from decisions of municipal civil services agencies. . . . where the law provides the right to such an appeal, it should also provide a procedure for the appeal." Villa v Fraser Civil Service Commission, 57 Mich App 754; 226 NW2d 718 (1975). However, a statute also provided for review in that case, so it was the lack of stated procedure to implement both the Constitution and the statute that was the focus of the court's attention. The prevailing view is to the contrary.

The Michigan Supreme Court has held that the "guarantee" of review provided by the Michigan Constitution is not an independent grant of subject matter jurisdiction. Viculin v Department of Civil Service, 386 Mich 375; 192 NW2d 449 (1971). According to the Court, Article VI, Section 28 ". . . is not self-executing and of itself requires nothing." 389 Mich at 391; 192 NW2d at 558. In effect, the constitutional language "as provided by law" requires a statutory grant of subject matter jurisdiction by the Legislature in order for a particular court to hear an administrative appeal. Two recent court of appeals decisions have held the circuit court does not have jurisdiction to hear appeals from municipal administrative agencies absent a statute or court rule authorizing such an appeal. Eckstein v Kuhn, 160 Mich App 240; 408 NW2d 131 (1987); Robertson v Detroit, 131 Mich App 594; 345 NW2d 695 (1983). See also Buback v Governor, 380 Mich 209, 226; 156 NW2d 549, 558 (1968).

Thus, despite the constitutional language, subject matter jurisdiction continues to present a technical hurdle to judicial review. Because of the broad grants of jurisdiction provided by the Michigan Administrative Procedures Act (APA) and the Revised Judicature Act (RJA), such problems are generally confined to review of actions by local administrative agencies.

Statutory Review--Statutes may control the availability of review, as well as particular aspects of the review process. These statutes fall into the four categories below.

1. Special Statutory Review Provisions--In order to determine the appropriate avenue of judicial review, the potential appellant must first explore the underlying statutes that apply to the agency action. Most often, the statute that authorizes the agency to take the action that the appellant wishes to challenge will contain language concerning review. Occasionally, another statute governing the

agency in question will contain a judicial review provision that is generally applicable to all or particularly-described actions of the agency. When such provisions are present, they must be followed. Such statutes may contain language granting jurisdiction to certain courts, they may identify the appropriate venue, they may impose limitations on the time for submission of the matter to the courts, they may identify the precise nature of the method of review to be used, and they may define or limit the authority of the reviewing court. Unfortunately, few statutes actually include provisions telling the appellant in what court to proceed, by what method, within what time, and under what scope of review. Any combination of these factors may appear in an underlying statute, and some statutes contain no review provisions at all.

In newer statutes and in older statutes that have been amended, the Michigan Legislature has tended to standardize judicial review procedures under the APA or RJA. It cannot be said that the tendency has approached any great degree of consistency or clarity. A large number of such statutes containing special review provisions continue to prescribe a variety of mechanisms to invoke judicial review. A master listing of over 190 statutes which contain such provisions may be found in the Attachment 1. In all likelihood, there are more.

2. Petitions for Review under the Michigan Administrative Procedures Act--Where judicial review pursuant to the underlying statute is not available or is inadequate, judicial or quasi-judicial actions of state administrative agencies may be reviewable through a petition for review, as provided under sections 103 to 105 of the APA. *See* MCL 24.302; MSA 3.560(202).

Review is available under the APA to persons aggrieved by a final decision or order of a state administrative agency in a "contested case," which is defined as "any administrative proceeding in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing." MCL 24.203(3); MSA 3.560(103)(3). Thus, if no hearing is required by the underlying statute, the APA review method is unavailable. Blue Cross Blue Shield of Michigan v Commissioner of Insurance, 155 Mich App 723; 400 NW2d 638 (1986).

Procedures for review under the APA are specified in sections 103 through 105 of the act and by MCR 7.105. Generally, petitions must be filed with the circuit court (or probate court in Department of Social Services adoption cases) in the appropriate venue--either the petitioner's county of residence, the county of his or her principal place of business or Ingham County. Filing must occur within 60 days after the date of mailing of the notice of the final decision or order of the agency. The petition itself must conform to MCR 7.105(C)(1) and MCR 2.113 and contain the elements prescribed by section 103(3) of the APA

and by MCR 7.105(C)(2)(a-d). Under these provisions, the petition must fully describe: (1) the nature of proceedings below; (2) any special appellate procedure required by statute upon which the petitioner intends to rely [see MCR 7.105(B)(1)]; (3) the factual basis of venue; (4) petitioner's grounds for relief; and (5) the relief actually sought.

3. The Revised Judicature Act--Section 631 of the Revised Judicature Act (RJA), MCL 600.631; MSA 27A.631, provides for direct appeal from any order, decision, or opinion of any state board, agency, or commission authorized to promulgate rules, from which an appeal or other judicial review has not otherwise been provided by law. The RJA provides a mechanism for judicial review where a statute authorizing the rulemaking agency to act fails to provide for review and the decision of the agency does not fall within the APA definition of a contested case.

The language of the RJA expressly limits its applicability to state agencies that are authorized to promulgate rules. O'Connor v Oakland County Sheriff's Department, 169 Mich App 790; 426 NW2d 816 (1988). Further, judicial review must not be "otherwise provided by law." This language tends to limit the RJA's applicability, since the majority of statutes authorizing administrative agencies to act contain review mechanisms of one form or another. The RJA is clearly inapplicable to decisions of local agencies whose enabling statutes often contain no provision for judicial review.

Under the RJA, the method of review is identified as an appeal. Like the APA, the RJA requires that an appellant first exhaust all administrative remedies. Subject matter jurisdiction is conferred by the RJA on the circuit court and venue is properly placed in either the appellant's county of residence or in Ingham County (but not in the appellant's principal place of business, as provided in the APA). According to MCR 7.104(A), review procedures under the RJA are governed by the appellate rules of the circuit court (see MCR 7.101). Appeals under the RJA must be filed within 21 days after the challenged decision. Leave to appeal must be requested pursuant to MCR 7.103, if the statute did not create a right to appeal or if the time for appeal has expired.

The Michigan courts have held that the scope of review under the RJA is "not de novo but limited to standards set out in Michigan Constitution," Schommer v Director, Department of Natural Resources, 162 Mich App 110; 412 NW2d 663 (1987) and "similar to that under the [APA]". Michigan Waste Systems v Department of Natural Resources, 147 Mich App 729, 735; 383 NW2d 112, 116 (1985). The constitutional standard of Article VI, Section 28, requires a determination whether the action was "authorized by law" and, if a hearing was required, is supported by "substantial, material and competent evidence."

4. Declaratory Judgments under the Michigan Administrative Procedures Act--While the APA and RJA review provisions deal exclusively with judicial and quasi-judicial action by state administrative agencies, another statutory mechanism is provided by the APA to review an administrative rule promulgated by an agency. Where a court finds that a rule or its threatened application interferes with or impairs a person's legal rights or threatens to do so, and no exclusive review procedures or remedies are provided by the underlying statute, section 64 of the APA provides for direct judicial review of the validity or applicability of that rule. MCL 24.264; MSA 3.560(164). Such review is in the nature of a declaratory judgment.

The purpose of section 64 is to remove uncertainty as to an agency's interpretation of its own rules. The statute vests subject matter jurisdiction in the circuit court and specifies that venue is proper either in the circuit court for plaintiff's county of residence or principal place of business, or in Ingham circuit court.

Although exhaustion of administrative remedies is generally not required when purely declaratory relief is requested, BCS Life Insurance Co v Commissioner of Insurance, 152 Mich App 360; 393 NW2d 636 (1986), section 63 of the APA requires, as a condition precedent, that an "interested person" first request the agency to issue a "declaratory ruling" on the applicability of the challenged rule to an actual state of facts. MCL 24.263; MSA 3.560(163); *see* Pletz v Secretary of State, 125 Mich App 335; 336 NW2d 789 (1983). If the request for a declaratory ruling is subsequently denied, or if the agency fails to act expeditiously on the request, section 64 may then be applied. Alternatively, a denial by the agency of a request for a declaratory ruling is itself reviewable as a contested case by the circuit courts. (*Id.* at 372; 336 NW2d at 808 [citing Human Rights Party v Michigan Corrections Commission, 76 Mich App 204, 209-212; 256 NW2d 439 (1977), *lv den* 402 Mich 906 (1978)]). Making the denial or refusal reviewable seems a rather poor alternative, however, since such review would be under sections 102 to 105 of the APA and limited in scope to the record made before the agency.

Only agency "rules" are reviewable under section 64. For the purposes of sections 63 and 64, a "rule" is narrowly defined by MCL 24.207(7); MSA 3.560(107)(7) and includes only agency statements formally promulgated pursuant to the APA rulemaking procedures. Bentley v Department of Corrections, 169 Mich App 264; 425 NW2d 778 (1988).

Where agency statements are not formally promulgated "rules," the circuit court generally lack jurisdiction under section 64 to review them. Michigan State

Chamber of Commerce v Secretary of State, 122 Mich App 611; 332 NW2d 547 (1983). Some courts have held, however, that "interpretative statements" that modify existing rules are, in effect "rules" and are reviewable as such under section 64. Detroit Base Coalition for the Human Rights of the Handicapped v Department of Social Services, 431 Mich 172; 428 NW2d 355 (1988).

The term "declaratory ruling" has also been narrowly interpreted by the courts to include only rulings issued pursuant to a specific request for a declaratory ruling. Other agency statements will not satisfy the condition precedent for invoking section 64 review. It is important to emphasize that section 64 review is available only when a declaratory ruling is not issued. Once issued, the ruling itself is subject to judicial review as a contested case under sections 103 through 105 of the APA, not under section 64. Health Central v Commissioner of Insurance, 152 Mich App 336; 393 NW2d 625 (1986).

Non-statutory Review--Beyond the convoluted judicial review mechanisms provided by the statutes lies the realm of equity and extraordinary writs derived from the common law. These may also may be applied to invoke judicial review of administrative action under certain circumstances. As is generally the case with equitable remedies, such mechanisms, with the exception of declaratory judgments, are not available where the plaintiff has an adequate remedy at law.

1. Declaratory Judgments outside the APA--In addition to the declaratory judgments available under section 64 of the APA, declaratory relief in its equitable form may also be applied to review administrative action in some contexts. Since the RJA repealed 1929 PA 36 (MCL 691.501), Michigan's former declaratory judgment act, declaratory judgments are now more correctly characterized as a remedy rather than a distinct form of action. A party seeking a declaratory judgment must, therefore, plead some cause of action constituting an "actual controversy" to vest subject matter jurisdiction in the reviewing court. See Shavers v Kelley, 402 Mich 554; 267 NW2d 72 (1978), and MCR 2.605(A)(2).

Declaratory relief is made generally applicable to administrative actions by MCR 2.605. Under MCR 2.605, any Michigan court of record otherwise having jurisdiction over the action may grant declaratory relief even though other adequate remedies may also be available. See Crawford County v Secretary of State, 160 Mich App 88; 408 NW2d 112 (1987), and MCR 2.605(C). However, where the petition for review procedure is available under the APA, MCR 7.105(B)(2) takes precedence to preclude declaratory judgment actions. BCS Life Insurance Co v Commissioner of Insurance, 152 Mich App 360; 393 NW2d 636 (1986). An exclusive remedy provided by the underlying statute may also preclude the availability of declaratory judgments, unless such remedy is deemed

inadequate by the court. Calcaterra v Civil Service Commission, 52 Mich App 27; 216 NW2d 613 (1974).

Where no exclusive remedies are provided or the APA is inapplicable, a party faced with a "costly dilemma," a choice between compliance with a costly regulatory ruling or non-compliance and possible sanctions by the agency, may appropriately seek declaratory relief even though other adequate remedies are or will become available. Harm to the party seeking declaratory relief need only be prospective. The party's rights are properly determined by the courts before any actual injury occurs. While the courts have held that an "actual controversy" is required, actual controversy has been found to exist where declaratory relief is necessary simply to guide the plaintiff's future conduct. See U.S. Aviex Co v Traveler's Insurance Co, 125 Mich App 579; 336 NW2d 838 (1983); Crawford County, supra.

2. Injunctions--Injunctive relief is another common law equitable remedy that often accompanies a declaratory judgment. The purpose of injunctive relief is to preserve the status quo, pending a resolution of the conflict between the parties. Psychological Services of Bloomfield, Inc v Blue Cross Blue Shield of Michigan, 144 Mich App 182; 375 NW2d 382 (1985). Issuance of injunctions is generally governed by MCR 3.310.

Within the context of administrative actions, the courts have found injunctive relief appropriate in extraordinary cases. The general rule, however, is that the courts will not enjoin the prosecution of proceedings pending in administrative tribunals. City of Highland v Fair Employment Practices Commission, 364 Mich 508; 111 NW2d 797 (1961). The courts have held that injunctive relief should not be granted if the party seeking it has an adequate remedy at law or if it will give one of the parties all of the relief requested prior to a hearing on the merits. Detroit v Salaried Physicians, UAW, 165 Mich App 142; 418 NW2d 679 (1987).

In the extraordinary cases where injunctions may issue to restrain administrative action, the Michigan courts will consider: (1) the possible harm to the public interest if the injunction issues; (2) the possible harm to the plaintiff if no injunction issues; (3) the likelihood that the plaintiff will prevail on the merits, [MCR 3.310; M & S Inc v Attorney General, 165 Mich App 301; 418 NW2d 441 (1987)]; and, (4) whether the prospective harm to the plaintiff will be irreparable if no injunction issues. Michigan State Employee's Association v Michigan Department of Mental Health, 421 Mich 152; 365 NW2d 93 (1984).

3. Extraordinary Writs--Judicial review of administrative agency action may also be available through at least four vehicles that have evolved from the common law writs.

Superintending Control--The Michigan Constitution of 1963, in Article VI, Sections 4 and 13, empowers superior courts to exercise supervisory and general control over inferior courts and tribunals. Pursuant to MCL 600.615; MSA 27A.615, the circuit court has superintending control over inferior courts and tribunals, subject to supreme court rule. Such constitutional supervision is accomplished through the writ of Superintending Control.

Superintending Control is not an appeal per se, but is rather an original action designed to require the defendant, an inferior tribunal, to perform a clear legal duty. It supersedes the writs of Certiorari and Mandamus when directed to a lower court or tribunal. This plenary power of the courts over inferior tribunals also includes administrative agencies acting in judicial or quasi-judicial capacities. Fort v City of Detroit, 146 Mich App 499; 381 NW2d 754 (1985); Beer v City of Fraser Civil Service Commission, 127 Mich App 239; 338 NW2d 197 (1983).

Superintending Control is generally unavailable where other adequate remedies exist at law, as under the APA or the RJA [see MCR 3.302(B) and (D)(2)], except where relief may be insufficient thereunder. Although the adequacy of available remedies is a question left to the court's discretion, availability of an appeal is usually deemed an adequate remedy. See Beer, supra; MCR 3.302(D)(2). Where a successful appeal still will not provide the relief sought by the plaintiff, however, Superintending Control may lie. Such circumstances would be found in challenges to the routine policies or practices of an inferior tribunal.

In practice, the multiplicity of review mechanisms available in Michigan will leave few situations where courts will find "no other adequate remedy" so as to render Superintending Control appropriate. Generally, the circuit court is the proper forum in which to seek Superintending Control over most state administrative agencies acting in judicial or quasi-judicial capacities. Some statutes, by specifying review by the Supreme Court or the Court of Appeals, in effect, confer status on agency tribunals equal to the circuit court. See, for example, the Worker's Disability Compensation Appeals Board, MCL 418.861; MSA 17.237(861), or the Michigan Employment Relations Commission, MCL 423.23; MSA 17.454(25). Since these are not technically "inferior" tribunals, the circuit court has no jurisdiction to exercise Superintending Control over them. In such cases, the Court of Appeal would be the proper forum.

Procedures for seeking writs of Superintending Control are generally governed by MCR 3.302 and other court rules applicable to the specific court having supervising jurisdiction over the inferior tribunal. In circuit court, MCR 3.302 controls. Where the court of appeals has jurisdiction, MCR 7.206(B) and (D) apply. In original proceedings before the Michigan Supreme Court, MCR 7.304 applies.

Mandamus--Mandamus is an extraordinary writ used to compel a public official to perform a clear legal duty. To the extent that Mandamus was once applied to exercise control over inferior courts or tribunals, it has been superseded by the writ of Superintending Control. The remedy survives as an extraordinary writ, however, under MCR 3.305 and apparently as a form of statutory review under section 4401 of the RJA, MCL 600.4401; MSA 27A.4401. The statute and court rule confer plenary supervisory jurisdiction to the court of appeals and the circuit court over non-judicial state and local officers. See State Board of Education v Houghton Lake Community Schools, 430 Mich 658; 425 NW2d 80 (1988); Teasel v Department of Mental Health, 419 Mich 390; 355 NW2d 75 (1984).

Where a state officer acts in a judicial or quasi-judicial capacity, Superintending Control rather than Mandamus, would be the appropriate procedure. SuperX Drugs Corp. v Michigan Board of Pharmacy, 233 F Supp 705 (WD Mich 1964). Improper choice of an extraordinary writ does not pose a significant problem, however, since the courts are free to inquire into the nature of relief requested and treat the complaint as one for Mandamus. Ferency v Secretary of State, 139 Mich App 677; 362 NW2d 743 (1984).

In the context of reviewing administrative action, Mandamus may be used where no other adequate remedy exists at law or in equity. Detroit City Council v Stecher, 153 Mich App 601; 396 NW2d 444 (1986), *rev'd on other grounds*, 430 Mich 74 (1988). The defendant public officer must also be under a clear duty to perform an act required by law. BCS Life Insurance Co v Commissioner of Insurance, 154 Mich App 373; 397 NW2d 552 (1986). Where a non-judicial public officer has a legal duty to exercise his discretion, Mandamus will lie to compel its exercise, but not to compel that it be exercised in a particular manner. State Board of Education, *supra*. Mandamus is a writ of grace, however, and issuance is therefore at the discretion of the court. A writ of Mandamus will not issue unless required by justice. Brownstown Creek, Etc v City of Woodhaven, 112 Mich App 675; 317 NW2d 220 (1982); Beadling v Governor, 106 Mich App 530; 308 NW2d 269 (1981).

Although an action for Mandamus against state officers may be brought--at the option of the party commencing the action--in either circuit court or the court of

appeals, Ferency, *supra*; the circuit court has specific jurisdiction over officers and boards of local units of government. MCR 3.305(A)(2). The court of appeals may decline to hear Mandamus actions on the grounds that circuit court proceedings constitute another adequate remedy at law. Gravlin v Department of State Police, 87 Mich App 217; 274 NW2d 21 (1978). The court of appeals may not, however, decline jurisdiction in cases of license denials not subject to APA review procedures, which involve solely questions of law. Gravlin, *supra*. Also, in the licensing context, the courts have held that arbitrary refusal by a licensing board or abuse of discretion in refusal to grant a license is grounds for Mandamus. Schweitzer v Board of Forensic Polygraph Examiners, 77 Mich App 749; 259 NW2d 362 (1977).

Pursuant to MCL 600.1615; MSA 27A.1615, venue in Mandamus actions is properly laid in the county where the governmental unit exercises its power. MCR 3.305 (B)(1). If state agencies are involved, venue lies in any county where proper and in Ingham County. MCL 600.4401; MSA 27A.4401, MCR 3.305(B)(2). Jurisdiction may also be exercised by other courts as required or allowed by statute. Saginaw Valley Trotting Association v Michigan Racing Commissioner, 84 Mich App 564; 269 NW2d 676 (1978). Procedurally, Mandamus actions brought in the circuit courts are governed by MCR 3.305(C)-(E). Those brought in the court of appeals are governed by MCR 7.206.

Certiorari--Certiorari was formerly a writ issued to an inferior tribunal asking that the record of a particular case be delivered for review. It was used only to review questions of jurisdiction or errors of law. Certiorari has been largely superseded in Michigan by orders of Superintending Control. MCR 3.302(C). Certiorari may still issue in the administrative context, however, where an underlying statute specifies it as the prescribed form of judicial review. At least 20 such statutes remain. See the attachments for examples.

Habeas Corpus--Habeas Corpus is an extraordinary writ brought to inquire into the cause of detention of a person. Procedures are governed by MCR 3.303. In the administrative context, Habeas Corpus may be used to review administrative action involving wrongful detention. See Triplett v Deputy Warden, Jackson Prison, 142 Mich App 774; 371 NW2d 862 (1985). A writ of Habeas Corpus may be filed at any time, so it is particularly effective when the time for filing other forms of review has lapsed.

Jurisdiction is conferred on all courts of record except the probate court. MCL 600.4304; MSA 27A.4304, MCR 3.303(A)(1). Venue is proper in the county in which a prisoner is detained, MCR 3.303(A)(2) or in which a child resides or is found. MCR 3.303(M)(1).

Conclusion--The forms of action available to review administrative decisions in Michigan are many and complex. As a result of the number and overlapping scope of these mechanisms however, the public policy articulated in the state constitution that administrative action shall be reviewable has been largely achieved. Nonetheless, the system as it presently stands suffers considerably from confusion and needless uncertainty. These problems are primarily generated by the very interrelations and overlap among the myriad constitutional, statutory and court rule provisions that presently "guarantee" judicial review of administrative action.

If the public policy objective to be achieved is indeed to guarantee judicial review, then the question becomes whether this admirable objective could not be accomplished more artfully by consolidating, streamlining and simplifying the present system.

III. Amendments to the Administrative Procedures Act

The Commission recommends changes in chapters 1 and 6 of the Michigan APA. These changes broaden the applicability of the APA judicial review language as noted in the commentary which follows each chapter's proposed amendments. New language is indicated in UPPER CASE; deleted language is indicated by underlining:

CHAPTER 1. GENERAL PROVISIONS

24.203 **Definitions A to G.**

Sec. 3(1) "ADJUDICATION" MEANS THE AGENCY PROCESS FOR THE FORMULATION OF AN ORDER.

