Michigan
Law Revision Commission

TWENTY-SEVENTH ANNUAL REPORT
1992

MICHIGAN
LAW REVISION COMMISSION

Term Members:

RICHARD McLELLAN, *Chairman*
ANTHONY DEREZINSKI, *Vice Chairman*
MAURA CORRIGAN
LAWRENCE OWEN

Legislative Members:

Senators:

DAVID HONIGMAN
VIRGIL CLARK SMITH

Representatives:

PERRY BULLARD
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MICHIGAN LAW REVISION COMMISSION
Twenty-Seventh Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its twenty-seventh 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 1992 were Senator David Honigman of West Bloomfield; Senator Virgil Clark Smith of Detroit; Representative Perry Bullard of Ann Arbor; and Representative Michael Nye of Litchfield. As Director of the Legislative Service Bureau, Elliott Smith was the ex-officio Commission member. The appointed members of the Commission were Richard McLellan, Anthony Derezinski, Maura Corrigan, David Lebenbom (through January 29, 1992), and Lawrence D. Owen (after January 29, 1992). 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 1992 Commission members and staff are located at the end of this report.

The Commission's Work in 1992

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 it 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.

The Commission recommends immediate legislative action on two of the topics studied. On one additional topic, the Commission prepared a study report.

The three topics are:

(1) Tortfeasor Contribution Under MCL §600.2925a(5)

(2) Amendments to Michigan's Estate Tax Apportionment Act

(3) Telephone Conference Call Participation in Public Meetings (study report)

Proposals for Legislative Consideration in 1993

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 1992.

(1) Uniform Transfers to Minors Act, 1984 Annual Report, page 17.

(2) Uniform Law on Notarial Acts, 1985 Annual Report, page 17.

(3) Uniform Fraudulent Transfer Act, 1988 Annual Report, page 13. HB 5217.

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

(5) Condemnation Provisions Inconsistent with the Uniform Condemnation Procedures Act, 1989 Annual Report, page 15.

(6) Proposed Administrative Procedures Act, 1989 Annual Report, page 27. HB 5136.

(7) Judicial Review of Administrative Agency Action, 1990 Annual Report, page 19.

(8) Amendment of Uniform Statutory Rule Against Perpetuities, 1990 Annual Report, page 141.

(9) Amendment of the Uniform Contribution Among Tortfeasors Act, 1991 Annual Report, page 19.

(10) International Commercial Arbitration, 1991 Annual Report, page 31.

Current Study Agenda

Topics on the current study agenda of the Commission are:

(1) Assumed Names (Statewide Registration by Individuals and Partnership)
(2) Usury Statutes
(3) Declaratory Judgment in Libel Law
(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) Uniform Anatomical Gift Act
(10) Uniform Trade Secrets Act
(11) Uniform Statutory Power of Attorney
(12) Uniform Putative and Unknown Fathers Act
(13) Uniform Custodial Trust Act
(14) Uniform Commercial Code -- Proposed Amendments for Article 6
(15) Laws Addressing the Powers of County Executives
(16) Implementation of Report on Judicial Review of Administrative Action
(17) Amendments to Michigan Statutory Rule Against Perpetuities
(18) Statutory Definitions of Gross Negligence

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. The Executive Secretary of the Commission since January 1, 1993, is Professor Kent Syverud, who was responsible for the publication of this report. 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

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

1968 Legislative Session

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

1969 Legislative Session

Subject	Commission Report	Act No.
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

Subject	Commission Report	Act No.
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

Subject	Commission Report	Act No.
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

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

1973 Legislative Session

Subject	Commission Report	Act No.
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

Subject	Commission Report	Act No.
Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Choice of Forum	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90

Technical Amendments to the Michigan General Corporations Act	1973, p. 37	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
Technical Amendments to the Business Corporation Act	1974, p. 30	303
Amendment to Dead Man's Statute	1972, p. 70	305
Attachment and Collection Fees	1968, p. 22	306
Contribution Among Joint Tortfeasors	1967, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Due Process in Seizure of a Debtor's Property (Elimination of Pre-judgment Garnishment)	1972, p. 7	371

1975 Legislative Session

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

1976 Legislative Session

Subject	Commission Report	Act No.
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

Subject	Commission Report	Act No.
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

