

# final minutes

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## Michigan Law Revision Commission Meeting

Thursday, August 23, 2007 ▪ 2:00 p.m.  
Legislative Council Conference Room ▪ 3 Boji Tower  
124 W. Allegan ▪ Lansing, Michigan

(Some Commissioners participated via conference call. Teleconferencing equipment was set up in the Legislative Council Conference Room.)

### Members Present:

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

### Members Absent:

Senator Bruce Patterson  
Representative Edward Gaffney

### Others Present:

Christina Barcroft  
Jeff Cuthbertson (via conference call)  
Gary Gulliver, MLRC Executive Secretary  
Susan Cavanagh, Office of the Legislative Council Administrator

Bruce Timmons, House Republican Staff  
Professor Gina Torielli (via conference call)  
Others were present, but did not identify themselves

## I. Convening of Meeting

Chairperson McLellan called the meeting to order at 2:00 p.m. The clerk took the roll as each member introduced themselves. A quorum was present and all absent members were excused.

## II. Approval of Minutes

The Chair asked for a motion to approve the minutes of the last meeting. No corrections or amendments were offered. **Mr. Ward moved, supported by Mr. Derezinski, to adopt the minutes of the October 31, 2006 Michigan Law Revision Commission meeting. The minutes were unanimously adopted.**

## III. Annual Report Economic Development Laws Project

Professor Torielli provided a summary of the project which involved taking a look at the economic development statutes and gathering them into a unified code. She noted that the code is primarily limited to the traditional levers the government pushes for economic development like tax incentives, assistance with plant assembly, and assistance with obtaining financing. Senator Basham asked if statutes affecting infrastructure like rail and highways were included. Professor Torielli responded that statutes that are primarily infrastructure-related to economic development like the Technology Part Development Act, the Transportation Economic Development Fund, parts of the State Transportation Preservation Act and the Broadband Authority are included in the code as well as some international infrastructure-related issues like foreign trade zones and the Port Authority. Chairperson McLellan commented that legislative support for economic development has been consistent for 40 years and the willingness of each legislature to layer on a new law may meet the political needs of the legislature at the time, but over decades has created a system of over 400 pages of statutes. He added that consolidating these statutes gives this legislature an opportunity to do something important in the economic development area. He also noted that any final draft will have to look at the Michigan Economic Development Corporation function in state government and the Strategic Fund and all of the programs created last year that generate new money into the process. He emphasized that the draft report does not upset any existing structures, but noted the process is very complicated and there may be too many boards and commissions to follow the money. Mr. Gulliver reiterated that this codification effort was not to upset any existing laws, but to bring them together in one place and eliminate redundancies. Representative Meadows remarked that he liked the proposed outline of the code organization. Judge Whitbeck suggested it may be appropriate for the Commission to not only point out where the boards and commissions are redundant, but also where they are unnecessary. Professor Toreilli concluded her update with two recommendations—to make sunshine and transparency provisions applicable to all of the entities and to determine whether the entities and functions currently exist and are being used. The Chair noted it is the Commission's intention to include the report in the 2006 MLRC Annual Report. Representative Meadows alerted the Chair to a package of bills that will be introduced and will amend many of the statutes to make them applicable to what will be called commerce centers based on zoning and urban area density calculations. The Chair assured the Representative the any new acts that are adopted before the

economic development code legislation is introduced will be included during the bill drafting process. Mr. Gulliver added that a half dozen of the articles have already been drafted and that this project will dovetail with a project he is working on to identify the commissions that have disappeared or been renamed.

#### **IV. Indian Laws Report**

The Chair began with some background on the issue and explained that Senator Allen asked the Commission to review two Michigan Supreme Court decisions that address Indian compacts. He noted that the Tomac I and Tomac II decisions authored by the Michigan Supreme Court uphold the right of the legislature by resolution to approve Indian gaming compacts. From the legislature's point of view, the decision clarified that the sovereign power of the State of Michigan in dealing with separate sovereign Indian tribes is a legislative authority and is within the plenary power of the legislature. Further explanation of the report by Christina Barcroft, a summer clerk for the MLRC and principal author of the report, followed. The report will be included in the annual report.

#### **V. Report of Recent Court Decisions Identifying Statutes for Legislative Action**

Chairperson McLellan provided an explanation of the history of the Commission's role in identifying these statutes and called on the Executive Secretary to review the cases that have been identified where the courts have requested legislative guidance or action. Specific case information can be found in the Report on Recent Court Decisions.

- a. Consequence of Register of Deeds to Maintain Entry Books  
*Recommendation: The Commission recommends legislative review of this issue, particularly concerning the methods by which counties now maintain official records, but makes no recommendation of specific legislative action.*
- b. Applicability of Tolling Provisions of the Revised Judicature Act to the "One-Year Back Rule" of the No Fault Act  
*Recommendation: The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.*
- c. Governmental Immunity for Negligent Maintenance of Property  
*Recommendation: The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action. Commissioner Ward had a specific recollection of an opinion from Justice Brickley that spoke to "protruding nuisance." He will look for the opinion and forward it to the Executive Secretary.*
- d. Unilateral Revocation of Common-Law Arbitration Agreements  
*Recommendation: The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.*
- e. Effect of Medical Malpractice Litigant's Filing of a Notice of Intent on the Wrongful Death Saving Period  
*Recommendation: The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action. Mr. Gulliver noted that Judge Whitbeck's earlier memo on the Timely Filing of Medical Malpractice Actions would be made part of the report.*
- f. Commencement of Two-Year Savings Period in Medical Malpractice Actions  
*Recommendation: The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.*
- g. Transportational Function Test for Parked Vehicle Exception Under the No Fault Act  
*Recommendation: The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.*

A discussion regarding the distinction between making no recommendation and making no recommendation, but urging legislative review followed. The Chair then added that if there are no objections, the Executive Secretary will compile the reports together and the Commission will issue the Annual Report. In addition, he acknowledged that an additional push will be made with regard to the economic development issue and that the Indian contracting report will be sent to Senator Allen. Mr. Gulliver added that he will include some language to recognize the authors in the economic development and Indian contracting reports.

**VI. Update on Current Projects**  
**Emergency Powers Project**

Mr. Gulliver reported that he has taken a look at how Michigan law is set up in terms of emergency preparedness and the State's response to natural and man-made emergencies. He has identified all those statutes that are on the books and has started the job of comparing them. He will continue to work on this review and bring forward some recommendations in the near future. A discussion followed including the licensure of medical personnel and the proclamation language used with regard to casualty insurance policies.

**Other Projects**

A discussion regarding the Michigan Civil Rights Initiative Report followed. The Chair noted that since this was a report to the Commission, it will not be included in the Annual Report. It will continue to be available to the public through the Commission staff. The Chair also suggested that the Commission try to find more projects like the Indian contracting project that a law student can work on. Judge Whitbeck will forward the names of any law students who might be interested in assisting the Commission.

**VII. Public Participation**

The Chair asked for public participation. There was none.

**VIII. Adjournment**

**Having no further business, Mr. McLellan moved, supported by Mr. Ward, to adjourn the meeting. Without objection, the motion was approved.** The meeting was adjourned at 3:05 p.m.

*(Approved at the September 24, 2008 Michigan Law Revision Commission meeting.)*