Renumber old 3(1) "Adoption of a rule" to 3(2).

Renumber old 3(2) "Agency" to 3(3).

Sec. 3(4) "AGENCY ACTION" MEANS THE WHOLE OR PART OF AN AGENCY RULE, ORDER, LICENSE, SANCTION, RELIEF, OR THE EQUIVALENT OR DENIAL THEREOF, OR THE FAILURE TO ACT.

Sec. 3(3)(5) "Contested case" means AN ADJUDICATION a proceeding, including ratemaking, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by STATUTE law to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal is taken to another agency, the hearing and the appeal are deemed to be a continuous proceeding as though before a single agency.

Renumber 3(4) "Committee" to 3(6).

Renumber 3(5) "Court" to 3(7).

Renumber 3(6) "Guideline" to 3(8).

24.205 **Definitions; L to P.**

Leave 5(1)-(3) as currently worded.

Sec.5(4) "ORDER" MEANS THE WHOLE OR PART OF A FINAL DISPOSITION, WHETHER AFFIRMATIVE, NEGATIVE, INJUNCTIVE, OR DECLARATORY IN FORM, OF AN AGENCY IN A MATTER OTHER THAN RULEMAKING, INCLUDING LICENSING AND RATEMAKING. THIS DEFINITION SHALL APPLY REGARDLESS OF THE DENOMINATION OR CHARACTERIZATION OF THE ACTION BY THE AGENCY.

Renumber the remaining subsections in this section as 5(5)-5(8).

CHAPTER 6. JUDICIAL REVIEW

24.301 Judicial review as of right or by leave.

Sec. 101. When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final AGENCY ACTION AS DEFINED IN SECTION 3(4), decision or order in a contested case whether such AGENCY ACTION decision or order is affirmative or negative in form, the AGENCY ACTION decision or order is subject to direct review by the courts as provided by law AND IN THE ABSENCE OF SUCH PROVISION, AS PROVIDED IN THIS CHAPTER. Exhaustion of administrative remedies does not require the filing of a motion or application for rehearing or reconsideration unless the agency rules require the filing before judicial review is sought. A preliminary, procedural or intermediate agency action or ruling is not immediately reviewable, except that the court may grant leave for review of such action if review of the agency's final decision or order would not provide an adequate remedy.

24.302 Judicial review; method.

Sec. 102. Judicial review of a final AGENCY ACTION decision or order in a contested case shall be by any applicable special statutory review proceeding in any court specified by statute and in accordance with the general court rules. In the absence or inadequacy thereof, judicial review shall be by a petition for review in accordance with sections 103 to 105.

24.303 Petition for review; filing; contents; copy of agency decision or order.

Sec. 103.(1) Except as provided in subsection (2), a petition for review shall be filed in the circuit court for the county where OF THE petitioner'S resides or has his or her principal place of business in this state, or FOR in the COUNTY IN WHICH THE PETITIONER RESIDES OR IN THE circuit court for Ingham county.

(2) As used in this subsection, "adoptee" means a child who is to be or who is adopted. In the case of an appeal from a final determination of the office of youth services within the department of social services regarding an adoption subsidy, a petition for review shall be filed:

(a) For an adoptee residing in this state, in the probate court for the county in which the petition for adoption was filed or in which the adoptee was found.

(b) For an adoptee not residing in this state, in the probate court for the county in which the petition for adoption was filed.

(3) A petition for review shall contain a concise statement of:

(a) The nature of the AGENCY ACTION proceedings as to which review is sought.

(b) The facts FACTUAL BACKGROUND OF THE MATTER on which venue is based.

(c) The FACTUAL AND LEGAL grounds on which relief is sought.

(d) The relief sought.

(4) The petitioner shall attach to the petition, as an exhibit, a copy of the agency ACTION decision or order of which review is sought. IF THE AGENCY ACTION WAS NOT REDUCED TO WRITTEN FORM, THE PETITIONER SHALL ATTACH TO THE PETITION, AS AN EXHIBIT, AN AFFIDAVIT IN ACCORDANCE WITH THE MICHIGAN COURT RULES DESCRIBING THE AGENCY ACTION OF WHICH REVIEW IS SOUGHT.

24.304 Petition for review; filing, time; stay; record; scope.

Sec. 104.(1) A petition shall be filed in the court within 60 days after the date of mailing notice of the final AGENCY ACTION decision or order of the agency, or if a rehearing before the agency is timely requested, within 60 days after delivery or mailing notice of the decision or order thereon. IF THE AGENCY ACTION IS THE FAILURE TO ACT, THE PETITION SHALL BE FILED IN THE COURT WITHIN 180 DAYS AFTER THE DATE UPON WHICH THE DUTY TO ACT AROSE. The filing of the petition does not stay enforcement of the agency action but the agency may grant, or the court may order, a stay upon appropriate terms.

(2) Within 60 days after service of the petition, or within such further time as the court allows, the agency shall transmit to the court the original or certified copy of the entire record of the AGENCY ACTION proceedings, unless parties to the proceedings for judicial review stipulate that the record be

shortened. IF THE AGENCY ACTION WAS NOT CONDUCTED AS A HEARING ON THE RECORD, THE AGENCY SHALL TRANSMIT TO THE COURT AN ORIGINAL OR CERTIFIED COPY OF ITS ENTIRE FILE RELEVANT TO THE PETITION, UNLESS THE PARTIES TO THE PROCEEDINGS FOR JUDICIAL REVIEW STIPULATE THAT THE RECORD MAY BE SHORTENED. A party unreasonably refusing to so stipulate may be taxed by the court for the additional costs. The court may permit subsequent corrections to the record.

(3) The review shall be conducted by the court without a jury and shall be confined to the record. In a case of alleged irregularity in procedure before the agency, OR IN REVIEW OF AGENCY FAILURE TO ACT, not shown in the record, proof thereof may be taken by the court. The court, on request, shall hear oral arguments and receive written briefs.

24.305 Inadequate record; additional evidence, modification of findings, decision order.

Sec. 105. IN REVIEW OF AGENCY ACTION CONDUCTED UNDER CHAPTER 4, if timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that an inadequate record was made at the hearing before the agency or that the additional evidence is material, and that there are good reasons for failing to record or present it in the proceeding before the agency, the court shall order the taking of additional evidence before the agency on such conditions as the court deems proper. The agency may modify its findings, decision or order because of the additional evidence and shall file with the court the additional evidence and any new findings, decision or order, which shall become part of the record.

24.306 Grounds for reversals.

Sec. 106.(1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside AGENCY ACTION a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the AGENCY ACTION decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency, OR SHORT OF STATUTORY RIGHT.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) ARBITRARY, CAPRICIOUS OR CLEARLY AN ABUSE OR UNWARRANTED EXERCISE OF DISCRETION Not supported by competent, material and substantial evidence on the whole record.

(e) AFFECTED BY OTHER SUBSTANTIAL AND MATERIAL ERROR OF LAW Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) IN REVIEW OF AGENCY ACTION CONDUCTED UNDER CHAPTER 4, AND IN REVIEW OF ALL OTHER AGENCY ACTION WHICH IS JUDICIAL OR QUASI-JUDICIAL IN NATURE AND IN WHICH A HEARING IS REQUIRED, Affected by other substantial and material error of law NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD. THE COURT SHALL APPLY THE RULES OF EVIDENCE IN THE SAME MANNER AS APPLIED IN THE AGENCY UNDER SECTION 75 AND SHALL NOT OVERTURN AN AGENCY DECISION SOLELY BECAUSE THE PREPONDERANCE OF THE EVIDENCE IS NOT WHOLLY CONSTITUTED OF EVIDENCE ADMISSIBLE UNDER THE MICHIGAN RULES OF EVIDENCE.

(2) The court, as appropriate, may affirm, reverse or modify the AGENCY ACTION decision or order or remand the case for further proceedings. THE COURT SHALL AUTHORIZE ONLY SUCH ACTIONS AS ARE INCLUDED WITHIN THE POWERS GRANTED TO THE AGENCY IN THE UNDERLYING STATUTE OR STATUTES ON WHICH THE AGENCY'S ACTION WAS BASED.

Commentary:

Chapter 1--Four changes are made in the definitional provisions in order to implement a new approach to judicial review. The current act provides only for judicial review of contested cases. All other forms of agency adjudication, which are known as informal adjudication in the federal system, are outside the scope of the APA, and a person aggrieved by any such action must rely on an underlying statute or attempt to utilize the RJA or other "generic" review methods. The purpose of the changes is to simplify the process and make it easier to use. To do so, the intent is to make the Administrative Procedures Act the vehicle for review insofar as possible.

(1) A fundamental change redefines "contested case." The current definition makes all situations in which an evidentiary hearing is required by "law" contested cases. This has the effect of converting nearly all state agency due process hearings into contested cases, a result probably unintended in the original passage of the APA. The current structure adds needless formality to many situations which call for flexibility.

The new definition limits the application of the contested case provisions to those situations in which it is the underlying statute that calls for the evidentiary hearing. Any agency action falling within the definition of a contested case remains subject to review in the same manner as is currently the case under the APA.

In order to simplify the judicial review structure in Michigan, three new definitions have been added--"agency action," "adjudication," and "order."

(2) Agency action is the broadest of the definitions, encompassing the outcome of all types of administrative activity. Agency action is made subject to judicial review through the amendments to the judicial review chapter.

(3) Orders are final dispositions in matters other than rulemaking.

(4) Adjudication is the process for the formulation of an order.

Chapter 6--The amendments in the judicial review chapter make all agency action subject to review under the APA, not just contested cases as in the current act. This includes informal adjudication--the process by which an agency issues an order where there is no requirement of an evidentiary hearing in the underlying statute. Thus, orders based on informal adjudication, such as denials of initial licenses, can now be reviewed under the APA provisions, even if the underlying statute makes no provision for judicial review.

Preenforcement review of rules will remain subject to the current provisions of sections 63 and 64 of the APA.

In all situations where the underlying statute does not specify another method, time, or court, the APA will now place review in the circuit court (with the three options for venue) by petition for review. The time allowed to seek review will remain 60 days after the date of mailing of an order. For review of the failure to act, the time limit will be 180 days after the day the duty to act arose.

The scope of judicial review in the amendments changes depending on the nature of the underlying agency action. While the current standards for the scope of review are all retained (albeit in somewhat different order), the substantial evidence test is used only in those situations in which the action is judicial or quasi-judicial and a hearing is required, which is consistent with the constitutional standard in Article VI, Section 28 of the Constitution of 1963. When due process requires a hearing, even though the underlying statute does not provide for an evidentiary hearing, the substantial evidence test will also apply.

IV. Amendments to the Revised Judicature Act

Currently, the Revised Judicature Act (RJA) serves as the general catch-all judicial review provision in regard to administrative appeals. As noted earlier it has two major failings--it applies only to state agencies with rulemaking powers, which eliminates any agency which does not have rulemaking authority, and it does not apply to local agencies.

The changes proposed in the APA judicial review chapter solve some but not all of the problems. Broadening the coverage of the APA to cover all "agency action" will simplify the review process, since some matters will now be included for APA review which were formerly included within the RJA and other court rules. Still, the APA does not apply to some state agencies, and the local administrative agencies are totally unaffected by the APA.

The changes proposed are intended to guarantee that all judicial and quasi-judicial decisions are indeed subject to judicial review. Accordingly, the two major limitations on the applicability of the RJA are removed. It will now apply to any state agency that is not covered by the APA, and it will apply to all local administrative agency decisions meeting the definition contained in the Michigan Constitution.

In addition, the provisions in the RJA contain no scope of review. In order to remove doubt as to the extent of review and the powers of the reviewing court and to achieve consistency, a sentence has been added to make the scope of review consistent with the proposed scope of review for agency action under the APA.

The changes are as follows. New language is indicated in UPPER CASE; deleted language is indicated by underlining:

600.631 Appeals from state agency decisions

Sec. 631. An appeal shall lie from any FINAL order, decision, FINDING, RULING, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court FOR of the county of which the appellant'S PRINCIPAL PLACE OF BUSINESS IN THIS STATE OR IN WHICH THE APPELLANT RESIDES is a resident or the circuit court FOR of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. SUCH APPEALS SHALL BE IN THE FORM OF A PETITION FOR REVIEW AND SHALL BE FILED WITHIN 60 DAYS AFTER THE DAY IN WHICH NOTICE WAS MAILED OR AS OTHERWISE PROVIDED IN THE ORDER, DECISION, FINDING,

RULING, OR OPINION. Such appeals shall be made in accordance with the rules of the supreme court. IN MAKING ITS REVIEW, THE COURT SHALL APPLY THE PROVISIONS FOUND IN SECTION 106 OF THE ADMINISTRATIVE PROCEDURES ACT, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTION 24.306 OF THE MICHIGAN COMPILED LAWS.

600.632 APPEALS FROM LOCAL AGENCY DECISIONS

Sec. 632. AN APPEAL SHALL LIE FROM ANY FINAL ORDER, DECISION, FINDING, RULING, OR OPINION OF ANY LOCAL BOARD, COMMISSION, OR AGENCY FROM WHICH AN APPEAL OR OTHER JUDICIAL REVIEW HAS NOT OTHERWISE BEEN PROVIDED FOR BY LAW TO THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE BOARD, COMMISSION, OR AGENCY IS LOCATED, WHICH COURT SHALL HAVE AND EXERCISE JURISDICTION WITH RESPECT THERETO AS IN NONJURY CASES. SUCH APPEALS SHALL BE IN THE FORM OF A PETITION FOR REVIEW AND SHALL BE FILED WITHIN 60 DAYS AFTER THE DAY IN WHICH NOTICE WAS MAILED OR AS OTHERWISE PROVIDED IN THE ORDER, DECISION, FINDING, RULING, OR OPINION. SUCH APPEALS SHALL BE MADE IN ACCORDANCE WITH THE RULES OF THE SUPREME COURT. IN MAKING ITS REVIEW, THE COURT SHALL APPLY THE PROVISIONS FOUND IN SECTION 106 OF THE ADMINISTRATIVE PROCEDURES ACT, BEING SECTION 24.306 OF THE MICHIGAN COMPILED LAWS.

Commentary:

State agency administrative decisions--Seven changes are made in the current provisions of Section 631 of the RJA, which relates to judicial review of state agency administrative decisions.

First, the word "final" is inserted as a modifier of the types of agency action which are subject to review. This makes the RJA and the Administrative Procedures Act consistent, since the APA review is only available for final agency action. Also, as a general matter of law, judicial review is not available for preliminary agency action.

Second, the words "finding" and "ruling" are added to the description of the types of action which are subject to review. This makes the RJA consistent

with Article 6, Section 28 of the Constitution, which guarantees review of all final decisions, findings, rulings, and orders.

Third, the amendment strikes the language of the current version which limits the application of the RJA review provision to review of those boards, commissions, and agencies with rulemaking authority. There seems to be no rational basis for the limitation.

Fourth, the venue provisions are amended to be consistent with the options in the Administrative Procedures Act. The RJA currently gives only two options--the appellant's place of residence or Ingham county. The APA allows the venue to lie in the county in which a petitioner has his or her principal place of business. Since the three options are retained in the APA, the choice in the RJA was expanded to keep them consistent. Fifth, the form of review is denominated a "petition for review," making it consistent with the APA form of review. The Supreme Court can then decide if it wants these petitions to have the same content and form as the APA now requires.

Sixth, the time frame for the filing of the petition for review is set at 60 days, again to be consistent with that set forth in the APA. The time runs from the time of the mailing of the order or decision involved, as it does with the APA.

Seventh, the scope of review has been made consistent with the scope of review in the proposed revised APA and the changes in the judicial review provisions of the APA contained in the previous section of this report.

Local agency administrative decisions--A new section 632 is added to the Revised Judicature Act. The law currently does not provide any implementation of the provisions of Article 6, Section 28 of the Constitution as it relates to the judicial or quasi-judicial decisions of local administrative officers or agencies. This section corrects that defect.

The language selected parallels the language of the RJA provision for review of state agencies except that the venue described is limited to the circuit court of the county in which the subject local agency is located. Thus, these appeals will not be taken to the Ingham circuit court, nor will the venue be based on either the appellant's place of residence or business.

As with judicial review of state agency action, the RJA provision will not apply if an underlying statute has specific judicial review provisions.

V. Recommended Standard Language for Underlying Statutes

State Agency Action

The Commission has already recommended that the review of administrative agency action be as simple and uniform as possible and that the Administrative Procedures Act serve as the vehicle whenever possible. It strongly recommends that the Legislature depart from the provisions of the APA only where public policy clearly overrides the virtues of uniformity and simplicity.

The easiest way to secure the uniformity and simplicity desired is to invoke the APA. As proposed, the APA now provides a desirable review vehicle, since it now covers a broad spectrum of agency action. Accordingly, we recommend that the following language be used in any statute which authorizes a state agency to undertake activity meeting the definition of agency action:

SEC. XXX. ANY PERSON AGGRIEVED BY ANY FINAL ORDER, DECISION, FINDING, RULING, OPINION, RULE, ACTION OR INACTION PROVIDED FOR UNDER THE AUTHORITY OF THIS ACT MAY SEEK JUDICIAL REVIEW THEREOF IN THE MANNER PROVIDED FOR IN CHAPTER 6 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.301 TO 24.306.

Commentary:

Existing legislation offers a nearly incomprehensible jumble of judicial review measures. Sometimes no review is provided for and, at other times, the review measures provided in the statute are not well-conceived. An example is a number of current statutes which use the APA as the judicial review vehicle for agency action clearly not covered by the present act.

In order to avoid further complications, the APA, as amended by this proposal, should serve as the vehicle, whenever possible. Thus, review should be by petition, filed within 60 days after the date of mailing of notice or otherwise making notice available, in the circuit court, with the three venue options, and under the standardized scope of review, including the application of the substantial evidence test.

This review provision should be considered even if the APA does not apply to the actual procedures undertaken within the agency itself. Thus, the Legislature should consider applying the APA review provisions, even if there are policy reasons to exempt the actions of the agency itself from APA coverage. Applicability of the APA to the underlying agency action and to the judicial review of that action should be separate consideration.

Local Agency Action

We recommend that the following language be used regarding judicial review of local administrative agency decisions:

SEC. XXX. ANY PERSON AGGRIEVED BY ANY FINAL ORDER, DECISION, FINDING, RULING, OPINION, RULE, ACTION OR INACTION PROVIDED FOR UNDER THE AUTHORITY OF THIS ACT MAY SEEK JUDICIAL REVIEW THEREOF IN THE MANNER PROVIDED FOR IN THE REVISED JUDICATURE ACT, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTION 600.632.

Commentary:

The APA could be considered for local agency administrative action, but often the venue choices of the APA are too broad, since there is no reason to involve the Ingham circuit court in the decisions as there is when dealing with state agency decisions. However, the goal should still be to keep the review process as simple and unified as possible. Thus, the language should closely parallel the RJA local agency appeal provisions.

Since the APA and the RJA have been made more compatible by these recommendations, the use of the RJA here does not derogate the uniformity or simplicity objectives of the Commission. Thus, we recommend that the Legislature apply the same premises to its consideration of judicial review of local agency action as we recommended in regard to state agency action. Unless there are strong public policy reasons, the method of review should be a petition for review, the time for review should be kept at 60 days, the court with jurisdiction should be the circuit court, venue should be in the circuit court for the county in which the local administrative agency is located, and the scope of review should be that of the RJA.