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

1981 Legislative Session

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

1982 Legislative Session

Subject	Commission Report	Act No.
Limited Partnerships	1980, p. 40	213
Technical Amendments to the Business Corporation Act	1980, p. 8	407
Interest on Probate Code Judgments	1980, p. 37	412

1983 Legislative Session

Subject	Commission Report	Act No.
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

Subject	Commission Report	Act No.
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

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

1987 Legislative Session

Subject	Commission Report	Act No.
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

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

1990 Legislative Session

Subject	Commission Report	Act No.
Elimination of Reference to Abolished Courts:		
a. Procedures of Justice Courts and Municipal Courts	1985, p. 12; 1986, p. 125	217
b. Noxious Weeds	1986, p. 128; 1988, p. 154	218
c. Criminal Procedure	1975, p. 24	219
d. Presumption Concerning Married Women	1988, p. 157	220
e. Mackinac Island State Park	1986, p. 138; 1988, p. 154	221
f. Relief and Support of the Poor	1986, p. 139; 1988, p. 154	222

g. Legal Work Day	1988, p. 154	223
h. Damage to Property by Floating Lumber	1988, p. 155	224

1991 Legislative Session

Subject	Commission Report	Act No.
Elimination of Reference to Abolished Courts:		
a. Land Contracts	1988, p. 157	140
b. Insurance	1988, p. 156	141
c. Animals	1988, p. 155	142
d. Trains	1986, pp. 153, 155; 1987, p. 80; 1988, p. 152	143
e. Appeals	1985, p. 12	144
f. Crimes	1988, p. 153	145
g. Library Corporations	1988, p. 155	146
h. Oaths	1988, p. 156	147
i. Agricultural Products	1986, p. 134; 1988, p. 151	148
j. Deeds	1988, p. 156	149
k. Corporations	1989, p. 4; 1990, p. 4	150
l. Summer Resort Corporations	1986, p. 154; 1988, p. 155	151
m. Association Land	1986, p. 154; 1988, p. 155	152
n. Burial Grounds	1988, p. 156	153
o. Posters, Signs, and Placecards	1988, p. 157	154
p. Railroad Construction	1988, p. 157; 1988, p. 156	155
q. Work Farms	1988, p. 157	156
r. Recording Duties	1988, p. 154	157
s. Liens	1986, pp. 141, 151, 158; 1988, p. 152	159

1992 Legislative Session

Subject	Commission Report	Act No.
Determination of Death Act	1987, p. 13	90

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

Respectfully submitted,

Richard D. McLellan, Chairman
Anthony Derezinski, Vice Chairman
Maura Corrigan
Lawrence D. Owen
Sen. David Honigman
Sen. Virgil Clark Smith
Rep. Perry Bullard
Rep. Michael Nye
Elliott Smith

Date: February 15, 1993

A RESOLUTION HONORING PROFESSOR JEROLD ISRAEL

Whereas, It is with a great deal of respect for his contributions to Michigan law that the members of the Michigan Law Revision Commission accord honor and tribute to Professor Jerold Israel. A member of the Michigan Law Revision Commission since 1973, Professor Israel has conscientiously completed his duties as Executive Secretary of the Commission and can look back proudly upon a long and successful tenure of leadership working to keep the books of Michigan law updated and revised. We are grateful for his commitment to the Commission and for his service on behalf of the citizens of our Great Lake State; and

Whereas, A graduate of Case-Western Reserve University and Yale University, Jerold Israel has contributed to the education of scores of Michigan lawyers and is the Alene and Allan F. Smith Professor of Law at the University of Michigan Law School. In addition to sharing his knowledge with law students, he is an author, a former co-reporter for the State Bar of Michigan's Proposed Michigan Criminal Code, and a member of committees of the Michigan Supreme Court. His publications, several in number, include the most widely used casebook on criminal procedure and a frequently cited three-volume treatise on the subject; and

Whereas, Upon his retirement from the Michigan Law Revision Commission, Jerold Israel completes a long and effective chapter in his continuing record of public service. His research on issues of concern to the Michigan Law Revision Commission has enlightened lawmakers and members of the legal profession. He has also shared his insight and experience as a consultant to other states which are revising their court rules and statutes. The people of Michigan have been most fortunate to have the benefit of his expertise; now, therefore, be it

Resolved, That a copy of this resolution be printed in the 27th Annual Report of the Michigan Law Revision Commission.