Attachment 1--Master List
Michigan Judicial Review Statutes

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
3.751 460/1982	Informal Adjudication (Inf. Adj.)	Petition	Unstated	Unstated	Low Level Radioactive Waste	Interstate
15.240 442/1976	Inf. Adj.	Action	Circuit ¹	De Novo	Freedom of Information Act	State/Local
18.358 223/1976	Contested Case (Cont. Case) ²	Leave to Appeal	Appeals	Unstated	Crime Victim Compensation	State
29.48 202/1970	Inf. Adj.	Appeal	Circuit ³	Unstated	Explosives	State
32.1068 523/1980	Inf. Adj. ⁴	Appeal	Appeals	Unstated	Military Code of Justice	State
35.23 214/1899	Inf. Adj.	Certiorari (Certior.)	Circuit ⁵	De Novo	Soldier's Relief	Local
35.355 263/1951	Inf. Adj.	Petition ⁶	Circuit ⁷	Unstated	Veterans-Public Employee	State/Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
35.404 205/1897	Inf. Adj. ⁸	Mandamus ⁹	Unstated	Unstated	Veterans' - Preference in Employment	State/Local
35.1027 & .1027a 370/1974	Inf. Adj.	Appeal	Claims	De Novo ¹⁰	Vietnam Veterans Era Bonus	State
37.2606 453/1976	Cont. Case ¹¹	Appeal	Circuit ¹²	De Novo	Civil Rights	State
38.514 78/1935	Inf. Adj.	Appeal	Circuit ¹³	Unstated ¹⁴	Civil Service- Police & Fire	Local
38.555 345/1937	Inf. Adj.	Certior. ¹⁵	Unstated	Unstated	Police & Fire Pension	Local
45.505 293/1966	Inf. Adj.	Petition	Appeals	Requirements of Law	Charter County Apportionment	Local
46.406 261/1966	Inf. Adj.	Petition	Appeals	Requirements of Law	County Board Apportionment	Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
51.360 298/1966	Inf. Adj.	Certior. 16	Unstated	Unstated	Sheriff Civil Service	Local
51.362 298/1966	Inf. Adj.	Certior.	Circuit ¹⁷	Unstated ¹⁸	Removal of Sheriff's Employees	Local
117.25 279/1909	Inf. Adj.	Mandamus	Circuit ¹⁹	Unstated	Home Rule City Clerk	Local
123.506 170/1933	Inf. Adj.	Mandamus/ Certior. ²⁰	Supreme/ or Circuit	Unstated	Bidders on Public Works	State/Local
123.783 185/1957	Inf. Adj.	Certior.	Unstated	Unstated ²¹	Public Works Condemnation	Local
123.1018 191/1968	Inf. Adj.	APA	APA	APA	Subdivision Boundaries	State
124.407 204/1967	Inf. Adj.	Appeal	Proper ²²	Abuse of Discretion Error of Law	Metropolitan Transit	Local
125.223 183/1943	Inf. Adj.	Appeal	Circuit	Record ²³	County Rural Zoning	Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
125.293a 184/1943	Inf. Adj.	Appeal	Circuit	Record ²⁴	Township Rural Zoning	Local
125.542 61/1969	Inf. Adj.	Petition ²⁵	Circuit ²⁶	Unstated	Dangerous Buildings	Local
125.585 207/1921	Inf. Adj.	Appeal	Circuit	Record ²⁷	City/Village Zoning	Local
125.590 207/1921	Inf. Adj.	Certior. ²⁸	Circuit	De Novo ²⁹	City/Village Nonconformity	Local
125.704 344/1968	Inf. Adj.	Action ³⁰	Unstated	De Novo	Housing Facilities	Local
125.1518 230/1972	Inf. Adj.	Claim of Appeal ³¹	Appeals	Unstated	Construction Code	State/Local
125.1518 230/1972	Inf. Adj.	Petition ³²	Ingham Circuit	Unstated	Construction Code	State/Local
125.2340 96/1987	Cont. Case	APA ³³	Circuit	APA	Mobile Homes	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
132.3 469/1982	Inf. Adj.	APA ³⁴	Circuit	APA	Municipal Finance	State
141.694 284/1964	Inf. Adj.	Action	Circuit ³⁵	Unstated	City Income Tax	State
168.479 116/1954	Inf. Adj.	Mandamus ³⁶	Supreme	Unstated	State Board of Canvassers Referenda	State
168.521 116/1954	Inf. Adj.	Mandamus	Unstated	Unstated	Illegal or Fraudulent Voter Registration	Local
168.552 116/1954	Inf. Adj.	Appeal ³⁷	Supreme	Unstated	State Board of Canvassers Petitions	State
168.561 116/1954	Inf. Adj.	Appeal	Circuit	De Novo	County Election Commission Designation	Local
168.561 116/1954	Inf. Adj.	Appeal	Ingham Circuit	De Novo	State Board of Canvassers Designation	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
168.696 116/1954 ³⁸	Inf. Adj.	Appeal	Circuit	De Novo	County Election Commission Ballots	Local
168.696 116/1954	Inf. Adj.	Appeal	Ingham Circuit	De Novo	State Board of Canvassers Ballots	State
168.877 116/1954	Inf. Adj.	Certior.	Circuit	Error	State Board of Canvassers Recount	State
168.878 116/1954	Inf. Adj.	Mandamus ³⁹	Ingham Circuit	Unstated	Recounts	State
168.952 116/1954	Inf. Adj.	Appeal	Circuit	Unstated	Recalls	Local
205.22 122/1941	Inf. Adj.	Appeal ⁴⁰	Court of Claims	Unstated ⁴¹	Tax Appeals	State
205.753 186/1973	Inf. Adj.	Appeal ⁴²	Appeals	Unstated ⁴³	Property Taxes	State
207.223 119/1980	Inf. Adj.	Action ⁴⁴	Court of Claims	Unstated	Motor Carrier Fuel Tax	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
207.614 438/1976	Inf. Adj.	Appeal ⁴⁵	Circuit	Unstated	Commercial Housing Facility	State
213.329 227/1972	Inf. Adj.	Unstated	Circuit	Unstated	Relocation Assistance	State
247.466 59/1915	Inf. Adj.	Certior.	Circuit	Lack of Jurisdiction	Highway Improvement	Local
252.323 106/1972	Cont. Case	Petition	Circuit	APA	Highway Advertising	State
254.229 99/1954	Inf. Adj.	Mandamus ⁴⁶	Unstated	Unstated	International Bridge Authority	State
257.250 300/1949	Inf. Adj.	Appeal	Circuit	Fact/Law ⁴⁷	Vehicle Dealer License	State
257.323 300/1949	Inf. Adj.	Petition	Circuit	De Novo ⁴⁸	Drivers Licenses	State
257.323a 300/1949	Inf. Adj.	Petition	Circuit ⁴⁹	De Novo	Suspension of Drivers License	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
257.625f 300/1949	Inf. Adj.	Petition	Circuit	De Novo ⁵⁰	Breath Test Refusal	State
257.1322 300/1974	Inf. Adj. ⁵¹	Unstated	Unstated	Unstated	Motor Vehicle Service & Repair	State
259.202 327/1945	Inf. Adj. ⁵²	Appeal ⁵³	Ingham Circuit	APA/ Constitution	Aeronautics Code	State
259.460 & .461 23/ES1950	Inf. Adj.	Petition ⁵⁴	Circuit ⁵⁵	Error ⁵⁶	Airport Zoning	Local
259.489 259/1959	Action ⁵⁷	Appeal	Ingham	Unstated ⁵⁸	Tall Structures	State
259.672 257/1955	Inf. Adj.	Petition ⁵⁹	Circuit	APA/ Constitution	Aircraft Financial Responsibility	State
279.237 205/1967	Inf. Adj.	Superintending Control (Super. Control) ⁶⁰	Unstated	Unstated	Irrigation District	Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
280.88 40/1956	Inf. Adj.	Super. ⁶¹ Control	Unstated ⁶²	Unstated	Drain Code	Local
280.161 40/1956	Inf. Adj.	Certior. ⁶³	Circuit	De Novo	Drains	Local
280.424 40/1956	Inf. Adj.	Certior.	Unstated	Unstated	Drain Obstruction Assessment	Local
280.483 40/1956	Inf. Adj.	Certior. ⁶⁴	Unstated	Unstated	Intra-County Drains	Local
280.489a 135/1979	Inf. Adj.	Action ⁶⁵	Circuit ⁶⁶	Unstated	Special Drain Assessment	Local
280.536 40/1956	Inf. Adj.	Certior. ⁶⁷	Unstated	Unstated	Inter-County Drain Improvement	Local
280.581 40/1956	Inf. Adj.	Certior. ⁶⁸	Unstated	Unstated	Water Management District	Local
281.306 20/1964	Inf. Adj.	Super. ⁶⁹ Control	Circuit ⁷⁰	Law only	Surplus Waters	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
281.582 244/1986	Cont. Case	Petition	Circuit	APA	Charter & Livery Boats	State
281.717 203/1979	Cont. Case	Petition	Circuit	APA	Wetlands	State
281.773 231/1970	Cont. Case	Petition	Circuit	APA	Natural River Act	State
281.961 346/1972	Cont. Case	Petition	Circuit	APA	Inland Lakes & Streams	State
282.113 347/1972	Inf. Adj.	Petition ⁷¹	Circuit	APA	Erosion & Sediment Control	State
286.213 189/1931	Inf. Adj.	Appeal	Circuit ⁷²	De Novo	Nursery Licenses	State
286.225 189/1931	Rule or Order ⁷⁴	Appeal	Circuit	De Novo ⁷³	Insect Pests & Diseases	State
287.124 284/1937	Inf. Adj.	Certior. ⁷⁵	Circuit ⁷⁶	Unstated	Livestock Dealers	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
287.581 280/1965	Inf. Adj.	Certior. ⁷⁷	Circuit ⁷⁸	Unstated	Slaughter House	State
288.54 212/1935	Inf. Adj.	Certior. ⁷⁹	Ingham	De Novo	Milk Fat Testers	State
288.113 222/1913	Inf. Adj.	Certior. ⁸⁰	Circuit ⁸¹	De Novo	Manufacturing Milk Act	State
289.590 228/1952	Inf. Adj.	Certior. ⁸²	Circuit ⁸³	Unstated	Meat Standards	State
290.461a 158/1964	Inf. Adj.	Certior. ⁸⁴	Circuit ⁸⁵	Unstated	Wholesale Potato Dealers	State
290.705 344/1972	Inf. Adj.	Petition	Appeals ⁸⁶	Substantial Evidence	Agricultural Marketing	State
290.723 344/1972	Inf. Adj.	Unstated	Appeals	Limited ⁸⁷	Agricultural Marketing	State
299.310 366/1974	Inf. Adj.	Petition	Circuit ⁸⁸	APA	Resource Recovery	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
299.311 366/1974	Cont. Case ⁸⁹	Petition ⁹⁰	Circuit	APA	Resource Recovery	State
299.417 209/1987	Cont. Case	Petition	Circuit	APA	Solid Waste	State
319.17 61/1939	Inf. Adj.	Unstated	Ingham	Unstated	Oil, Gas & Minerals	State
319.222 315/1969	Action	Unstated ⁹¹	Unstated	Unstated	Mineral Wells	State
319.386 197/1959	Action	Unstated	Ingham	Unstated	Gas & Oil Utilization	State
320.313b 199/1931	Inf. Adj.	Petition	Circuit ⁹²	Evidentiary ⁹³	Commercial Forest	State
322.402d 326/1913	Inf. Adj.	Appeal	Circuit ⁹⁴	Unstated ⁹⁵	State Lands	State
322.706 247/1955	Inf. Adj.	Petition	Circuit	De Novo ⁹⁶	State Lands	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
323.7 245/1929	Cont. Case	Petition ⁹⁷	Circuit ⁹⁸	APA	Waste Discharge Permits	State
323.8(3) 245/1929	Cont. Case	Petition ⁹⁹	Circuit	APA	Water Resources	State
323.8(3) 245/1929	Cont. Case	Petition ¹⁰⁰	Circuit	APA	Pollution Permits	State
323.258 143/1959	Cont. Case	Petition	Circuit	APA	Mining	State
323.314 253/1964	Inf. Adj.	Petition ¹⁰¹	Circuit	APA	Local Rivers	State
323.357 222/1966	Inf. Adj.	Petition ¹⁰²	Circuit	APA	Pollution Control Facilities	State
330.1146 258/1974	Inf. Adj.	Appeal	Circuit ¹⁰³	Law/Competent Evidence ¹⁰⁴	Mental Hospital Licensure	State
330.1531 258/1974	Inf. Adj.	Petition	Court ¹⁰⁵	Unstated	Mental Health Admission Status	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
330.1836 258/1974	Cont. Case ¹⁰⁶	Appeal	Probate	Unstated	Financial Responsibility for Mentally III	State
333.1205 368/1978	Cont. Case ¹⁰⁷	Petition	Circuit	APA	Public Health Code-General	State
333.2263 368/1978	Cont. Case	Petition	Circuit	APA	Public Health Rule Violation Citations	State
333.2462 368/1978	Inf. Adj.	Petition	Circuit ¹⁰⁸	Unstated	Local Public Health Rule Violation Citations	Local
333.2486 368/1978	Inf. Adj.	Petition	Circuit	APA ¹⁰⁹	Local Health Plans	State
333.6243 368/1978	Cont. Case	Petition	Circuit	APA	Substance Abuse Service License	State
333.7314 368/1978	Cont. Case ¹¹⁰	Petition	Circuit	APA	Controlled Substance License	State

<u>MCL No. and Public Act No. of Original or Amending Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
333.7533 368/1978	Cont. Case	Petition	Circuit	APA	Controlled Substance Matters ¹¹¹	State
333.12416 368/1978	Cont. Case	Petition	Circuit	APA	Agricultural Labor Camp Licensure	State
333.12508 368/1978	Cont. Case	Petition	Circuit	APA	Campground License Application	State
333.12512 368/1978	Cont. Case	Petition	Circuit	APA	Campground License Revocation	State
333.13739 203/1987	Inf. Adj. ¹¹²	Injunction	Unstated	Unstated	Low Level Radioactive Waste	State
333.16226 174/1986	Cont. Case ¹¹³	Unstated	Unstated	Unstated	Health Profession Violation	State
333.22231 332/1988	Inf. Adj.	Petition ¹¹⁴	Circuit ¹¹⁵	APA	Certificate of Need	State
336.18 257/1972	Inf. Adj.	Petition	Circuit ¹¹⁶	APA	Air Pollution Abatement Agreement	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
336.23 257/1972	Action ¹¹⁷	Petition	Circuit	De Novo	Air Pollution Orders & Rules	State
338.46 294/1978	Inf. Adj. ¹¹⁸	Action	Circuit	De Novo	Good Moral Character	State
338.658 309/1941	Inf. Adj.	Appeal	Unstated ¹¹⁹	Unlawful & Unreasonable	Barber License	State
338.1724 295/1972	Inf. Adj.	Unstated ¹²⁰	Unstated	Unstated	Polygraph Examiners License	State
338.3309 135/1986	Inf. Adj.	Petition	Circuit ¹²¹	Unstated ¹²²	Asbestos Abatement	State
399.211 169/1970	Inf. Adj.	Unstated ¹²³	Unstated	Unstated	Historic Districts	Local
400.37 280/1939	Inf. Adj.	Petition ¹²⁴	Circuit ¹²⁵	Questions of Law	Social Welfare Assistance	Local
400.111a &.111c 321/1980	Cont. Case	APA ¹²⁶	APA	APA	Payment to Medical Care Provider	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
400.115f 292/1980	Cont. Case	APA	Probate ¹²⁷	APA	Adoption Subsidies	State
400.275 169/1975	Inf. Adj. ¹²⁸	Unstated	Unstated	Unstated	Charitable Solicitation	State
400.725 218/1979	Cont. Case	Appeal ¹²⁹	Circuit	De Novo	Adult Foster Care Facilities	State
408.481 602/1978	Cont. Case	APA	Circuit ¹³⁰	APA	Wages & Fringe Benefits	State
408.765 290/1965	Inf. Adj. ¹³¹	None	None	None	Boiler Inspector License	State
408.1031 154/1974	Inf. Adj.	Mandamus	Circuit ¹³²	Unstated	OSHA Imminent Danger	State
408.1044 154/1974	Cont. Case ¹³³	Petition	Circuit	APA	OSHA Citation	State
408.1065 154/1974	Cont. Case	Petition	Circuit ¹³⁴	APA	Retaliatory Discharge	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
418.861 317/1969	Inf. Adj.	MCR ¹³⁵	Appeals	Law/Fraud	Worker's Disability (Appeal Board)	State
418.861a 103/1985	Inf. Adj.	MCR ¹³⁶	Appeals	Law/Fraud	Worker's Disability (Appellate Commission)	State
421.38 1/ES1936	Inf. Adj.	Review ¹³⁷	Circuit	Law/ Substantial Evidence	Employment Security	State
423.23 176/1939	Cont. Case	Petition ¹³⁸	Appeals	Substantial Evidence	Unfair Labor	State
423.216 336/1947	Cont. Case	Petition ¹³⁹	Appeals	Substantial Evidence	Public Employment Unfair Labor Practices	State
423.242 312/1969	Inf. Adj.	Unstated ¹⁴⁰	Circuit	Jurisdiction/ Substantial Evidence/ Fraud	Police & Fire Labor Disputes	Local/State
423.283 17/1980	Inf. Adj.	Unstated ¹⁴¹	Circuit	Jurisdiction/ Substantial Evidence/ Fraud	State Police Trooper Labor Disputes	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
425.1101 303/1982	Cont. Case ¹⁴²	Unstated	Unstated	Unstated	Mine Reclamation	State
431.61-.71 327/1980	Inf. Adj.	Unstated ¹⁴³	Circuit	Unstated	Racing	State
432.23 239/1972	Inf. Adj. ¹⁴⁴	Unstated	Unstated	Unstated	Lottery	State
432.116 382/1972	Cont. Case ¹⁴⁵	Unstated	Unstated	Unstated	Bingo Licenses	State
436.20 8/ES1933	Inf. Adj.	Certior.	Circuit ¹⁴⁶	Unstated	Liquor Licenses	State
436.40 209/1980	Rulemaking	Certior.	Unstated	Limited ¹⁴⁷	Beer Taxes	State
445.335 184/1913	Inf. Adj.	Certior.	Unstated	Unstated	Farm Product Sale	State
445.1608 135/1977	Cont. Case ¹⁴⁸	Unstated	Unstated	Unstated	Mortgage Lenders Practices	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
450.1151 284/1972	Inf. Adj. 149	Petition	Circuit	APA	Business Corporations	State
450.2151 162/1982	Inf. Adj. 150	Petition	Circuit	APA	Non-profit Corporations	State
451.4 13/1935	Inf. Adj.	Unstated ¹⁵¹	Unstated	Unstated	Corporations & Securities	State
451.316 89/1933	Inf. Adj.	Unstated ¹⁵²	Circuit ¹⁵³	Unstated	Protective Committees	State
451.811 265/1964	Cont. Case	Petition	Ingham Circuit	Substantial Evidence	Uniform Securities Act	State
456.540 251/1968	Cont. Case ¹⁵⁴	Petition	Circuit	APA	Cemetery Regulation	State
460.4 300/1972	Inf. Adj. 155	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.59 7/1987	Inf. Adj. 156	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
460.117 299/1972	Inf. Adj.	Claim	Court of Claims	Law and Fact	Cost of Utility Regulation	State
460.205 246/1921	Inf. Adj. 157	Appeal	Appeals/ Ingham	Unlawful/ Unreasonable	Public Service Commission	State
460.301 319/1977	Inf. Adj. 158	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.506 11/1987	Inf. Adj. 159	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.557 8/1987	Inf. Adj. 160	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
462.26 300/1909	Inf. Adj. 161	Appeal	Appeals/162 Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
479.20 9/1987	Inf. Adj. 163	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
483.110 6/1987	Inf. Adj. 164	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable Comm.	Public Service	State
484.114 5/1987	Inf. Adj. 165	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable Commission	Public Service	State
486.570 19/1967	Inf. Adj.	Action	Ingham	Unlawful/ Unreasonable	Water Companies	State
487.341 319/1969	Cont. Case	Petition	Circuit	APA	Banking Code	State
487.912 275/1986	Cont. Case	Petition ¹⁶⁶	Circuit	APA	Sale of Checks	State
487.1201 89/1986	Inf. Adj.	Unstated ¹⁶⁷	Unstated	Unstated	BIDCO	State
487.2060 161/1988	Cont. Case	Petition ¹⁶⁸	Circuit	APA	Consumer Financial Services License	State
490.6b 278/1986	Inf. Adj.	Appeal	Circuit ¹⁶⁹	Unstated	Credit Unions	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
492.109 27/ES1950	Cont. Case ¹⁷⁰	Petition	Circuit	APA	Motor Vehicle Sales Finance	State
493.105 & .106 379/1984	Inf. Adj. ¹⁷¹	Unstated	Unstated	Unstated	Credit Cards	State
500.244 218/1956	Inf. Adj.	Petition ¹⁷²	Circuit ¹⁷³	De Novo ¹⁷⁴	Insurance Code	State
500.1244 218/1956	Cont. Case ¹⁷⁵	Unstated	Unstated	Unstated	Insurance Agent Licensure	State
500.1379 218/1956	Inf. Adj. ¹⁷⁶	Petition	Circuit	De Novo	Insurance Holding Companies Licensure	State
500.2041 218/1956	Cont. Case	Petition	Circuit	De Novo ¹⁷⁷	Insurance Fraud	State
500.2405 218/1956	Inf. Adj. ¹⁷⁸	Petition	Ingham	De Novo ¹⁷⁹	Insurance Fraud	State
500.2482 218/1956	Inf. Adj. ¹⁸⁰	Petition	Circuit	De Novo	Casualty Insurance Rates	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
500.2672 218/1956	Inf. Adj. 181	Petition	Circuit	De Novo	Fire & Inland Marine Rates	State
500.2943 218/1956	Cont. Case 182	Unstated	Unstated	Unstated	Basic Property Insurance	State
500.5252 292/1982	Cont. Case	Petition	Circuit	APA	Certificate of Exemption	State
500.7711 194/1982	Inf. Adj.	Unstated	Unstated 183	Unstated	Life and Health Insurance Guaranty Association	State
500.7949 218/1956	Cont. Case 184	Unstated	Unstated	Unstated	Property & Casualty Guaranty Association	State
550.617 173/1958	Inf. Adj.	Unstated	Unstated	Unstated	Credit Insurance Policies	State
550.956 218/1984	Inf. Adj.	Petition 185	Circuit 186	De Novo	3rd Party Administrators	State
550.1016 252/1986	Cont. Case 187	Unstated	Unstated	Unstated	Health Benefit Agents	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
550.1518 350/1980	Cont. Case	Petition	Appeals ¹⁸⁸	APA	NonProfit Health Care Corporations	State
550.1615 350/1980	Cont. Case	Petition	Ingham ¹⁸⁹	APA	NonProfit Health Care Corporations Rates	State
550.1616 350/1980	Inf. Adj. 190	Petition ¹⁹¹	Circuit	APA	NonProfit Health Care Corporations Filings	State
554.705 116/1974	Inf. Adj. 192	Petition	Circuit	APA	Farmland Preservation	Local/State
600.631 ¹⁹³ 236/1961	Inf. Adj.	Appeal	Circuit	Const.	RJA	State
691.1204 127/1970	Cont. Case	Petition	Circuit ¹⁹⁴	APA	Environmental Protection	State
722.122 116/1973	Cont. Case	Appeal ¹⁹⁵	Circuit ¹⁹⁶	Law	Child Care Institutions Licensure	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
722.627 418/1984	Cont. Case	Unstated	Unstated	Unstated	Expungement of Child Abuse Records	State
791.217 303/1980	Inf. Adj.	Action ¹⁹⁷	Unstated ¹⁹⁸	Procedure	Prison Site Selection	State
791.255 155/1983	Inf. Adj.	Application ¹⁹⁹	Circuit ²⁰⁰	Law/ Substantial Evidence	Prisoner Misconduct	State

Endnotes to List of Michigan Judicial Review Statutes

1. Four possible locations are given: (1) the county in which the public record is kept; (2) the county in which the public body is located; (3) the county of the complainant's residence; and (4) the county of the complainant's principal place of business.
2. The APA is not made directly applicable, but an evidentiary hearing is required by this statute.
3. The venue options are the county of the complainant's place of residence or Ingham county. The principal place of business option is missing and no scope of review is stated.
4. This act covers offenses under Michigan's code of military justice and applies to personnel on active state duty. While there appears to be no exemption from the APA, the intent is clearly to create a system of justice without regard to the administrative law system.
5. The circuit court is the locus of the county soldier's relief commission.
6. The provision mentions motion, petition or pleading.
7. Venue rests solely in the circuit court of the employer's location.
8. This act applies to both state and local employees. As to the state employees, it appears that the hearings are evidentiary by statute and, thus, are contested cases.
9. This statute provides for mandamus as a remedy for wrongful rejection for appointment, but mentions nothing regarding review of discharge or discipline cases which are also covered in this act. Thus, as to some provisions, it is silent.
10. The claimant has the right to a hearing before the court, but must request it. Failure to do so will mean the court will decide on the record.
11. The civil rights act is not totally clear as to the evidentiary nature of the hearings conducted by the civil rights commission. It appears that its hearings are covered by the contested case provisions.

12. Four venue possibilities are given: (1) Ingham county; (2) county of the alleged violation; (3) county of alleged violator's residence; and (4) county of alleged violator's principal place of business.
13. The venue is the circuit court of the county in which the city, village or municipality is situated. There is a 90 day time limit for filing.
14. The act says the appeal is on the record, but it does not say whether it is de novo or limited to substantial evidence.
15. The act simply says that review is by certiorari and mentions no specific court or scope.
16. The act simply says that refusal to examine or certify is reviewable by certiorari. It does not provide a court or scope of review.
17. The venue is the county in which the sheriff's office is located. The statute includes a 90 day time limit to appeal.
18. The appeal is limited to the record, but the statute does not make clear whether review is de novo or based on the substantial evidence test.
19. Venue is not mentioned.
20. The statute also states "other proper remedy" as the method of review.
21. The provision is not really precise on the scope of review, merely stating that it should be the same procedure as for certiorari of circuit court decisions.
22. The statute allows an "appeal" in the "proper" court in any county in the area served by the transit authority.
23. Review is of the record and decision only. The court must review the record and decision to determine that it meets the following: (1) compliance with the state constitution and state law; (2) based upon proper procedure; (3) supported by competent, material, and substantial evidence on the record; and (4) represents the reasonable exercise of discretion granted by law to the board.
24. The act lists compliance with constitution and laws, based on proper procedure, supported by substantial, material and competent evidence, and reasonable exercise of discretion.

25. This section of the act requires a petition for an order of superintending control.

26. No venue provision is included.

27. Review is of the record and decision only. The provisions regarding scope of review are the same as those indicated for the other local zoning acts.

28. Review is to be by certiorari or "other" means.

29. Review is to be of both fact and law. The scope is limited by caselaw.

30. This act apparently contemplates that the person aggrieved by a decision of the Board of Tenant Affairs will file a lawsuit to regain possession. Challenges to other decisions of that board are not mentioned. Although this appears to be an example of a quasi-judicial administrative action, there is no true judicial review mechanism for any type of decision in this act.

31. Appeal is from a decision of the construction code commission or of a state plumbing, electrical or barrier free board which has reviewed an appeal from a local board of appeals or other enforcing agency. Review is described as "pursuant to Act 306 (APA)," but these are not contested cases.

32. The petition can only be filed in Ingham circuit court.

33. This statute by implication makes the appeals subject to the APA judicial review provisions. It fails to state explicitly that the form of review is the petition for review.

34. This act says that an aggrieved party can "appeal" the decision or order "as a contested case." Since the determination is not a contested case, there are problems regarding the scope of the judicial review. Also, the method is stated as appeal, even though the APA uses petition.

35. The jurisdiction is in the court for the county in which the taxing authority is located.

36. Review is to be by mandamus, certiorari, or "other" appropriate remedy.

37. Review is to be by mandamus, certiorari or other appropriate method.

38. The provisions under this section are identical to those under section 561 except that they apply to general rather than primary elections.

39. The section purports to retain all actions and remedies regarding recounts except that interfering with the state board of canvassers, the board of county canvassers, or representatives of the board of state canvassers in recounts shall be by mandamus only and only against the board of canvassers.

40. The process makes the Tax Tribunal and the Court of Claims alternate forums for appeal. The Tribunal appeal must occur within 30 days, the Court of Claims within 90 days. Further appeal is to the Supreme Court.

41. The statute is silent. Caselaw indicates that review is de novo.

42. The statute says subject to the judicial review provision of the APA. Arguably, the proper form is then a petition for review.

43. The scope of the APA judicial review sections would apparently apply, since the statute says subject to the constitution and the APA judicial review section. In property tax cases the scope is "in the absence of fraud, error of law or the adoption of wrong principles."

44. This act also gives an alternative between the board of tax appeals or the court of claims.

45. This act provides that appeals shall be in the manner and form and within the time provided in the APA. This probably invokes the scope of review section as well.

46. The method can also be by suit, action or other applicable method.

47. The statute provides for review of facts and law, and the taking of new evidence, but not trial de novo. It allows the modification of the order.

48. The act allows for the taking of testimony and examination into the facts.

49. The review is to be undertaken by either the circuit court of the county in which the person was arrested, or the circuit court of the county of the person's residence, depending on which section the denial or suspension was premised upon.

50. This statute is tied to 257.323 regarding the appeals. Thus, the full de novo review system is apparently invoked.

51. This section provides for a hearing, but does not specifically invoke the APA. Since the word "evidentiary" does not appear and the provisions apply to denials, the application of the APA is uncertain. There are no judicial review provisions concerning the licensing or hearing provisions.

52. This section also makes review of regulations possible.

53. The statute says review or appeal. It is limited to Ingham circuit. The statute further says "in the manner provided for the review of the orders of other administrative bodies of this state."

54. The act says that the petition gives the court the discretion to issue a writ of certiorari.

55. The venue lies with the circuit court of the county in which the board sits.

56. The act makes the substantial evidence test applicable to the facts.

57. The provision applies to any order, rule or regulation.

58. The scope of review is stated to be "in the manner provided for the review of other administrative bodies of this state."

59. The act states that the review of the acts or orders are to be as "provided in the general laws of this state for judicial review of the orders or acts of administrative agencies."

60. No other method of review is allowed. The time limit is twenty days.

61. The act says the procedure shall be the same as is required in case of certiorari to review judgments of circuit courts. The action must be brought within 20 days.

62. The act says that a determination of necessity may only be reviewed by superintending control in the court of appeals and only within 10 days.

63. The process is very quick--only 10 days allowed for the issuance of the writ.

64. The time limit is 20 days.

65. The action must be brought within 45 days.

66. Venue is in the circuit court of the county in which the property is located.
67. The time limit is 20 days.
68. The process is the same under this statute as for drain cases. The time limit is 30 days. The details are unstated.
69. The statute actually says a writ of superintending control in an action in the nature of certiorari.
70. Venue is in either the circuit court for Ingham County or the county which requested the order.
71. This statute purports to follow the APA, but limits the venue to the place of violation or Ingham county and the time for review to 15 days.
72. Venue is limited to the county of residence.
73. The scope is stated as "having such rule, regulation or order modified or suspended."
74. This statute allows for judicial review of rules without showing any hardship; all that is required is that the person be "affected."
75. The writ must be filed within 10 days.
76. Venue is limited to the county of residence.
77. The writ must be filed within 10 days.
78. Venue is in either the county of residence or principal place of business.
79. The writ must be filed within 10 days.
80. The writ must be filed within 10 days.
81. Venue is in the county of residence.
82. The writ must be sought within 10 days.
83. Venue is in the circuit court for the county in which the complainant resides.

84. The writ must be sought within 10 days.

85. Venue is in the county of residence.

86. Although the statute sends those aggrieved by final orders to the court of appeals, there is caselaw allowing the circuit court to act.

87. The scope of review is limited to: (1) the committee was without or exceeded its jurisdiction; (2) the award is unsupported by competent, material and substantial evidence on the whole record; or (3) the award was procured by fraud, collusion or other similar and unlawful means.

88. Venue is in one of three possibilities: (1) Ingham county; (2) the county in which the municipality is located; (3) the county in which the violation occurred.

89. The act specifically invokes the APA notice provisions, but is silent as to whether the balance of the hearing provisions apply.

90. This statute says to review pursuant to the APA (P.A. 306); it may be a good model for the appropriate language for generic review.

91. This section allows for an administrative review within the agency, but specifically provides that the administrative remedy need not be exhausted prior to seeking review under section 19 of the act. Section 19 identifies Ingham circuit as the sole court with jurisdiction for challenges to administrative action, but provides no other detail as to judicial review.

92. Venue is in the county where the lands or any part thereof are located.

93. This statute would be a good candidate for conversion to an administrative contested case hearing, followed by APA judicial review.

94. Venue is in the county in which the land is situated.

95. The statute says the appeal shall be in accordance with appeals from justice courts.

96. The court appoints an appraiser, but the statute refers to the decision of the court.

97. The statute requires filing within 15 days.

98. Venue is in the place of violation, rather than the place of business, in addition to the usual APA venues.

99. This subsection has the same venue provision as section 7, but no 15 day time limit.

100. This subsection has the same provisions as section 7 of this act.

101. This act has a 15 day time limit for seeking review.

102. This statute is an example of those which refer judicial review into the APA review process despite the fact that the order reviewed is not made under the contested case provisions. Such statutes offer a method and court for review, but do not adequately address the scope of review.

103. Venue choices are not stated in the statute.

104. The provision says authorized by law and supported by competent evidence, a variation of the constitutional scope for this type of case.

105. Review is by the court which already has jurisdiction.

106. The hearing section of this portion of the mental health code requires a hearing pursuant to the contested case provisions of the APA. However, the APA does not govern judicial review. The method is an appeal; the court is the probate court of the responsible person's place of residence.

107. This act could serve as a model, since it says that all matters involving applicants, licensees, or other persons whose rights are to be determined after a hearing under the public health code are entitled to an APA hearing. Then, judicial review shall be as provided by the APA, except as otherwise noted in the code.

108. The venue is the county of the local department.

109. This is an example of a poorly-conceived review system. Apparently, the general judicial review provisions of the public health code apply, meaning that the hearing will be a contested case and review will be under the chapter 6 APA provisions. The underlying action, however, is not really suited to evidentiary decision-making.

110. This statute calls for a controlled substance licensing system, but does not specify judicial review. It is apparently covered by the language of section 7533.

111. This section governs the judicial review in the section 7314 situation.

112. This section authorizes an action to challenge a failure to act, an example of inaction as action.

113. The act refers to judicial review action without prescribing it. Thus, the action is apparently covered under the general review provisions of the public health code. The section includes a specific instruction to the courts if holding a sanction imposed by the agency unlawful.

114. The statute refers to the APA judicial review provisions, but only to sections 303 to 306. It should probably have referred to all the sections, including 302.

115. Two possibilities are given: (1) Ingham County; (2) the county of the applicant's principal place of business.

116. The act allows for judicial review under the APA, but it restricts venue to the place of residence or Ingham County and does not include the locus of the pollution.

117. This section allows applications for relief from any order or rule of the air pollution commission, creating a modified trial de novo system which uses affidavits and other written proof. Venue is place of residence or Ingham county.

118. This act applies to any licensing decision where the licensee is found to lack good moral character. The licensee can "bring an action" in circuit court for a "review of the record." The court determines if the record does not disclose lack of good moral character.

119. The act says "such court," but does not identify the specific court or venue. In a subsequent sentence the statute at least implies that the circuit court is the intended court.

120. The act simply says that administrative decisions shall be reviewed "in accordance with the provisions of law."

121. Venue is in the county where the violation is alleged to have occurred.

122. The act makes the hearings subject to the APA, so the scope of review is governed by the APA.

123. The statute calls for the same right of appeal as for a decision of a zoning board of appeal.

124. The act says appeal, but refers to the "petition" and the "petitioner." The petition must be filed within 30 days.

125. Venue is the court of the county of residence.

126. The section says the director is to hold a hearing under chapters 4 and 6 of the APA. That is the only reference to judicial review.

127. The statute makes the APA provisions applicable to the hearing and to judicial review except that the court with jurisdiction is the probate court with three different venue provisions--for adoptees found in the state, venue is in the county where the petition was filed or in which the adoptee is found; for adoptees not residing in the state, the county in which the petition was filed.

128. This section is an example of where the APA contested case hearing provisions might apply by definition, although the statute does not specifically invoke either the hearing or judicial review provisions.

129. This is an example of using the contested case hearing provisions, but not using the APA judicial review provisions. The method stated is to "appeal" by filing an affidavit and the venue is the circuit in which the person resides. The scope is apparently de novo, since the statute gives the court jurisdiction to hear and determine all questions of law and fact.

130. Three venue possibilities are given: (1) the county of the employee's residence; (2) the county of the place of employment; (3) the county of the employer's principal place of business.

131. This is an example of a statute which does not specifically invoke the APA contested case provisions and has no provision for judicial review.

132. The statute says the action may be brought in the circuit court having jurisdiction.

133. Although the judicial review provision is tied to review of decisions from the hearing process, the section also allows review of standards promulgated by the commission. This should be clarified.

134. Three possibilities for venue are included: (1) the county of employee's residence; (2) the county of the place of employment; (3) the county of the employer's principal place of business.

135. The statute says by application by any method permissible under the court rules. The court is in the alternative--the court of appeals or the Supreme Court. The scope is for errors of law--findings of fact are supposed to be conclusive in the absence of fraud.

136. The statute says by application by any method permissible under the court rules. The court is in the alternative--The court of appeals or the Supreme Court. The scope is for errors of law--findings of fact are supposed to be conclusive in the absence of fraud.

137. The statute does not really indicate a method; it simply empowers the circuit court to review by any method permissible under the court rules. The venue is the claimant's place of residence or employment or the employer's place of business. The scope is limited to contrary to law and the substantial evidence test.

138. The petition must be filed within 20 days of the final order.

139. The petition must be filed within 20 days of the final order.

140. The act says the orders are reviewable in the circuit court where the dispute arose or where a majority of the affected employees reside.

141. The provisions are identical to those for police and fire labor disputes in MCL 423.242.

142. This is another example of a statute which specially applies the contested case procedures, but does not specially provide for judicial review of the decision.

143. This statute has several review provisions. It allows review but fails to state the method in section 8, stating that review may take place in the county in which the racetrack is located. Then, either party may appeal to the court of appeals. In section 9, actions may be appealed pursuant to the APA and

then to the court of appeals. In section 11, review is available in a manner similar to section 8, but also for some decisions by mandamus.

144. This statute provides for revocation of lottery sales agent licenses, but makes no provision for either hearings or judicial review.

145. This is another example of a statute which designates the action as a contested case, but has no judicial review provision.

146. Venue is not stated.

147. The scope of review is limited to whether the commission acted illegally or in excess of their authority.

148. This is another statute with a contested case provision with no judicial review provisions.

149. This act provides for judicial review under the APA, but there is no contested case basis for the decisions subject to review.

150. The review provisions of this act are identical to those in the Business Corporations Act, MCL 450.1151.

151. This statute says that orders are subject to review in the manner provided for review of orders of the Michigan Securities Commission. No court or scope is stated. This statute simply makes orders of the new Securities and Exchange Commission subject to judicial review in the same manner as its predecessor.

152. The statute says the method is an application for "any relief."

153. The statute provides two possibilities for venue: (1) Ingham circuit and (2) the circuit for the county in which the complainant resides.

154. This provisions may serve as a model for the generic language.

155. The statute has several appeal provisions, but the apparent intent is to consolidate appeals from orders affecting the regulated businesses in the court of appeals and leave those dealing with individual customers in the circuit court. The statute refers to MCL 462.26 as the controlling review provision.

156. This is another of the PSC reviews controlled by MCL 462.26.

157. This is another of the PSC reviews covered by MCL 462.26.
158. This is another of the PSC reviews covered by MCL 462.26.
159. This is another of the PSC reviews covered by MCL 426.62.
160. This is another of the PSC reviews covered by MCL 426.62.
161. This appears to be the controlling review provision for all PSC review (see, e.g., MCL 460.6).
162. The statute provides that appeals from orders affecting common carriers and other parties shall be in the court of appeals (subsection (1)) and that orders regarding the application of rules, rates or tariffs to individual customers shall be in the Ingham County circuit court (subsection (7)).
163. This is another of the PSC reviews covered by MCL 426.62.
164. This is another of the PSC reviews covered by MCL 462.26
165. This is another of the PSC reviews covered by MCL 462.26.
166. The appeal from the agency must be taken within 30 days.
167. The provision simply states that orders, decisions, licenses and other official acts of the commissioner are "subject to judicial review in accordance with law."
168. The petition must be filed within 30 days of the date of the order.
169. The act offers two possibilities for venue: (1) Ingham county; and (2) the county in which the credit union is located.
170. This section refers to the general provisions of the banking code. However, that code is based on the application of the contested case provisions, this one is apparently not. The reference also cites the hearing section, but not the appropriate review section. Further clarification would be required.
171. This statute calls for hearings, but does not invoke the contested case provisions. Nor does it provide for judicial review.
172. The petition must be filed within 30 days of the order or decision.

173. This statute places venue in Ingham county or the county of the place of principal office or where the person resides.

174. The review is as a civil case in chancery, including the taking of additional evidence.

175. This section makes provision for contested case hearings regarding license revocations, but does not provide for judicial review. The relationship to section 244 is not explained.

176. This section provides for revocations, no contested case hearing and no judicial review. It apparently is covered by the general review provision of section 244.

177. This section has an unusual scope of review section, stating that the findings of fact shall be conclusive if supported by the preponderance of evidence. This is clearly inconsistent with the substantial evidence test and makes review de novo.

178. The section empowers an intervenor to invoke the jurisdiction of the court when the commissioner declines to take action.

179. The court's power is not clearly defined. It appears to be empowered to act in an administrative capacity.

180. This section makes section 244 applicable.

181. This section also invokes section 244.

182. This section was added after the APA, so it states that the proceedings are governed by the APA, apparently invoking the contested case provisions. No mention is made of judicial review.

183. The statute simply says that review is available in a court of competent jurisdiction.

184. This section makes the contested case provisions applicable. It does not provide for judicial review.

185. The petition must be filed within 30 days of the date of service of the order or decision.

186. There are three possibilities for venue: (1) Ingham county; (2) the county of the principal office of the third party administrator; (3) the county in which the person against whom the order is sought resides.

187. This act provides that the hearings conducted are subject to the contested case provisions, but has no reference to judicial review.

188. This act makes the APA applicable, but places review in the court of appeals within 30 days of the final determination.

189. This act applies the APA, but makes Ingham Circuit the only forum for review.

190. The agency action is refusal to file documents.

191. The section states that only sections 103, 104 and 106 of the APA apply to these reviews, which are not contested cases or based on hearings. The normal current method would be either mandamus or superintending control.

192. This act provides for a state agency review of agreements, which are like licenses. The process does not provide for a hearing, but applies the APA judicial review procedures.

193. This is the provision of the Revised Judicature Act which allows for appeal of decisions of state agencies with rulemaking power. Compared to the APA, the method is appeal, rather than petition, the venue is slightly different--eliminating the choice of the place of business, and the scope of review is nearly the same--errors of law and substantial evidence. This provision applies when no other method of review is available. There is no apparent justification for the limitation to agencies with rulemaking power, nor is there any apparent reason to limit this approach to state agencies.

194. The statute allows a party seeking relief in a lawsuit to retain the jurisdiction of the court if the lawsuit is remitted to an agency for administrative proceedings. The section specifically provides that the court will conduct the judicial review, even if the APA would require to the contrary. It does not address the scope of review, res judicata or collateral estoppel aspects.

195. The appeal must be taken within 30 days of the decision.

196. The appeal can go only to the county of residence.

197. The action must be brought within 45 days of the time when notice is given to the appropriate public officials.

198. The statute refers to a court of proper jurisdiction.

199. The prisoner must first file an application for rehearing, then has 60 days to apply for "direct" review.

200. The venue choices are the place of residence or Ingham county.

Attachment 2--List
Michigan Judicial Review Statutes
Combined Local and State Agency Review

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
3.751 460/1982	Informal Adjudication (Inf. Adj.)	Petition	Unstated	Unstated	Low Level Radioactive Waste	Interstate
15.240 442/1976	Inf. Adj.	Action	Circuit ¹	De Novo	Freedom of Information Act	State/Local
35.355 263/1951	Inf. Adj.	Petition ²	Circuit ³	Unstated	Veterans-Public Employee	State/Local
35.404 205/1897	Inf. Adj. ⁴	Mandamus ⁵	Unstated	Unstated	Veterans Preference in Employment	State/Local
123.506 170/1933	Inf. Adj.	Mandamus/ Certiorari (Certior.) ⁶	Supreme/ or Circuit	Unstated	Bidders on Public Works	State/Local
125.1518 230/1972	Inf. Adj.	Claim of Appeal ⁷	Appeals	Unstated	Construction Code	State/Local
125.1518 230/1972	Inf. Adj.	Petition ⁸	Ingham Circuit	Unstated	Construction Code	State/Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
423.242 312/1969	Inf. Adj.	Unstated ⁹	Circuit	Jurisdiction/ Substantial Evidence/ Fraud	Police & Fire Labor Disputes	Local/State
554.705 116/1974	Inf. Adj. ¹⁰	Petition	Circuit	APA	Farmland Preservation	Local/State

Endnotes to Combined Review Statutes

1. Four possible locations are given: (1) the county in which the public record is kept; (2) the county in which the public body is located; (3) the county of the complainant's residence; and (4) the county of the complainant's principal place of business.
2. The provision mentions motion, petition or pleading.
3. Venue rests solely in the circuit court of the employer's location.
4. This act applies to both state and local employees. As to the state employees, it appears that the hearings are evidentiary by statute and, thus, are contested cases.
5. This statute provides for mandamus as a remedy for wrongful rejection for appointment, but mentions nothing regarding review of discharge or discipline cases which are also covered in this act. Thus, as to some provisions, it is silent.
6. The statute also states "other proper remedy" as the method of review.
7. Appeal is from a decision of the construction code commission or of a state plumbing, electrical or barrier free board which has reviewed an appeal from a local board of appeals or other enforcing agency. Review is described as "pursuant to Act 306 (APA)," but these are not contested cases.
8. The petition can only be filed in Ingham circuit court.
9. The act says the orders are reviewable in the circuit court where the dispute arose or where a majority of the affected employees reside.
10. This act provides for a state agency review of agreements, which are like licenses. The process does not provide for a hearing, but applies the APA judicial review procedures.

Attachment 3--List
Michigan Judicial Review Statutes
Review of State Administrative Agencies

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
18.358 223/1976	Contested Case (Cont. Case) ¹	Leave to Appeal	Appeals	Unstated	Crime Victim Compensation	State
29.48 202/1970	Informal Adjudication (Inf. Adj.)	Appeal	Circuit ²	Unstated	Explosives	State
32.1068 523/1980	Inf. Adj. ³	Appeal	Appeals	Unstated	Military Code of Justice	State
35.1027 & .1027a 370/1974	Inf. Adj.	Appeal	Claims	De Novo ⁴	Vietnam Veterans Era Bonus	State
37.2606 453/1976	Cont. Case ⁵	Appeal	Circuit ⁶	De Novo	Civil Rights	State
123.1018 191/1968	Inf. Adj.	APA	APA	APA	Subdivision Boundaries	State
125.2340 96/1987	Cont. Case	APA ⁷	Circuit	APA	Mobile Homes	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
132.3 469/1982	Inf. Adj.	APA ⁸	Circuit	APA	Municipal Finance	State
141.694 284/1964	Inf. Adj.	Action	Circuit ⁹	Unstated	City Income Tax	State
168.479 116/1954	Inf. Adj.	Mandamus ¹⁰	Supreme	Unstated	State Board of Canvassers Referenda	State
168.552 116/1954	Inf. Adj.	Appeal ¹¹	Supreme	Unstated	State Board of Canvassers Petitions	State
168.561 116/1954	Inf. Adj.	Appeal	Ingham Circuit	De Novo	State Board of Canvassers Designation	State
168.696 116/1954	Inf. Adj.	Appeal	Ingham Circuit	De Novo	State Board of Canvassers Ballots	State
168.877 116/1954	Inf. Adj.	Certiorari (Certior.)	Circuit	Error	State Board of Canvassers Recount	State
168.878 116/1954	Inf. Adj.	Mandamus ¹²	Ingham Circuit	Unstated	Recounts	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
205.22 122/1941	Inf. Adj.	Appeal ¹³	Court of Claims	Unstated ¹⁴	Tax Appeals	State
205.753 186/1973	Inf. Adj.	Appeal ¹⁵	Appeals	Unstated ¹⁶	Property Taxes	State
207.223 119/1980	Inf. Adj.	Action ¹⁷	Court of Claims	Unstated	Motor Carrier Fuel Tax	State
207.614 438/1976	Inf. Adj.	Appeal ¹⁸	Circuit	Unstated	Commercial Housing Facility	State
213.329 227/1972	Inf. Adj.	Unstated	Circuit	Unstated	Relocation Assistance	State
252.323 106/1972	Cont. Case	Petition	Circuit	APA	Highway Advertising	State
254.229 99/1954	Inf. Adj.	Mandamus ¹⁹	Unstated	Unstated	International Bridge Authority	State
257.250 300/1949	Inf. Adj.	Appeal	Circuit	Fact/Law ²⁰	Vehicle Dealer License	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
257.323 300/1949	Inf. Adj.	Petition	Circuit	De Novo ²¹	Drivers Licenses	State
257.323a 300/1949	Inf. Adj.	Petition	Circuit ²²	De Novo	Suspension of Drivers License	State
257.625f 300/1949	Inf. Adj.	Petition	Circuit	De Novo ²³	Breath Test Refusal	State
257.1322 300/1974	Inf. Adj. ²⁴	Unstated	Unstated	Unstated	Motor Vehicle Service & Repair	State
259.202 327/1945	Inf. Adj. ²⁵	Appeal ²⁶	Ingham Circuit	APA/ Constitution	Aeronautics Code	State
259.489 259/1959	Action ²⁷	Appeal	Ingham	Unstated ²⁸	Tall Structures	State
259.672 257/1955	Inf. Adj.	Petition ²⁹	Circuit	APA/ Constitution	Aircraft Financial Responsibility	State
281.306 20/1964	Inf. Adj.	Superintending ³⁰ Control	Circuit ³¹	Law only	Surplus Waters	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
281.582 244/1986	Cont. Case	Petition	Circuit	APA	Charter & Livery Boats	State
281.717 203/1979	Cont. Case	Petition	Circuit	APA	Wetlands	State
281.773 231/1970	Cont. Case	Petition	Circuit	APA	Natural River Act	State
281.961 346/1972	Cont. Case	Petition	Circuit	APA	Inland Lakes & Streams	State
282.113 347/1972	Inf. Adj.	Petition ³²	Circuit	APA	Erosion & Sediment Control	State
286.213 189/1931	Inf. Adj.	Appeal	Circuit ³³	De Novo	Nursery Licenses	State
286.225 189/1931	Rule or Order ³⁵	Appeal	Circuit	De Novo ³⁴	Insect Pests & Diseases	State
287.124 284/1937	Inf. Adj.	Certior. ³⁶	Circuit ³⁷	Unstated	Livestock Dealers	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
287.581 280/1965	Inf. Adj.	Certior. ³⁸	Circuit ³⁹	Unstated	Slaughter House	State
288.54 212/1935	Inf. Adj.	Certior. ⁴⁰	Ingham	De Novo	Milk Fat Testers	State
288.113 222/1913	Inf. Adj.	Certior. ⁴¹	Circuit ⁴²	De Novo	Manufacturing Milk Act	State
289.590 228/1952	Inf. Adj.	Certior. ⁴³	Circuit ⁴⁴	Unstated	Meat Standards	State
290.461a 158/1964	Inf. Adj.	Certior. ⁴⁵	Circuit ⁴⁶	Unstated	Wholesale Potato Dealers	State
290.705 344/1972	Inf. Adj.	Petition	Appeals ⁴⁷	Substantial Evidence	Agricultural Marketing	State
290.723 344/1972	Inf. Adj.	Unstated	Appeals	Limited ⁴⁸	Agricultural Marketing	State
299.310 366/1974	Inf. Adj.	Petition	Circuit ⁴⁹	APA	Resource Recovery	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
299.311 366/1974	Cont. Case ⁵⁰	Petition ⁵¹	Circuit	APA	Resource Recovery	State
299.417 209/1987	Cont. Case	Petition	Circuit	APA	Solid Waste	State
319.17 61/1939	Inf. Adj.	Unstated	Ingham	Unstated	Oil, Gas & Minerals	State
319.222 315/1969	Action	Unstated ⁵²	Unstated	Unstated	Mineral Wells	State
319.386 197/1959	Action	Unstated	Ingham	Unstated	Gas & Oil Utilization	State
320.313b 199/1931	Inf. Adj.	Petition	Circuit ⁵³	Evidentiary ⁵⁴	Commercial Forest	State
322.402d 326/1913	Inf. Adj.	Appeal	Circuit ⁵⁵	Unstated ⁵⁶	State Lands	State
322.706 247/1955	Inf. Adj.	Petition	Circuit	De Novo ⁵⁷	State Lands	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
323.7 245/1929	Cont. Case	Petition ⁵⁸	Circuit ⁵⁹	APA	Waste Discharge Permits	State
323.8(3) 245/1929	Cont. Case	Petition ⁶⁰	Circuit	APA	Water Resources	State
323.8(3) 245/1929	Cont. Case	Petition ⁶¹	Circuit	APA	Pollution Permits	State
323.258 143/1959	Cont. Case	Petition	Circuit	APA	Mining	State
323.314 253/1964	Inf. Adj.	Petition ⁶²	Circuit	APA	Local Rivers	State
323.357 222/1966	Inf. Adj.	Petition ⁶³	Circuit	APA	Pollution Control Facilities	State
330.1146 258/1974	Inf. Adj.	Appeal	Circuit ⁶⁴	Law/ Competent Evidence ⁶⁵	Mental Hospital Licensure	State
330.1531 258/1974	Inf. Adj.	Petition	Court ⁶⁶	Unstated	Mental Health Admission Status	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
330.1836 258/1974	Cont. Case ⁶⁷	Appeal	Probate	Unstated	Financial Responsibility for Mentally III	State
333.1205 368/1978	Cont. Case ⁶⁸	Petition	Circuit	APA	Public Health Code-General	State
333.2263 368/1978	Cont. Case	Petition	Circuit	APA	Public Health Rule Violation Citations	State
333.2486 368/1978	Inf. Adj.	Petition	Circuit	APA ⁶⁹	Local Health Plans	State
333.6243 368/1978	Cont. Case	Petition	Circuit	APA	Substance Abuse Service License	State
333.7314 368/1978	Cont. Case ⁷⁰	Petition	Circuit	APA	Controlled Substance License	State
333.7533 368/1978	Cont. Case	Petition	Circuit	APA	Controlled Substance Matters ⁷¹	State
333.12416 368/1978	Cont. Case	Petition	Circuit	APA	Agricultural Labor Camp Licensure	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
333.12508 368/1978	Cont. Case	Petition	Circuit	APA	Campground License Application	State
333.12512 368/1978	Cont. Case	Petition	Circuit	APA	Campground License Revocation	State
333.13739 203/1987	Inf. Adj. ⁷²	Injunction	Unstated	Unstated	Low Level Radioactive Waste	State
333.16226 174/1986	Cont. Case ⁷³	Unstated	Unstated	Unstated	Health Profession Violation	State
333.22231 332/1988	Inf. Adj.	Petition ⁷⁴	Circuit ⁷⁵	APA	Certificate of Need	State
336.18 257/1972	Inf. Adj.	Petition	Circuit ⁷⁶	APA	Air Pollution Abatement Agreement	State
336.23 257/1972	Action ⁷⁷	Petition	Circuit	De Novo	Air Pollution Orders & Rules	State
338.46 294/1978	Inf. Adj. ⁷⁸	Action	Circuit	De Novo	Good Moral Character	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
338.658 309/1941	Inf. Adj.	Appeal	Unstated ⁷⁹	Unlawful & Unreasonable	Barber License	State
338.1724 295/1972	Inf. Adj.	Unstated ⁸⁰	Unstated	Unstated	Polygraph Examiners License	State
338.3309 135/1986	Inf. Adj.	Petition	Circuit ⁸¹	Unstated ⁸²	Asbestos Abatement	State
400.111a & .111c 321/1980	Cont. Case	APA ⁸³	APA	APA	Payment to Medical Care Provider	State
400.115f 292/1980	Cont. Case	APA	Probate ⁸⁴	APA	Adoption Subsidies	State
400.275 169/1975	Inf. Adj. ⁸⁵	Unstated	Unstated	Unstated	Charitable Solicitation	State
400.725 218/1979	Cont. Case	Appeal ⁸⁶	Circuit	De Novo	Adult Foster Care Facilities	State
408.481 602/1978	Cont. Case	APA	Circuit ⁸⁷	APA	Wages & Fringe Benefits	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
408.765 290/1965	Inf. Adj. ⁸⁸	None	None	None	Boiler Inspector License	State
408.1031 154/1974	Inf. Adj.	Mandamus	Circuit ⁸⁹	Unstated	OSHA Imminent Danger	State
408.1044 154/1974	Cont. Case ⁹⁰	Petition	Circuit	APA	OSHA Citation	State
408.1065 154/1974	Cont. Case	Petition	Circuit ⁹¹	APA	Retaliatory Discharge	State
418.861 317/1969	Inf. Adj.	MCR ⁹²	Appeals	Law/Fraud	Worker's Disability (Appeal Board)	State
418.861a 103/1985	Inf. Adj.	MCR ⁹³	Appeals	Law/Fraud	Worker's Disability (Appellate Commission)	State
421.38 1/ESI936	Inf. Adj.	Review ⁹⁴	Circuit	Law/ Substantial Evidence	Employment Security	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
423.23 176/1939	Cont. Case	Petition ⁹⁵	Appeals	Substantial Evidence	Unfair Labor	State
423.216 336/1947	Cont. Case	Petition ⁹⁶	Appeals	Substantial Evidence	Public Employment Unfair Labor Practices	State
423.283 17/1980	Inf. Adj.	Unstated ⁹⁷	Circuit	Jurisdiction/Substantial Evidence/Fraud	State Police Trooper Labor Disputes	State
425.1101 303/1982	Cont. Case ⁹⁸	Unstated	Unstated	Unstated	Mine Reclamation	State
431.61-.71 327/1980	Inf. Adj.	Unstated ⁹⁹	Circuit	Unstated	Racing	State
432.23 239/1972	Inf. Adj. ¹⁰⁰	Unstated	Unstated	Unstated	Lottery	State
432.116 382/1972	Cont. Case ¹⁰¹	Unstated	Unstated	Unstated	Bingo Licenses	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
436.20 8/ES1933	Inf. Adj.	Certior.	Circuit ¹⁰²	Unstated	Liquor Licenses	State
436.40 209/1980	Rulemaking	Certior.	Unstated	Limited ¹⁰³	Beer Taxes	State
445.335 184/1913	Inf. Adj.	Certior.	Unstated	Unstated	Farm Product Sale	State
445.1608 135/1977	Cont. Case ¹⁰⁴	Unstated	Unstated	Unstated	Mortgage Lenders Practices	State
450.1151 284/1972	Inf. Adj. ¹⁰⁵	Petition	Circuit	APA	Business Corporations	State
450.2151 162/1982	Inf. Adj. ¹⁰⁶	Petition	Circuit	APA	Non-profit Corporations	State
451.4 13/1935	Inf. Adj.	Unstated ¹⁰⁷	Unstated	Unstated	Corporations & Securities	State
451.316 89/1933	Inf. Adj.	Unstated ¹⁰⁸	Circuit ¹⁰⁹	Unstated	Protective Committees	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
451.811 265/1964	Cont. Case	Petition	Ingham Circuit	Substantial Evidence	Uniform Securities Act	State
456.540 251/1968	Cont. Case ¹¹⁰	Petition	Circuit	APA	Cemetery Regulation	State
460.4 300/1972	Inf. Adj. 111	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.59 7/1987	Inf. Adj. 112	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.117 299/1972	Inf. Adj.	Claim	Court of Claims	Law and Fact	Cost of Utility Regulation	State
460.205 246/1921	Inf. Adj. 113	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.301 319/1977	Inf. Adj. 114	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
460.506 11/1987	Inf. Adj. 115	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.557 8/1987	Inf. Adj. 116	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
462.26 300/1909	Inf. Adj. 117	Appeal	Appeals/118 Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
479.20 9/1987	Inf. Adj. 119	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
483.110 6/1987	Inf. Adj. 120	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
484.114 5/1987	Inf. Adj. 121	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
486.570 19/1967	Inf. Adj.	Action	Ingham	Unlawful/ Unreasonable	Water Companies	State

<u>MCL No. and Public Act No. of Original or Amendaratory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
487.341 319/1969	Cont. Case	Petition	Circuit	APA	Banking Code	State
487.912 275/1986	Cont. Case	Petition ¹²²	Circuit	APA	Sale of Checks	State
487.1201 89/1986	Inf. Adj.	Unstated ¹²³	Unstated	Unstated	BIDCO	State
487.2060 161/1988	Cont. Case	Petition ¹²⁴	Circuit	APA	Consumer Financial Services License	State
490.6b 278/1986	Inf. Adj.	Appeal	Circuit ¹²⁵	Unstated	Credit Unions	State
492.109 27/ES1950	Cont. Case ¹²⁶	Petition	Circuit	APA	Motor Vehicle Sales Finance	State
493.105 & .106 379/1984	Inf. Adj. ¹²⁷	Unstated	Unstated	Unstated	Credit Cards	State
500.244 218/1956	Inf. Adj.	Petition ¹²⁸	Circuit ¹²⁹	De Novo ¹³⁰	Insurance Code	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
500.1244 218/1956	Cont. Case ¹³¹	Unstated	Unstated	Unstated	Insurance Agent Licensure	State
500.1379 218/1956	Inf. Adj. 132	Petition	Circuit	De Novo	Insurance Holding Companies Licensure	State
500.2041 218/1956	Cont. Case	Petition	Circuit	De Novo ¹³³	Insurance Fraud	State
500.2405 218/1956	Inf. Adj. 134	Petition	Ingham	De Novo ¹³⁵	Insurance Fraud	State
500.2482 218/1956	Inf. Adj. 136	Petition	Circuit	De Novo	Casualty Insurance Rates	State
500.2672 218/1956	Inf. Adj. 137	Petition	Circuit	De Novo	Fire & Inland Marine Rates	State
500.2943 218/1956	Cont. Case ¹³⁸	Unstated	Unstated	Unstated	Basic Property Insurance	State
500.5252 292/1982	Cont. Case	Petition	Circuit	APA	Certificate of Exemption	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
500.7711 194/1982	Inf. Adj.	Unstated	Unstated ¹³⁹	Unstated	Life and Health Insurance Guaranty Association	State
500.7949 218/1956	Cont. Case ¹⁴⁰	Unstated	Unstated	Unstated	Property & Casualty Guaranty Association	State
550.617 173/1958	Inf. Adj.	Unstated	Unstated	Unstated	Credit Insurance Policies	State
550.956 218/1984	Inf. Adj.	Petition ¹⁴¹	Circuit ¹⁴²	De Novo	3rd Party Administrators	State
550.1016 252/1986	Cont. Case ¹⁴³	Unstated	Unstated	Unstated	Health Benefit Agents	State
550.1518 350/1980	Cont. Case	Petition	Appeals ¹⁴⁴	APA	NonProfit Health Care Corporations	State
550.1615 350/1980	Cont. Case	Petition	Ingham ¹⁴⁵	APA	NonProfit Health Care Corporations Rates	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
550.1616 350/1980	Inf. Adj. 146	Petition ¹⁴⁷	Circuit	APA	NonProfit Health Care Corporations Filings	State
600.631 ¹⁴⁸ 236/1961	Inf. Adj.	Appeal	Circuit	Const.	RJA	State
691.1204 127/1970	Cont. Case	Petition	Circuit ¹⁴⁹	APA	Environmental Protection	State
722.122 116/1973	Cont. Case	Appeal ¹⁵⁰	Circuit ¹⁵¹	Law	Child Care Institutions Licensure	State
722.627 418/1984	Cont. Case	Unstated	Unstated	Unstated	Expungement of Child Abuse Records	State
791.217 303/1980	Inf. Adj.	Action ¹⁵²	Unstated ¹⁵³	Procedure	Prison Site Selection	State
791.255 155/1983	Inf. Adj.	Application ¹⁵⁴	Circuit ¹⁵⁵	Law/ Substantial Evidence	Prisoner Misconduct	State

Endnotes to List of State Agency Judicial Review Statutes

1. The APA is not made directly applicable, but an evidentiary hearing is required by this statute.
2. The venue options are the county of the complainant's place of residence or Ingham county. The principal place of business option is missing and no scope of review is stated.
3. This act covers offenses under Michigan's code of military justice and applies to personnel on active state duty. While there appears to be no exemption from the APA, the intent is clearly to create a system of justice without regard to the administrative law system.
4. The claimant has the right to a hearing before the court, but must request it. Failure to do so will mean the court will decide on the record.
5. The civil rights act is not totally clear as to the evidentiary nature of the hearings conducted by the civil rights commission. It appears that its hearings are covered by the contested case provisions.
6. Four venue possibilities are given: (1) Ingham county; (2) county of the alleged violation; (3) county of alleged violator's residence; and (4) county of alleged violator's principal place of business.
7. This statute by implication makes the appeals subject to the APA judicial review provisions. It fails to state explicitly that the form of review is the petition for review.
8. This act says that an aggrieved party can "appeal" the decision or order "as a contested case." Since the determination is not a contested case, there are problems regarding the scope of the judicial review. Also, the method is stated as appeal, even though the APA uses petition.
9. The jurisdiction is in the court for the county in which the taxing authority is located.
10. Review is to be by mandamus, certiorari, or "other" appropriate remedy.
11. Review is to be by mandamus, certiorari or other appropriate method.

12. The section purports to retain all actions and remedies regarding recounts except that interfering with the state board of canvassers, the board of county canvassers, or representatives of the board of state canvassers in recounts shall be by mandamus only and only against the board of canvassers.

13. The process makes the Tax Tribunal and the Court of Claims alternate forums for appeal. The Tribunal appeal must occur within 30 days, the Court of Claims within 90 days. Further appeal is to the Supreme Court.

14. The statute is silent. Caselaw indicates that review is de novo.

15. The statute says subject to the judicial review provision of the APA. Arguably, the proper form is then a petition for review.

16. The scope of the APA judicial review sections would apparently apply, since the statute says subject to the constitution and the APA judicial review section. In property tax cases the scope is "in the absence of fraud, error of law or the adoption of wrong principles."

17. This act also gives an alternative between the board of tax appeals or the court of claims.

18. This act provides that appeals shall be in the manner and form and within the time provided in the APA. This probably invokes the scope of review section as well.

19. The method can also be by suit, action or other applicable method.

20. The statute provides for review of facts and law, and the taking of new evidence, but not trial de novo. It allows the modification of the order.

21. The act allows for the taking of testimony and examination into the facts.

22. The review is to be undertaken by either the circuit court of the county in which the person was arrested, or the circuit court of the county of the person's residence, depending on which section the denial or suspension was premised upon.

23. This statute is tied to 257.323 regarding the appeals. Thus, the full de novo review system is apparently invoked.

24. This section provides for a hearing, but does not specifically invoke the APA. Since the word "evidentiary" does not appear and the provisions apply to denials, the application of the APA is uncertain. There are no judicial review provisions concerning the licensing or hearing provisions.

25. This section also makes review of regulations possible.

26. The statute says review or appeal. It is limited to Ingham circuit. The statute further says "in the manner provided for the review of the orders of other administrative bodies of this state."

27. The provision applies to any order, rule or regulation.

28. The scope of review is stated to be "in the manner provided for the review of other administrative bodies of this state."

29. The act states that the review of the acts or orders are to be as "provided in the general laws of this state for judicial review of the orders or acts of administrative agencies."

30. The statute actually says a writ of superintending control in an action in the nature of certiorari.

31. Venue is in either the circuit court for Ingham County or the county which requested the order.

32. This statute purports to follow the APA, but limits the venue to the place of violation or Ingham county and the time for review to 15 days.

33. Venue is limited to the county of residence.

34. The scope is stated as "having such rule, regulation or order modified or suspended."

35. This statute allows for judicial review of rules without showing any hardship; all that is required is that the person be "affected."

36. The writ must be filed within 10 days.

37. Venue is limited to the county of residence.

38. The writ must be filed within 10 days.

39. Venue is in either the county of residence or principal place of business.
40. The writ must be filed within 10 days.
41. The writ must be filed within 10 days.
42. Venue is in the county of residence.
43. The writ must be sought within 10 days.
44. Venue is in the circuit court for the county in which the complainant resides.
45. The writ must be sought within 10 days.
46. Venue is in the county of residence.
47. Although the statute sends those aggrieved by final orders to the court of appeals, there is caselaw allowing the circuit court to act.
48. The scope of review is limited to: (1) the committee was without or exceeded its jurisdiction; (2) the award is unsupported by competent, material and substantial evidence on the whole record; or (3) the award was procured by fraud, collusion or other similar and unlawful means.
49. Venue is in one of three possibilities: (1) Ingham county; (2) the county in which the municipality is located; (3) the county in which the violation occurred.
50. The act specifically invokes the APA notice provisions, but is silent as to whether the balance of the hearing provisions apply.
51. This statute says to review pursuant to the APA (P.A. 306); it may be a good model for the appropriate language for generic review.
52. This section allows for an administrative review within the agency, but specifically provides that the administrative remedy need not be exhausted prior to seeking review under section 19 of the act. Section 19 identifies Ingham circuit as the sole court with jurisdiction for challenges to administrative action, but provides no other detail as to judicial review.
53. Venue is in the county where the lands or any part thereof are located.

54. This statute would be a good candidate for conversion to an administrative contested case hearing, followed by APA judicial review.
55. Venue is in the county in which the land is situated.
56. The statute says the appeal shall be in accordance with appeals from justice courts.
57. The court appoints an appraiser, but the statute refers to the decision of the court.
58. The statute requires filing within 15 days.
59. Venue is in the place of violation, rather than the place of business, in addition to the usual APA venues.
60. This subsection has the same venue provision as section 7, but no 15 day time limit.
61. This subsection has the same provisions as section 7 of this act.
62. This act has a 15 day time limit for seeking review.
63. This statute is an example of those which refer judicial review into the APA review process despite the fact that the order reviewed is not made under the contested case provisions. Such statutes offer a method and court for review, but do not adequately address the scope of review.
64. Venue choices are not stated in the statute.
65. The provision says authorized by law and supported by competent evidence, a variation of the constitutional scope for this type of case.
66. Review is by the court which already has jurisdiction.
67. The hearing section of this portion of the mental health code requires a hearing pursuant to the contested case provisions of the APA. However, the APA does not govern judicial review. The method is an appeal; the court is the probate court of the responsible person's place of residence.
68. This act could serve as a model, since it says that all matters involving applicants, licensees, or other persons whose rights are to be determined

after a hearing under the public health code are entitled to an APA hearing. Then, judicial review shall be as provided by the APA, except as otherwise noted in the code.

69. This is an example of a poorly-conceived review system. Apparently, the general judicial review provisions of the public health code apply, meaning that the hearing will be a contested case and review will be under the chapter 6 APA provisions. The underlying action, however, is not really suited to evidentiary decision-making.

70. This statute calls for a controlled substance licensing system, but does not specify judicial review. It is apparently covered by the language of section 7533.

71. This section governs the judicial review in the section 7314 situation.

72. This section authorizes an action to challenge a failure to act, an example of inaction as action.

73. The act refers to judicial review action without prescribing it. Thus, the action is apparently covered under the general review provisions of the public health code. The section includes a specific instruction to the courts if holding a sanction imposed by the agency unlawful.

74. The statute refers to the APA judicial review provisions, but only to sections 303 to 306. It should probably have referred to all the sections, including 302.

75. Two possibilities are given: (1) Ingham County; (2) the county of the applicant's principal place of business.

76. The act allows for judicial review under the APA, but it restricts venue to the place of residence or Ingham County and does not include the locus of the pollution.

77. This section allows applications for relief from any order or rule of the air pollution commission, creating a modified trial de novo system which uses affidavits and other written proof. Venue is place of residence or Ingham county.

78. This act applies to any licensing decision where the licensee is found to lack good moral character. The licensee can "bring an action" in circuit

court for a "review of the record." The court determines if the record does not disclose lack of good moral character.

79. The act says "such court," but does not identify the specific court or venue. In a subsequent sentence the statute at least implies that the circuit court is the intended court.

80. The act simply says that administrative decisions shall be reviewed "in accordance with the provisions of law."

81. Venue is in the county where the violation is alleged to have occurred.

82. The act makes the hearings subject to the APA, so the scope of review is governed by the APA.

83. The section says the director is to hold a hearing under chapters 4 and 6 of the APA. That is the only reference to judicial review.

84. The statute makes the APA provisions applicable to the hearing and to judicial review except that the court with jurisdiction is the probate court with three different venue provisions--for adoptees found in the state, venue is in the county where the petition was filed or in which the adoptee is found; for adoptees not residing in the state, the county in which the petition was filed.

85. This section is an example of where the APA contested case hearing provisions might apply by definition, although the statute does not specifically invoke either the hearing or judicial review provisions.

86. This is an example of using the contested case hearing provisions, but not using the APA judicial review provisions. The method stated is to "appeal" by filing an affidavit and the venue is the circuit in which the person resides. The scope is apparently de novo, since the statute gives the court jurisdiction to hear and determine all questions of law and fact.

87. Three venue possibilities are given: (1) the county of the employee's residence; (2) the county of the place of employment; (3) the county of the employer's principal place of business.

88. This is an example of a statute which does not specifically invoke the APA contested case provisions and has no provision for judicial review.

89. The statute says the action may be brought in the circuit court having jurisdiction.

90. Although the judicial review provision is tied to review of decisions from the hearing process, the section also allows review of standards promulgated by the commission. This should be clarified.

91. Three possibilities for venue are included: (1) the county of employee's residence; (2) the county of the place of employment; (3) the county of the employer's principal place of business.

92. The statute says by application by any method permissible under the court rules. The court is in the alternative--the court of appeals or the Supreme Court. The scope is for errors of law--findings of fact are supposed to be conclusive in the absence of fraud.

93. The statute says by application by any method permissible under the court rules. The court is in the alternative--The court of appeals or the Supreme Court. The scope is for errors of law--findings of fact are supposed to be conclusive in the absence of fraud.

94. The statute does not really indicate a method; it simply empowers the circuit court to review by any method permissible under the court rules. The venue is the claimant's place of residence or employment or the employer's place of business. The scope is limited to contrary to law and the substantial evidence test.

95. The petition must be filed within 20 days of the final order.

96. The petition must be filed within 20 days of the final order.

97. The provisions are identical to those for police and fire labor disputes in MCL 423.242.

98. This is another example of a statute which specially applies the contested case procedures, but does not specially provide for judicial review of the decision.

99. This statute has several review provisions. It allows review but fails to state the method in sections 8, stating that review may take place in the county in which the racetrack is located. Then, either party may appeal to the court of appeals. In section 9, actions may be appealed pursuant to the

APA and then to the court of appeals. In section 11, review is available in a manner similar to section 8, but also for some decisions by mandamus.

100. This statute provides for revocation of lottery sales agent licenses, but makes no provision for either hearings or judicial review.

101. This is another example of a statute which designates the action as a contested case, but has no judicial review provision.

102. Venue is not stated.

103. The scope of review is limited to whether the commission acted illegally or in excess of their authority.

104. This is another statute with a contested case provision with no judicial review provisions.

105. This act provides for judicial review under the APA, but there is no contested case basis for the decisions subject to review.

106. The review provisions of this act are identical to those in the Business Corporations Act, MCL 450.1151.

107. This statute says that orders are subject to review in the manner provided for review of orders of the Michigan Securities Commission. No court or scope is stated. This statute simply makes orders of the new Securities and Exchange Commission subject to judicial review in the same manner as its predecessor.

108. The statute says the method is an application for "any relief."

109. The statute provides two possibilities for venue: (1) Ingham circuit; and (2) the circuit court for the county in which the complainant resides.

110. This provisions may serve as a model for the generic language.

111. The statute has several appeal provisions, but the apparent intent is to consolidate appeals from orders affecting the regulated businesses in the court of appeals and leave those dealing with individual customers in the circuit court. The statute refers to MCL 462.26 as the controlling review provision.

112. This is another of the PSC reviews controlled by MCL 462.26.

113. This is another of the PSC reviews covered by MCL 462.26.
114. This is another of the PSC reviews covered by MCL 462.26.
115. This is another of the PSC reviews covered by MCL 426.62.
116. This is another of the PSC reviews covered by MCL 426.62.
117. This appears to be the controlling review provision for all PSC review (see, e.g., MCL 460.6).
118. The statute provides that appeals from orders affecting common carriers and other parties shall be in the court of appeals (subsection (1)) and that orders regarding the application of rules, rates or tariffs to individual customers shall be in the Ingham County circuit court (subsection (7)).
119. This is another of the PSC reviews covered by MCL 426.62.
120. This is another of the PSC reviews covered by MCL 462.26
121. This is another of the PSC reviews covered by MCL 462.26.
122. The appeal from the agency must be taken within 30 days.
123. The provision simply states that orders, decisions, licenses and other official acts of the commissioner are "subject to judicial review in accordance with law."
124. The petition must be filed within 30 days of the date of the order.
125. The act offers two possibilities for venue: (1) Ingham county; and (2) the county in which the credit union is located.
126. This section refers to the general provisions of the banking code. However, that code is based on the application of the contested case provisions, this one is apparently not. The reference also cites the hearing section, but not the appropriate review section. Further clarification would be required.
127. This statute calls for hearings, but does not invoke the contested case provisions. Nor does it provide for judicial review.

128. The petition must be filed within 30 days of the order or decision.
129. This statute places venue in Ingham county or the county of the place of principal office or where the person resides.
130. The review is as a civil case in chancery, including the taking of additional evidence.
131. This section makes provision for contested case hearings regarding license revocations, but does not provide for judicial review. The relationship to section 244 is not explained.
132. This section provides for revocations, no contested case hearing and no judicial review. It apparently is covered by the general review provision of section 244.
133. This section has an unusual scope of review section, stating that the findings of fact shall be conclusive if supported by the preponderance of evidence. This is clearly inconsistent with the substantial evidence test and makes review de novo.
134. The section empowers an intervenor to invoke the jurisdiction of the court when the commissioner declines to take action.
135. The court's power is not clearly defined. It appears to be empowered to act in an administrative capacity.
136. This section makes section 244 applicable.
137. This section also invokes section 244.
138. This section was added after the APA, so it states that the proceedings are governed by the APA, apparently invoking the contested case provisions. No mention is made of judicial review.
139. The statute simply says that review is available in a court of competent jurisdiction.
140. This section makes the contested case provisions applicable. It does not provide for judicial review.

141. The petition must be filed within 30 days of the date of service of the order or decision.

142. There are three possibilities for venue: (1) Ingham county; (2) the county of the principal office of the third party administrator; (3) the county in which the person against whom the order is sought resides.

143. This act provides that the hearings conducted are subject to the contested case provisions, but has no reference to judicial review.

144. This act makes the APA applicable, but places review in the court of appeals within 30 days of the final determination.

145. This act applies the APA, but makes Ingham Circuit the only forum for review.

146. The agency action is refusal to file documents.

147. The section states that only sections 103, 104 and 106 of the APA apply to these reviews, which are not contested cases or based on hearings. The normal current method would be either mandamus or superintending control.

148. This is the provision of the Revised Judicature Act which allows for appeal of decisions of state agencies with rulemaking power. Compared to the APA, the method is appeal, rather than petition, the venue is slightly different--eliminating the choice of the place of business, and the scope of review is nearly the same--errors of law and substantial evidence. This provision applies when no other method of review is available. There is no apparent justification for the limitation to agencies with rulemaking power, nor is there any apparent reason to limit this approach to state agencies.

149. The statute allows a party seeking relief in a lawsuit to retain the jurisdiction of the court if the lawsuit is remitted to an agency for administrative proceedings. The section specifically provides that the court will conduct the judicial review, even if the APA would require to the contrary. It does not address the scope of review, res judicata or collateral estoppel aspects.

150. The appeal must be taken within 30 days of the decision.

151. The appeal can go only to the county of residence.

152. The action must be brought within 45 days of the time when notice is given to the appropriate public officials.

153. The statute refers to a court of proper jurisdiction.

154. The prisoner must first file an application for rehearing, then has 60 days to apply for "direct" review.

155. The venue choices are the place of residence or Ingham county.

Attachment 4--List
Michigan Judicial Review Statutes
Review of Local Administrative Agencies

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
35.23 214/1899	Informal Adjudication (Inf. Adj.)	Certiorari (Certior.)	Circuit ¹	De Novo	Soldier's Relief	Local
38.514 78/1935	Inf. Adj.	Appeal	Circuit ²	Unstated ³	Civil Service Police & Fire	Local
38.555 345/1937	Inf. Adj.	Certior. ⁴	Unstated	Unstated	Police & Fire Pension	Local
45.505 293/1966	Inf. Adj.	Petition	Appeals	Requirements of Law	Charter County Apportionment	Local
46.406 261/1966	Inf. Adj.	Petition	Appeals	Requirements of Law	County Board Apportionment	Local
51.360 298/1966	Inf. Adj.	Certior. ⁵	Unstated	Unstated	Sheriff Civil Service	Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
51.362 298/1966	Inf. Adj.	Certior.	Circuit ⁶	Unstated ⁷	Removal of Sheriff's Employees	Local
117.25 279/1909	Inf. Adj.	Mandamus	Circuit ⁸	Unstated	Home Rule City Clerk	Local
123.783 185/1957	Inf. Adj.	Certior.	Unstated	Unstated ⁹	Public Works Condemnation	Local
124.407 204/1967	Inf. Adj.	Appeal	Proper ¹⁰	Abuse of Discretion Error of Law	Metropolitan Transit	Local
125.223 183/1943	Inf. Adj.	Appeal	Circuit	Record ¹¹	County Rural Zoning	Local
125.293a 184/1943	Inf. Adj.	Appeal	Circuit	Record ¹²	Township Rural Zoning	Local
125.542 61/1969	Inf. Adj.	Petition ¹³	Circuit ¹⁴	Unstated	Dangerous Buildings	Local
125.585 207/1921	Inf. Adj.	Appeal	Circuit	Record ¹⁵	City/Village Zoning	Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
125.590 207/1921	Inf. Adj.	Certior. ¹⁶	Circuit	De Novo ¹⁷	City/Village Nonconformity	Local
125.704 344/1968	Inf. Adj.	Action ¹⁸	Unstated	De Novo	Housing Facilities	Local
168.521 116/1954	Inf. Adj.	Mandamus	Unstated	Unstated	Illegal or Fraudulent Voter Registration	Local
168.561 116/1954	Inf. Adj.	Appeal	Circuit	De Novo	County Election Commission Designation	Local
168.696 116/1954 ¹⁹	Inf. Adj.	Appeal	Circuit	De Novo	County Election Commission Ballots	Local
168.952 116/1954	Inf. Adj.	Appeal	Circuit	Unstated	Recalls	Local
247.466 59/1915	Inf. Adj.	Certior.	Circuit	Lack of Jurisdiction	Highway Improvement	Local
259.460 & .461 23/ES1950	Inf. Adj.	Petition ²⁰	Circuit ²¹	Error ²²	Airport Zoning	Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
279.237 205/1967	Inf. Adj.	Superintending ²³ Control	Unstated	Unstated	Irrigation District	Local
280.88 40/1956	Inf. Adj.	Superintending ²⁴ Control	Unstated ²⁵	Unstated	Drain Code	Local
280.161 40/1956	Inf. Adj.	Certior. ²⁶	Circuit	De Novo	Drains	Local
280.424 40/1956	Inf. Adj.	Certior.	Unstated	Unstated	Drain Obstruction Assessment	Local
280.483 40/1956	Inf. Adj.	Certior. ²⁷	Unstated	Unstated	Intra-County Drains	Local
280.489a 135/1979	Inf. Adj.	Action ²⁸	Circuit ²⁹	Unstated	Special Drain Assessment	Local
280.536 40/1956	Inf. Adj.	Certior. ³⁰	Unstated	Unstated	Inter-County Drain Improvement	Local
280.581 40/1956	Inf. Adj.	Certior. ³¹	Unstated	Unstated	Water Management District	Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
333.2462 368/1978	Inf. Adj.	Petition	Circuit ³²	Unstated	Local Public Health Rule Violation Citations	Local
399.211 169/1970	Inf. Adj.	Unstated ³³	Unstated	Unstated	Historic Districts	Local
400.37 280/1939	Inf. Adj.	Petition ³⁴	Circuit ³⁵	Questions of Law	Social Welfare Assistance	Local

Endnotes to Local Agency Review Statutes

1. The circuit court is the locus of the county soldier's relief commission.
2. The venue is the circuit court of the county in which the city, village or municipality is situated. There is a 90 day time limit for filing.
3. The act says the appeal is on the record, but it does not say whether it is de novo or limited to substantial evidence.
4. The act simply says that review is by certiorari and mentions no specific court or scope.
5. The act simply says that refusal to examine or certify is reviewable by certiorari. It does not provide a court or scope of review.
6. The venue is the county in which the sheriff's office is located. The statute includes a 90 day time limit to appeal.
7. The appeal is limited to the record, but the statute does not make clear whether review is de novo or based on the substantial evidence test.
8. Venue is not mentioned.
9. The provision is not really precise on the scope of review, merely stating that it should be the same procedure as for certiorari of circuit court decisions.
10. The statute allows an "appeal" in the "proper" court in any county in the area served by the transit authority.
11. Review is of the record and decision only. The court must review the record and decision to determine that it meets the following: (1) compliance with the state constitution and state law; (2) based upon proper procedure; (3) supported by competent, material, and substantial evidence on the record; and (4) represents the reasonable exercise of discretion granted by law to the board.
12. The act lists compliance with constitution and laws, based on proper procedure, supported by substantial, material and competent evidence, and reasonable exercise of discretion.

13. This section of the act requires a petition for an order of superintending control.
14. No venue provision is included.
15. Review is of the record and decision only. The provisions regarding scope of review are the same as those indicated for the other local zoning acts.
16. Review is to be by certiorari or "other" means.
17. Review is to be of both fact and law. The scope is limited by caselaw.
18. This act apparently contemplates that the person aggrieved by a decision of the Board of Tenant Affairs will file a lawsuit to regain possession. Challenges to other decisions of that board are not mentioned. Although this appears to be an example of a quasi-judicial administrative action, there is no true judicial review mechanism for any type of decision in this act.
19. The provisions under this section are identical to those under section 561 except that they apply to general rather than primary elections.
20. The act says that the petition gives the court the discretion to issue a writ of certiorari.
21. The venue lies with the circuit court of the county in which the board sits.
22. The act makes the substantial evidence test applicable to the facts.
23. No other method of review is allowed. The time limit is twenty days.
24. The act says the procedure shall be the same as is required in case of certiorari to review judgments of circuit courts. The action must be brought within 20 days.
25. The act says that a determination of necessity may only be reviewed by superintending control in the court of appeals and only within 10 days.
26. The process is very quick. Only 10 days is allowed for the issuance of the writ.

27. The time limit is 20 days.
28. The action must be brought within 45 days.
29. Venue is in the circuit court of the county in which the property is located.
30. The time limit is 20 days.
31. The process is the same under this statute as for drain cases. The time limit is 30 days. The details are unstated.
32. The venue is the county of the local department.
33. The statute calls for the same right of appeal as for a decision of a zoning board of appeal.
34. The act says appeal, but refers to the "petition" and the "petitioner." The petition must be filed within 30 days.
35. Venue is the court of the county of residence.

Attachment 5--List
Michigan Judicial Review Statutes
Jurisdiction to Review Specified in Other than Circuit Court

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
18.358 223/1976	Contested Case (Cont. Case) ¹	Leave to Appeal	Appeals	Unstated	Crime Victim Compensation	State
32.1068 523/1980	Informal Adjudication (Inf. Adj.) ²	Appeal	Appeals	Unstated	Military Code of Justice	State
35.1027 & .1027a 370/1974	Inf. Adj.	Appeal	Claims	De Novo ³	Vietnam Veterans Era Bonus	State
45.505 293/1966	Inf. Adj.	Petition	Appeals	Requirements of Law	Charter County Apportionment	Local
46.406 261/1966	Inf. Adj.	Petition	Appeals	Requirements of Law	County Board Apportionment	Local
123.506 170/1933	Inf. Adj.	Mandamus/Certiorari (Certior.) ⁴	Supreme/ or Circuit	Unstated	Bidders on Public Works	State/Local

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
125.1518 230/1972	Inf. Adj.	Claim of Appeal ⁵	Appeals	Unstated	Construction Code	State/Local
168.479 116/1954	Inf. Adj.	Mandamus ⁶	Supreme	Unstated	State Board of Canvassers Referenda	State
168.552 116/1954	Inf. Adj.	Appeal ⁷	Supreme	Unstated	State Board of Canvassers Petitions	State
205.22 122/1941	Inf. Adj.	Appeal ⁸	Court of Claims	Unstated ⁹	Tax Appeals	State
205.753 186/1973	Inf. Adj.	Appeal ¹⁰	Appeals	Unstated ¹¹	Property Taxes	State
207.223 119/1980	Inf. Adj.	Action ¹²	Court of Claims	Unstated	Motor Carrier Fuel Tax	State
290.705 344/1972	Inf. Adj.	Petition	Appeals ¹³	Substantial Evidence	Agricultural Marketing	State
290.723 344/1972	Inf. Adj.	Unstated	Appeals	Limited ¹⁴	Agricultural Marketing	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
330.1836 258/1974	Cont. Case ¹⁵	Appeal	Probate	Unstated	Financial Responsibility for Mentally III	State
400.115f 292/1980	Cont. Case	APA	Probate ¹⁶	APA	Adoption Subsidies	State
418.861 317/1969	Inf. Adj.	MCR ¹⁷	Appeals	Law/Fraud	Worker's Disability (Appeal Board)	State
418.861a 103/1985	Inf. Adj.	MCR ¹⁸	Appeals	Law/Fraud	Worker's Disability (Appellate Commission)	State
423.23 176/1939	Cont. Case	Petition ¹⁹	Appeals	Substantial Evidence	Unfair Labor	State
423.216 336/1947	Cont. Case	Petition ²⁰	Appeals	Substantial Evidence	Public Employment Unfair Labor Practices	State
460.4 300/1972	Inf. Adj. ²¹	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
460.59 7/1987	Inf. Adj. ²²	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.117 299/1972	Inf. Adj.	Claim	Court of Claims	Law and Fact	Cost of Utility Regulation	State
460.205 246/1921	Inf. Adj. ²³	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.301 319/1977	Inf. Adj. ²⁴	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.506 11/1987	Inf. Adj. ²⁵	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
460.557 8/1987	Inf. Adj. ²⁶	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
462.26 300/1909	Inf. Adj. ²⁷	Appeal	Appeals/ ²⁸ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State

<u>MCL No. and Public Act No. of Original or Amendatory Public Act</u>	<u>Nature of Administrative Action</u>	<u>Method of Obtaining Judicial Review</u>	<u>Court</u>	<u>Scope of Review</u>	<u>Subject of Action</u>	<u>Interstate, State, Local or Combined State and Local Action</u>
479.20 9/1987	Inf. Adj. ²⁹	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
483.110 6/1987	Inf. Adj. ³⁰	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
484.114 5/1987	Inf. Adj. ³¹	Appeal	Appeals/ Ingham Circuit	Unlawful/ Unreasonable	Public Service Commission	State
550.1518 350/1980	Cont. Case	Petition	Appeals ³²	APA	NonProfit Health Care Corporations	State

Endnotes to Jurisdiction to Review Statutes

1. The APA is not made directly applicable, but an evidentiary hearing is required by this statute.
2. This act covers offenses under Michigan's code of military justice and applies to personnel on active state duty. While there appears to be no exemption from the APA, the intent is clearly to create a system of justice without regard to the administrative law system.
3. The claimant has the right to a hearing before the court, but must request it. Failure to do so will mean the court will decide on the record.
4. The statute also states "other proper remedy" as the method of review.
5. Appeal is from a decision of the construction code commission or of a state plumbing, electrical or barrier free board which has reviewed an appeal from a local board of appeals or other enforcing agency. Stated as "pursuant to Act 306 (APA)," but these are not contested cases.
6. Review is to be by mandamus, certiorari, or "other" appropriate remedy.
7. Review is to be by mandamus, certiorari or other appropriate method.
8. The process makes the Tax Tribunal and the Court of Claims alternate forums for appeal. The Tribunal appeal must occur within 30 days, the Court of Claims within 90 days. Further appeal is to the Supreme Court.
9. The statute is silent. Caselaw indicates that review is de novo.
10. The statute says subject to the judicial review provision of the APA. Arguably, the proper form is then a petition for review.
11. The scope of the APA judicial review sections would apparently apply, since the statute says subject to the constitution and the APA judicial review section. In property tax cases the scope is "in the absence of fraud, error of law or the adoption of wrong principles."
12. This act also gives an alternative between the board of tax appeals or the court of claims.

13. Although the statute sends those aggrieved by final orders to the court of appeals, there is caselaw allowing the circuit court to act.

14. The scope of review is limited to: (1) the committee was without or exceeded its jurisdiction; (2) the award is unsupported by competent, material and substantial evidence on the whole record; or (3) the award was procured by fraud, collusion or other similar and unlawful means.

15. The hearing section of this portion of the mental health code requires a hearing pursuant to the contested case provisions of the APA. However, the APA does not govern judicial review. The method is an appeal; the court is the probate court of the responsible person's place of residence.

16. The statute makes the APA provisions applicable to the hearing and to judicial review except that the court with jurisdiction is the probate court with three different venue provisions--for adoptees found in the state, venue is in the county where the petition was filed or in which the adoptee is found; for adoptees not residing in the state, the county in which the petition was filed.

17. The statute says by application by any method permissible under the court rules. The court is in the alternative--the court of appeals or the Supreme Court. The scope is for errors of law--findings of fact are supposed to be conclusive in the absence of fraud.

18. The statute says by application by any method permissible under the court rules. The court is in the alternative--The court of appeals or the Supreme Court. The scope is for errors of law--findings of fact are supposed to be conclusive in the absence of fraud.

19. The petition must be filed within 20 days of the final order.

20. The petition must be filed within 20 days of the final order.

21. The statute has several appeal provisions, but the apparent intent is to consolidate appeals from orders affecting the regulated businesses in the court of appeals and leave those dealing with individual customers in the circuit court. The statute refers to MCL 462.26 as the controlling review provision.

22. This is another of the PSC reviews controlled by MCL 462.26.

23. This is another of the PSC reviews covered by MCL 462.26.

24. This is another of the PSC reviews covered by MCL 462.26.
25. This is another of the PSC reviews covered by MCL 426.62.
26. This is another of the PSC reviews covered by MCL 426.62.
27. This appears to be the controlling review provision for all PSC review (see, e.g., MCL 460.6).
28. The statute provides that appeals from orders affecting common carriers and other parties shall be in the court of appeals (subsection (1)) and that orders regarding the application of rules, rates or tariffs to individual customers shall be in the Ingham County circuit court (subsection (7)).
29. This is another of the PSC reviews covered by MCL 426.62.
30. This is another of the PSC reviews covered by MCL 462.26
31. This is another of the PSC reviews covered by MCL 462.26.
32. This act makes the APA applicable, but places review in the court of appeals within 30 days of the final determination.

MEMORANDUM

November 29, 1990

TO: Law Revision Commission Members
FROM: Jerry Israel
IN RE: USRAP Amendment

Enclosed is the final version of this Amendment and the Treasury letter to which it responds. The more favorable stance taken by Treasury removes the urgency for adopting this Amendment, but it still will be helpful, as explained in the memo.

The University of Michigan
Law School

Ann Arbor, Michigan 48109-1215

LAWRENCE W. WAGGONER
Lucius M. Simms Professor of Law

November 26, 1990

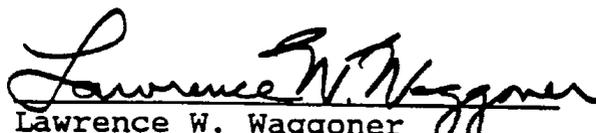
Hutchins Hall
(313) 763-2586

**FINAL UPDATE FOR STATES THAT HAVE ENACTED
USRAP AND THAT ARE CONSIDERING ENACTING IT:
USRAP SECTION 1(e) AND THE
GRANDFATHERING REGULATIONS UNDER GENERATION-SKIPPING TAX**

I am pleased to announce that the Treasury Department has now given written confirmation of its decision to accommodate the 90-year period of the Uniform Statutory Rule Against Perpetuities (USRAP) under the "grandfathering" regulations of the federal generation-skipping transfer tax. Letter from Michael J. Graetz, Deputy Assistant Secretary of the Treasury (Tax Policy), to Lawrence J. Bugge, President, National Conference of Commissioners on Uniform State Laws (Nov. 16, 1990).

The written decision is more favorable than earlier anticipated. It has now become clear that enactment of new Section 1(e), enclosed, is not essential -- though in one circumstance it can still be helpful -- in preserving the grandfathered status of certain pre-1986 trusts under Treasury's forthcoming generation-skipping regulations. The forthcoming amended regulations will accommodate the 90-year period under USRAP as originally promulgated in 1986 as well as under USRAP as amended by the addition of Section 1(e) in 1990. Both the original and amended versions of USRAP nullify a direct effort to obtain a "later of" approach through a "later of" clause, which was Treasury's main concern. Enactment of new Section 1(e) can still be important, however. In certain circumstances, it can preserve grandfathered status by nullifying an attempt to prolong a grandfathered trust by successive exercises of nongeneral powers to achieve a "later of" approach. The details of these points are explained in the enclosed document headed "Explanation."

Note that Section 1(e), enclosed, has undergone modest styling amendments. The enclosed version is the final version and the one preferred to be enacted. Although the addition of Section 1(e) is not as pressing a matter as originally thought, it is a very desirable addition in any event and we urge its inclusion in any new enactment and its addition by amendment in any previous enactment.


Lawrence W. Waggoner
Reporter, Uniform Statutory
Rule Against Perpetuities

NEW SECTION 1(e) OF THE
UNIFORM STATUTORY RULE AGAINST PERPETUITIES

(e) [Effect of Certain "Later-of" Type Language.] If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

EXPLANATION

1. Section 1(e)--Effect of Certain "Later-of" Type Language.

Section 1(e) was added to the Uniform Statutory Rule in 1990. It primarily applies to a non-traditional type of "later of" clause (described below). Use of that type of clause might have produced unintended consequences, which are now rectified by the addition of Section 1(e).

In general, perpetuity saving or termination clauses can be used in either of two ways. The predominant use of such clauses is as an override clause. That is, the clause is not an integral part of the dispositive terms of the trust, but operates independently of the dispositive terms; the clause provides that all interests must vest no later than at a specified time in the future, and sometimes also provides that the trust must then terminate, but only if any interest has not previously vested or if the trust has not previously terminated. The other use of such a clause is as an integral part of the dispositive terms of the trust; that is, the clause is the provision that directly regulates the duration of the trust. Traditional perpetuity saving or termination clauses do not use a "later of" approach; they mark off the maximum time of vesting or termination only by reference to a 21-year period following the death of the survivor of specified lives in being at the creation of the trust.

Section 1(e) applies to a non-traditional clause called a "later of" (or "longer of") clause. Such a clause might provide that the maximum time of vesting or termination of any interest or trust must occur no later than the later of (A) 21 years after the death of the survivor of specified lives in being at the creation of the trust or (B) 90 years after the creation of the trust.

Under Section 1 of the Uniform Statutory Rule as originally promulgated, this type of "later of" clause would not achieve a "later of" result. Section 1, in relevant part, provides:

- (a) [Validity of Nonvested Property Interest.] A nonvested property interest is invalid unless:
- (1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or
 - (2) the interest either vests or terminates within 90 years after its creation.

If used as an override clause in conjunction with a trust whose terms were, by themselves, valid under the common-law rule against perpetuities (common-law Rule), the "later of" clause did no harm. The trust would be valid under the common-law Rule as

codified in Section 1(a)(1) because the clause itself would neither postpone the vesting of any interest nor extend the duration of the trust. But, if used either (1) as an override clause in conjunction with a trust whose terms were not valid under the common-law Rule or (2) as the provision that directly regulated the duration of the trust, the "later of" clause would not cure the perpetuity violation in case (1) and would create a perpetuity violation in case (2). In neither case would the clause qualify the trust for validity at common law under Section 1(a)(1) because the clause would not guarantee that all interests will be certain to vest or terminate no later than 21 years after the death of an individual then alive. In any given case, 90 years can turn out to be longer than the period produced by the specified-lives-in-being-plus-21-years language.

Because the clause would fail to qualify the trust for validity under the common-law Rule of Section 1(a)(1), the nonvested interests in the trust would be subject to the wait-and-see element of Section 1(a)(2) and vulnerable to a reformation suit under Section 3. Under Section 1(a)(2), an interest that is not valid at common law is invalid unless it actually vests or terminates within 90 years after its creation. Section 1(a)(2) does not grant such nonvested interests a permissible vesting period of either 90 years or a period of 21 years after the death of the survivor of specified lives in being. Section 1(a)(2) only grants such interests a period of 90 years in which to vest.

The operation of Section 1(a), as outlined above, is also supported by perpetuity policy. If Section 1(a) allowed a "later of" clause to achieve a "later of" result, it would authorize an improper use of the 90-year permissible vesting period of Section 1(a)(2). The 90-year period of Section 1(a)(2) is designed to approximate the period that, on average, would be produced by using actual lives in being plus 21 years. Because in any given case the period actually produced by lives in being plus 21 years can be shorter or longer than 90 years, an attempt to utilize a 90-year period in a "later of" clause improperly seeks to turn the 90-year average into a minimum.

Set against this background, the addition of Section 1(e) is quite beneficial. Section 1(e) limits the effect of this type of "later of" language to 21 years after the death of the survivor of the specified lives, in effect transforming the clause into a traditional perpetuity saving/termination clause. By doing so, Section 1(e) grants initial validity to the trust under the common-law Rule as codified in Section 1(a)(1) and precludes a reformation suit under Section 3.

Note that Section 1(e) covers variations of the "later of" clause described above, such as a clause that postpones vesting until the later of (A) 20 years after the death of the survivor

of specified lives in being or (B) 89 years. Section 1(e) does not, however, apply to all dispositions that incorporate a "later of" approach. To come under Section 1(e), the specified-lives prong must include a tack-on period of up to 21 years. Without a tack-on period, a "later of" disposition, unless valid at common law, comes under Section 1(a)(2) and is given 90 years in which to vest. An example would be a disposition that creates an interest that is to vest upon "the later of the death of my widow or 30 years after my death."

2. Coordination of the Federal Generation-skipping Transfer Tax with the Uniform Statutory Rule.

Section 1433(b)(2) of the Tax Reform Act of 1986 generally exempts ("grandfathers") trusts from the federal generation-skipping transfer tax that were irrevocable on September 25, 1985. This section adds, however, that the exemption shall apply "only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985." The provisions of Section 1433(b)(2) were first implemented by Temp. Treas. Reg. § 26.2601-1, promulgated by T.D. 8187 on March 14, 1988. Insofar as the Uniform Statutory Rule is concerned, a key feature of that temporary regulation is the concept that the statutory reference to "corpus added to the trust after September 25, 1985" not only covers actual post-9/25/85 transfers of new property or corpus to a grandfathered trust but "constructive" additions as well. Under the temporary regulation as first promulgated, a "constructive" addition occurs if, after 9/25/85, the donee of a nongeneral power of appointment exercises that power "in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. If a power is exercised by creating another power it will be deemed to be exercised to whatever extent the second power may be exercised." Temp. Treas. Reg. § 26.2601-1(b)(1)(v)(B)(2) (1988).

Because the Uniform Statutory Rule was promulgated in 1986 and applies only prospectively, any "grandfathered" trust would have become irrevocable prior to the enactment of USRAP in any state. Nevertheless, the second sentence of Section 5(a) extends USRAP's wait-and-see approach to post-effective-date exercises of nongeneral powers even if the power itself was created prior to USRAP's effective date. Consequently, a post-USRAP-effective-date exercise of a nongeneral power of appointment created in a "grandfathered" trust could come under the provisions of USRAP.

The literal wording, then, of Temp. Treas. Reg. § 26.2601-1(b)(1)(v)(B)(2) (1988), as first promulgated, could have jeopardized the grandfathered status of an exempt trust if (1)

the trust created a nongeneral power of appointment, (2) the donee exercised that nongeneral power, and (3) USRAP is the perpetuity law applicable to the donee's exercise. This possibility arose not only because the donee's exercise itself might come under the 90-year permissible vesting period of Section 1(a)(2) if it otherwise violated the common-law Rule and hence was not validated under Section 1(a)(1). The possibility also arose in a less obvious way if the donee's exercise created another nongeneral power. The last sentence of the temporary regulation states that "if a power is exercised by creating another power it will be deemed to be exercised to whatever extent the second power may be exercised."

In late March 1990, the National Conference of Commissioners on Uniform State Laws (NCCUSL) filed a formal request with the Treasury Department asking that measures be taken to coordinate the regulation with USRAP. In November 1990, the Treasury Department responded by stating that it "will amend the temporary regulations to accommodate the 90-year period under USRAP as originally promulgated [in 1986] or as amended [in 1990 by the addition of Section 1(e)]." Letter from Michael J. Graetz, Deputy Assistant Secretary of the Treasury (Tax Policy), to Lawrence J. Bugge, President, National Conference of Commissioners on Uniform State Laws (Nov. 16, 1990) (hereinafter Treasury Letter). This should effectively remove the possibility of loss of grandfathered status under the Uniform Statutory Rule merely because the donee of a nongeneral power created in a grandfathered trust inadvertently exercises that power in violation of the common-law Rule or merely because the donee exercises that power by creating a second nongeneral power that might, in the future, be inadvertently exercised in violation of the common-law Rule.

The Treasury Letter states, however, that any effort by the donee of a nongeneral power in a grandfathered trust to obtain a "later of" specified-lives-in-being-plus-21-years or 90-years approach will be treated as a constructive addition, unless that effort is nullified by state law. As explained above, the Uniform Statutory Rule, as originally promulgated in 1986 or as amended in 1990 by the addition of Section 1(e), nullifies any direct effort to obtain a "later of" approach by the use of a "later of" clause.

The Treasury Letter states that an indirect effort to obtain a "later of" approach would also be treated as a constructive addition that would bring grandfathered status to an end, unless the attempt to obtain the later-of approach is nullified by state law. The Treasury Letter indicates that an indirect effort to obtain a "later of" approach could arise if the donee of a nongeneral power successfully attempts to prolong the duration of a grandfathered trust by switching from a specified-lives-in-being-plus-21-years perpetuity period to a 90-year perpetuity

period, or vice versa. This is a highly unlikely chain of events, and the Official Commentary to the Uniform Statutory Rule will be supplemented to include adequate warnings of the consequences of engaging in such manipulation. Nevertheless, should a donee attempt to make a switch from a specified-lives-in-being-plus-21-years period to a 90-year period, Section 1(e) can play an important role in preserving grandfathered status by nullifying the attempt. For example, suppose that the original grandfathered trust contained a standard perpetuity saving clause declaring that all interests in the trust must vest no later than 21 years after the death of the survivor of specified lives in being. In exercising a nongeneral power created in that trust, any indirect effort by the donee to obtain a "later of" approach by adopting a 90-year perpetuity saving clause will likely be nullified by Section 1(e). If that exercise occurs at a time when it has become clear or reasonably predictable that the 90-year period will prove longer, the donee's exercise would constitute language in a governing instrument that seeks to operate in effect to postpone the vesting of any interest until the later of the specified-lives-in-being-plus-21-years period or 90 years. Section 1(e) makes that language inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

Although Section 1(e) would not nullify a switch from a 90-year period to a specified-lives-in-being-plus-21-years period, the relation-back doctrine generally recognized in the exercise of nongeneral powers stands as a state-law doctrine that could potentially be invoked to nullify such an attempted switch (and one going in the other direction as well). Under that doctrine, interests created by the exercise of a nongeneral power are considered created by the donor of that power. See, e.g., Restatement (Second) of Property, Donative Transfers § 11.1 comment b (1986). As such, the maximum vesting period applicable to interests created by the exercise of a nongeneral power would apparently be covered by the perpetuity saving clause in the document that created the power, notwithstanding any different period the donee seeks to adopt.



DEPARTMENT OF THE TREASURY
WASHINGTON

RECEIVED NOV 21 1990

Mr. Lawrence J. Bugge
President
National Conference of Commissioners
on Uniform State Laws (NCCUSL)
676 North St. Clair St.
Suite 1700
Chicago, IL 60611

NOV 13 1990

Re: Temp. Reg. Section 26.2601-1(b)(1)(v)(B)(2) and the
Uniform Statutory Rule Against Perpetuities (USRAP)

Dear Mr. Bugge:

We have considered the request made on behalf of NCCUSL to amend the temporary regulations under the generation-skipping tax regarding constructive additions to "grandfathered" trusts resulting from the exercise of certain nongeneral powers of appointment. Under the current temporary regulations, an exercise of such a power will generally be treated as a constructive addition to an otherwise grandfathered trust if the exercise of such power may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years.

The Uniform Statutory Rule Against Perpetuities generally provides that a nonvested interest in property is invalid unless (1) when it is created, it is certain to vest or terminate no later than 21 years after the death of an individual alive at the time the interest is created or (2) such interest in fact vests or terminates within 90 years after its creation. We understand that the 90-year period of the "wait and see" prong was intended to be a reasonable approximation of the period of time that would on average be produced under the measuring standard of lives in being plus 21 years. We have been requested to amend the temporary regulations to incorporate the 90-year period for states that have adopted USRAP. Such an amendment would provide that in USRAP states the exercise of a nongeneral power would not be a constructive addition as long as applicable perpetuities law does not allow such exercise to postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period extending beyond 90 years from the date of creation of the trust or for a period extending beyond lives in being at the creation of the trust plus 21 years.

The regulation in its current form would not treat an exercise of a nongeneral power as a constructive addition to a trust if state law limits the perpetuities period to lives in

being plus 21 years measured from the creation of the trust, even if the state uses a "wait and see" approach. We understand that, generally, if appropriate measuring lives are chosen, a perpetuities period of 90 years or more can be obtained under a traditional perpetuities saving clause using the period of specified lives in being plus 21 years in both USRAP and non-USRAP states.

Because of the two-pronged approach of USRAP, we are concerned that, if we amend the regulation as you have requested, nongeneral powers in grandfathered trusts which become subject to USRAP will be exercised to prolong the maximum time for the vesting of interests in such trusts for the longer of 90 years or lives in being plus 21 years. If such a "longer of" period could validly be obtained by exercising nongeneral powers in grandfathered trusts, we believe the requested amendment to the regulations would give an undue advantage to such trusts located in USRAP states.

We have been advised, however, that such a "longer of" approach is not effective under USRAP as originally promulgated. We have been advised by NCCUSL that in the case of a grandfathered trust, if a nongeneral power is exercised in a manner that violates the common law rule against perpetuities, USRAP limits the maximum vesting period to 90 years after the creation of the original trust notwithstanding the use of a "longer of" clause. We have been advised by NCCUSL that the Official Commentary to USRAP will be supplemented to explain why the 90-year limit applies in such a case. On the other hand, if under the terms of the exercise of the nongeneral power all interests are certain to vest within the period of lives in being at the creation of the trust plus 21 years, the use of a "longer of" clause in connection with the exercise of such power cannot extend the vesting period beyond the period referred to under the temporary regulation in its current form.

We have also been advised that NCCUSL has amended USRAP by adding a provision applicable to language in a governing instrument that attempts to obtain a "longer of" perpetuities period whenever the lives-in-being prong has a tack on period of up to 21 years. In such cases, under USRAP as so amended, the maximum vesting period is 21 years after the death of the survivor of the specified lives, i.e. such a "longer of" clause is effectively transformed into a traditional perpetuities saving clause that uses the period of specified lives in being plus 21 years.

We are also concerned that indirect means may be used to obtain a "longer of" perpetuities period under USRAP. This could be attempted through an exercise of a nongeneral power or successive exercises of nongeneral powers which purport to switch from one maximum vesting period to the other. We have been advised by NCCUSL that such indirect means are unlikely to

be effective. For example, we have been advised that, in the case of a grandfathered trust that is subject to either of the two perpetuities periods, the donee's exercise of a nongeneral power within the applicable period that purports to switch to the other period when the latter would be longer is likely to be nullified.

Considering the foregoing, we will amend the temporary regulations to accommodate the 90-year period under USRAP as originally promulgated or as amended. However, the amendment to the regulations would treat the exercise of a nongeneral power which, directly or indirectly, attempts to obtain a "longer of" perpetuities period as described above (including where such exercise would operate in conjunction with another instrument, e.g. a prior exercise of a nongeneral power) as a constructive addition to the trust unless state law nullifies such attempt.

Sincerely yours,

Michael J. Graetz
Deputy Assistant Secretary
(Tax Policy)

cc: Lawrence W. Waggoner

THE HISTORY OF THE MICHIGAN LAW REVISION COMMISSION

The Michigan Law Revision Commission was created by the enactment of 1965 PA 412.¹ The suggestion that such a commission be created, however, had been made much earlier. In the attached July, 1951 open letter to the Michigan Legislature and the members of the State Bar of Michigan, entitled *Proposing a State Law Revision Commission for Michigan*, four faculty members of the University of Michigan Law School² advocated the creation of a law revision commission to “be charged with the responsibility for proposing systematic revision of [Michigan’s] substantive law.”³

The article stressed the authors’ suggestion that such a commission should “be limited solely to revision of the private law.”⁴ The authors defined private law as “those rules which govern the day-to-day relationship between individual members of society, as distinguished from public law which governs the regulatory impact of government on individuals.”⁵ The authors felt that a commission was needed to revise the private law, because unlike the public law, the private law was “not, in general, favored with articulate special-interest groups” that would provide the Legislature with “sufficient expert advice of the kind which it must have to exercise intelligently its policy-making function.”⁶

The article suggested that the New York Law Revision Commission, the “country’s most successful agency charged with . . . law revision work” be considered a model for any Michigan commission.⁷ The authors noted that a commission was needed, because “the range of the private law [would be] much too great to make one person responsible for policy recommendations covering its diversified fields.”⁸

The article described the New York Law Revision Commission as a body comprised of five paid regular members, at least four of which were admitted to practice in the state and at least two of which were members of law school faculties of the state, and four ex-officio members, chairs of certain committees of the state legislature.⁹ The New York Commission also was described as having a paid director coordinating the work of research assistants and consultants.¹⁰

On April 1, 1963, the voters of the State of Michigan, in adopting the Michigan Constitution of 1963, indirectly gave great impetus to the

creation of such a law revision commission. The proposed Michigan Constitution of 1963, in addition to containing many provisions identical to or based on sections of the Michigan Constitution of 1908, also contained several new provisions. One of the new constitutional provisions created a bipartisan legislative council and provided as follows:

The council shall periodically examine and recommend to the legislature revision of the various laws of the state. Const 1963, art IV, § 15.

Recognizing that the adoption of Const 1963, art IV, § 15, created an opportunity for the establishment of a commission working under the aegis of this new legislative council, Jason Honigman wrote an article published in the Michigan State Bar Journal entitled *Michigan Needs a Law Revision Commission*,¹¹ which the author noted was “taken principally”¹² from the open letter cited previously. Mr. Honigman suggested that a law revision commission, modeled after the New York Law Revision Commission, be created, with the only variation being that Michigan should follow the California example and add as an ex-officio member, the legislative counsel of the Legislature.¹³

In his article, Mr. Honigman also mentioned a few of the major problems of Michigan law that needed study and revision, such as the condemnation laws, the domestic relation laws, and several areas of property law.¹⁴ He also included within the article the language of a proposed act to create a law revision commission, the members of which would be appointed by the newly created legislative council.

In 1965, the Legislature, stimulated by Mr. Honigman’s article, enacted the Legislative Council Act, 1965 PA 412, MCL 4.311 et seq., which provided in attached sections 12 to 14 for the creation of the Michigan Law Revision Commission whose responsibilities and membership were to be much as outlined in the July, 1951 open letter and in the Honigman article. These sections were amended only twice before 1986. In one instance, the set salary amount provided for Commissioners was replaced by language providing that the salary amount should be decided annually as part of the appropriations process.¹⁵ The second amendment clarified other law and noted that the Commission was subject to the Freedom of Information Act.¹⁶ In 1986, 1965 PA 412 was repealed by the new Legislative Council Act, 1986 PA 268, MCL 4.1101 et seq. Attached sections 401 to 403 of the new act recreated the Commission with the only major alteration being a change of manner by which legislators became legislative Commissioners. Formerly the positions were ex-officio

positions for the chairs and ranking minority members of the Senate and House Committees on Judiciary. After the changes, the positions were to be appointed by the Majority Leader of the Senate and the Speaker of the House of Representatives with one member from each of the two major parties from each house of the Legislature.

Following the enactment of 1965 PA 412, the Legislative Council recognized Jason Honigman's role in the creation of the Commission and appointed him to a three-year term on the Commission, designating him as the Commission's first Vice-Chairman. He became Chairman in 1967 and served in that position until his resignation from the Commission in December, 1981. In the 1982 Annual Report of the Commission, the Commission noted that "[n]o person [has] been more instrumental in the success the Commission [has] achieved than Mr. Honigman."¹⁷ In 1966, the same year as Mr. Honigman's original appointment, Tom Downs was given a four-year term on the Commission and was named the Commission's first Chairman. He became the Vice-Chairman in 1967, serving in that position until Mr. Honigman's resignation. Mr. Downs then served as Chairman of the Commission until he left the Commission in December, 1985. The other original members of the Commission were Senator Basil Brown, who served until December, 1985, and Senator Haskell Nichols, who served one year; Representatives Homer Arnett and William Boos, both of whom were replaced in 1967; Charles Levin, who served only one year of his two-year term; Andrew Wisti, who served a one year term and was not reappointed; and Donald Hoenshell, who was as ex-officio member of the Commission until he left his position as Director of the Legislative Service Bureau in September, 1967.

The Commission, in its first organizational meetings, appointed William Pierce, one of the co-authors of the July, 1951 open letter advocating the creation of the Law Revision Commission, as the Commission's first Executive Secretary. At the time of his appointment, Mr. Pierce was the Director of the Legislative Research Center at University of Michigan Law School and had been a Commissioner of the National Conference of Commissioners on Uniform State Laws since 1953. He had earlier been associated with the New York Law Revision Commission.

Attachment C to this article lists the entire membership of the Commission through the years, noting those prominent and influential members of the legal community and of state government who have offered their services and provided their talent to further the work of the Commission. In addition to members already mentioned, however, several

deserve special notice, due to their tenure or position on the Commission. Richard McLellan, who is a government affairs and international trade expert, has served as a Commissioner since June, 1985 and as Chairman since 1986. Anthony Derezinski, a former State Senator and a current law professor at Thomas M. Cooley Law School, has served as a Commissioner and as Vice-Chairman since 1986. David Lebenbom, an attorney specializing in administrative law particularly in the field of medical professionals, has served on the Commission since filling Charles Levin's term in 1967. Richard Van Dusen, a well known and knowledgeable figure in Michigan's legal community has served as a Commissioner for 13 years. He replaced Harold Sawyer, who had served as a Commissioner for 10 years. The dean of the legislative members as of December, 1990 is Representative Perry Bullard, Jr., Chair of the House Committee on Judiciary. Representative David Honigman, grandson of Jason Honigman, has served since 1987. Senators Rudy Nichols and Virgil Smith, Jr. have served since 1987 and May, 1988, respectively. In 1990, Senator Nichols was the Chair of the Senate Committee on Judiciary.

The Commission has had three Executive Secretaries since William Pierce's resignation from that post in 1969. Professors Carl Hawkins and Stanley Siegel of the University of Michigan Law School served from 1969 to 1972 and from January, 1973 to September, 1973, respectively.

Jerold Israel, Alene and Allan F. Smith Professor of Law at University of Michigan Law School, has served as Executive Secretary to the Commission for over 17 years, beginning in October, 1973.

As a result of the Commission's recommendations to the Legislature over the Commission's 25-year history, many important pieces of legislation have been enacted. Some of the more important enactments were 1968 PA 293 (emancipation of minors), 1969 PA 306 (administrative procedures act), 1971 PA 75 (no fault divorce), 1972 PA 284 (the business corporations act), 1974 PA 371 (elimination of pre-judgment garnishment), 1975 PA 297 (child custody jurisdiction), 1978 PA 33 (juvenile obscenity), 1980 PA 87 (the condemnation procedures act), 1984 PAs 27, 28, and 29 (implementation of constitutional amendment on legislative immunity), and 1988 PAs 417 and 418 (statutory rule against perpetuities). In 1972, a Commission recommendation for a constitutional amendment that changed the types of criminal prosecution for which a jury of less than 12 jurors is required was adopted by the Michigan voters. Const 1963, art I, § 20.

While the Commission has clearly had great success in fulfilling its statutory mandate and in aiding the Legislature in its revision and improvement of state law, the activities of the Commission in the last several years show that the Commission remains an important entity in the legislative branch as can be seen by its 1989 recommendation of a new administrative procedures act, the 1989 study report on the United States-Canada Free Trade Agreement, and the 1990 recommendation on judicial review of administrative agency decisions. The production of such important products certainly suggests that the next 25 years of the Commission will be every bit as successful as its first 25 years.

¹Former MCL 4.311 to 4.327.

²E. Blythe Stason, L. Hart Wright, Samuel D. Estep, & William J. Pierce.

³Stason, Wright, Estep, & Pierce, *Proposing a State Law Revision Commission for Michigan*, 30 Mich St BJ, No 7, pp 25, 26 (July, 1951).

⁴*Id.* at 27.

⁵*Id.*

⁶*Id.*

⁷*Id.* at 28.

⁸*Id.*

⁹*Id.* at 29.

¹⁰*Id.*

¹¹Jason Honigman, *Michigan Needs a Law Revision Commission*, 42 Mich St BJ, No 8, p 13 (August, 1963).

¹²*Id.* at 17.

¹³Author's note to *Michigan Needs a Law Revision Commission*.

¹⁴*Id.* at 18, 19.

¹⁵1975 PA 71.

¹⁶1980 PA 15.

¹⁷1982 Annual Report of the Michigan Law Revision Commission, p 1.

BIOGRAPHIES OF COMMISSION MEMBERS AND STAFF

RICHARD D. McLELLAN

Mr. McLellan is Chairman of the Michigan Law Revision Commission, a position he has filled since 1986, the year following his appointment as a public member of the Commission.

Mr. McLellan is a partner in the 300-lawyer firm of Dykema Gossett, which has offices in Michigan, Florida and Washington, D.C. He serves as the head of his firm's Government Policy and Practice Group.

He is a graduate of the Michigan State University Honors College and the University of Michigan Law School.

Prior to entering private practice, Mr. McLellan served as an Administrative Assistant to former Governor William G. Milliken. He is a former member of the National Advisory Food and Drug Committee in the United States Department of Health, Education and Welfare. Mr. McLellan served as the Transition Director for Governor John Engler following the 1990 election.

Mr. McLellan is also the Treasurer and a member of the Executive Committee of the Michigan State Chamber of Commerce and is the President of the Library of Michigan Foundation.

His legal practice includes primarily the representation of business interests in matters pertaining to state government.

McLellan is a member of the Board of Directors of Crown America Life Insurance Company.

ANTHONY DEREZINSKI

Mr. Derezinski is Vice-Chairman 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 a visiting professor at Thomas M. Cooley Law School.

He is a graduate of Muskegon Catholic Central High School, Marquette University, University of Michigan Law School (Juris Doctor degree), and Harvard Law School (Master of Laws degree). He is married and has one child.

Mr. Derezinski is a Democrat and served as State Senator from 1975 to 1978. He is a member of the Board of Regents of Eastern Michigan University.

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, Dereziński Post No. 7729, the American Academy of Hospital Attorneys, the International Association of Defense Counsel, and the National Health Lawyers' Association.

DAVID LEBENBOM

Mr. Lebenbom is a public member of the Michigan Law Revision Commission and has served since his appointment in 1967, the second year of the Commission's existence.

Mr. Lebenbom is engaged in the private practice of law as David Lebenbom, P.C.

He is a graduate of Detroit Central High School, Wayne State University (where he graduated with distinction), and Columbia Law School. He is married and has four children.

Mr. Lebenbom is a Democrat and served as Chairman of the Wayne County Democratic Committee from 1961 to 1968.

He is a veteran of World War II with a Battle Star. He is a member of Congregation B'nai Moshe and Congregation Shaarey Zedek, the former President of the Jewish Community Council, and the current Vice President of the National Jewish Community Political Advisory Board.

Mr. Lebenbom is the Chair of the Columbia Law School Michigan Alumni Association.

RICHARD C. VAN DUSEN

Mr. Van Dusen is a public member of the Michigan Law Revision Commission and has served since his appointment in September 1977.

Mr. Van Dusen is Senior Partner in the law firm of Dickinson, Wright, Moon, Van Dusen and Freeman.

He is a graduate of Deerfield Academy, the University of Minnesota, and Harvard Law School. He is married and has three children.

Mr. Van Dusen is a Republican and served as a State Representative in 1955 and 1956, a delegate to the 1961-62 Michigan Constitutional Convention, and Under Secretary of the United States Department of Housing and Urban Development from 1969 to 1972. He has served on the Wayne State University Board of Governors from 1979 to the present.

He served in the United States Naval Reserve from 1943 to 1946. He is a member of the Episcopal Church.

RUDY J. NICHOLS

Mr. Nichols is a legislative member of the Michigan Law Revision Commission and has served on the Commission since February 1987.

Mr. Nichols is a Republican State Senator representing the 8th Senatorial District. He was first elected to the Senate in January 1984, following his service as a State Representative representing the 20th House District from January 1983 to January 1984. Among his committee assignments, he is currently serving as Chair of the Senate Committee on Judiciary.

He is a graduate of Michigan State University and the Detroit College of Law. He is married and has two children.

Mr. Nichols is a member of the Waterford Republican Club, the Oakland County Republican Party, and the Waterford Optimist Club. He has been a leader in the Jaycees and was selected as one of the five Outstanding Young Men of Michigan in 1981.

VIRGIL C. SMITH, JR.

Mr. Smith is a legislative member of the Michigan Law Revision Commission and has served on the Commission since May 1988.

Mr. Smith is a Democratic State Senator representing the 2nd Senatorial District. He was first elected to the Michigan House in November 1976 and served in that body until his election to the Senate in March 1988. He presently serves on the Senate Finance Committee and the Senate Local Government and Veterans Committee.

He is a graduate of Detroit Pershing High School, Michigan State University (Bachelor of Arts Degree in Political Science), and Wayne State University Law School. Mr. Smith is married and has two children.

Mr. Smith was a supervisory attorney for the Inkster office of Wayne County Legal Services and was Senior Assistant Corporation Counsel for the City of Detroit Law Department before his election to the Legislature.

W. PERRY BULLARD

Mr. Bullard is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 1981.

Mr. Bullard is a Democratic State Representative representing the 53rd House District. He was first elected to the State House in November 1972. Among his committee assignments, he has served as Chair of the House Committee on Civil Rights and Chair of the House Committee on Labor. He is currently Chair of the House Committee on Judiciary.

He is a graduate of Harvard University and the University of Michigan Law School. He is married and has one child.

Mr. Bullard was in the United States Navy from 1964 to 1968, receiving 13-air medals. He is a member of the Michigan Commission on Criminal Justice, Educational Fund for Individual Rights Advisory Committee, and the American Civil Liberties Committee and is the Vice Chairman of the National Conference of State Legislatures State-Federal Assembly Energy Committee.

He was named the Police Officers Association of Michigan's Legislator of the Year in 1979 and 1988, the Outstanding Legislator of the Year in 1980 by the American Association of University Professors, and Legislator of the Year for the Michigan Network of Runaway & Youth Services for 1989.

Mr. Bullard is also a Commissioner of the National Conference of Commissioners on Uniform State Laws and a member of the Michigan 21st Century Commission on the Courts.

DAVID M. HONIGMAN

Mr. Honigman is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 1987.

Mr. Honigman is a Republican State Representative representing the 24th House District. He was first elected to the State House in November 1984. Among his committee assignments, he has served on the House Committee on Judiciary.

He is a graduate of Yale University (with honors) and the University of Michigan Law School. He is married.

Mr. Honigman serves on the Board of Trustees of the Michigan Cancer Foundation and the Alumni Board of Detroit County Day School. He is a member of the Michigan Regional Advisory Board of the Anti-Defamation League of B'nai Brith. He was named one of the Outstanding Young Men in America in 1985.

Mr. Honigman is also a Commissioner of the National Conference of Commissioners on Uniform State Laws.

ELLIOTT JOHN SMITH

Mr. Smith is an ex officio member of the Michigan Law Revision Commission due to his position as the Director of the Legislative Service Bureau, a position he has filled since January 1980.

Mr. Smith has worked with Michigan legislators since 1972 in various capacities, including his work as a Research Analyst for Senator Stanley Rozycki, Administrative Assistant to

Senator Anthony Derezinski, and Executive Assistant to Senate Majority Leader William Faust before being named to his current position.

He is a graduate of Michigan State University. He is married and has two children.

JEROLD ISRAEL

Mr. Israel is the Executive Secretary to the Michigan Law Revision Commission, a position he has filled since October 1973.

Mr. Israel joined the University of Michigan law faculty in 1961 and has taught courses in constitutional law, civil procedure, criminal law, and criminal procedure. He is currently the Alene and Allan F. Smith Professor of Law at the University of Michigan Law School.

He is a graduate of Case-Western Reserve University and Yale University. Following his graduation from Yale, he served as a law clerk to Justice Potter Stewart of the United States Supreme Court. He is married and has three children.

Mr. Israel was co-reporter for the Michigan State Bar Association's Proposed Michigan Criminal Code and for the National Conference of Commissioners on Uniform State Laws' Uniform Rules of Criminal Procedure. He has served as a member of Michigan Supreme Court committees and gubernatorial commissions and as a consultant to other states revising their court rules and statutes.

He has co-authored several publications concerning criminal procedure, including the most widely used casebook and a frequently cited three-volume treatise.

GARY GULLIVER

Mr. Gulliver acts as the liaison between the Michigan Law Revision Commission and the Legislative Service Bureau, a responsibility he has had since May 1984.

Mr. Gulliver is currently the Director of Legal Research with the Legislative Service Bureau. He is a graduate of Albion College (with honors) and Wayne State University Law School. He is married and has three children.

Mr. Gulliver is also a Commissioner of the National Conference of Commissioners on Uniform State Laws.