A RESOLUTION COMMENDING THE HONORABLE PERRY BULLARD

Whereas, It is with great respect and appreciation for his valuable contributions that the Michigan Law Revision Commission is pleased to honor Representative Perry Bullard on his departure from the Commission. As a member of the Commission since 1981, Mr. Bullard has served with distinction as a member of the body statutorily charged with the responsibility of examining and discovering defects in the laws and recommending needed reform; and

Whereas, Perry Bullard, a legislative member of the Commission, brought to his assignment on the Commission a keen eye, discretion, and a broad knowledge of the law. A graduate of Harvard University and the University of Michigan Law School, Mr. Bullard has been a Democratic State Representative, representing the Ann Arbor area, for the past two decades; and

Whereas, Prior to entering law and the Legislature, Perry Bullard distinguished himself as an aviation officer, earning thirteen air medals while serving with the United States Navy. As a legislator, he has served on several key committees, including the House Civil Rights Committee, which he chaired from 1975-1978, was also chair of the House Labor Committee and, most recently, Chair of the House Judiciary Committee; and

Whereas, He is also a Commissioner of the National Conference of Commissioners on Uniform State Laws and was a member of the Michigan 21st Century Commission on the Courts. His contributions to the Michigan Law Revision Commission will be long remembered; now, therefore, be it

Resolved, That a copy of this resolution be printed in the 27th Annual Report of the Michigan Law Revision Commission.

TORTFEASOR CONTRIBUTION UNDER MICHIGAN COMPILED LAWS §600.2925a(5)

Introduction

Section 600.2925a(5) of the Michigan Compiled Laws limits contribution rights among joint tortfeasors by requiring that the tortfeasor who is sued make a reasonable effort to notify a tortfeasor who has not been sued of the commencement of the action. This section was adopted in 1974, largely in response to the Commission's recommendations. There are two defects in the wording of the section: the use of the word "contributee," and the implication that a reasonable effort at notice is required even when the tortfeasors have both been joined in the action.

Joint Tortfeasor Contribution Under MCL §600.2925a(5)

Section 2925a(5) of the Revised Judicature Act of 1961, 1961 PA 236, the Michigan act dealing with contribution between joint tortfeasors, provides:

> A tort-feasor who satisfies all or part of a judgment entered in an action for injury or wrongful death is not entitled to contribution if the alleged contributee was not made a party to the action and if a reasonable effort was not made to notify him of the commencement of the action. Upon timely motion, a person receiving such notice may intervene in the action and defend as if joined as a third-party.

A brief review of the provision's legislative history follows:

The Uniform Acts

A. *Uniform Contribution Among Tortfeasors Act (1939)*

The Uniform Contribution Among Tortfeasors Act (1939), promulgated by the National Conference of Commissioners on Uniform State Laws, allowed a joint tortfeasor to gain contribution in three situations:

1) Where judgment has been entered against several joint tortfeasors and enforced disproportionately against one. Section 1 (hereafter described as the "party situation").

2) Where judgment has been recovered from one joint tortfeasor, and other joint tortfeasors were not made parties to the action. Section 2 (hereafter described as the "non-party situation").

3) Where one joint tortfeasor has settled with the injured person and extinguished the liability of the others. Section 3(3) (hereafter described as the "settlement situation").

Section 7 of the Act set detailed rules governing third-party practice, amended complaints, counterclaims, cross complaints and motion practice. Notably, §7(3)(b) stated that a joint tortfeasor seeking contribution from a joint judgment debtor had to do so concurrent to the original action.

B. *Uniform Contribution Among Tortfeasors Act (1955)*

Due to unfavorable reports as to the progress and operation of the 1939 Act, it was revised in 1955. Commissioners' Prefatory Note (1955 Revision). Unlike the 1939 Act, the revision omitted any rules governing third-party practice. Instead, each state was to employ its own established rules for such procedures. Commissioner's Comment, §3(b). As to the party situation, it now specifically permitted a joint tortfeasor to gain contribution even in a separate action. Section 3(a). As to settlement, it added that a joint tortfeasor could only gain contribution for reasonable amounts paid to the injured party. Section 1(d).

Michigan Legislation

A. *MCL §600.2925*

Initially adopted in 1941, MCL §600.2925(1) allowed contribution only where judgment was entered against several joint tortfeasors, but enforced disproportionately against one.

B. *Michigan Law Revision Commission (MLRC) Proposal (1967)*

In 1967, the MLRC proposed a bill to extend the right of contribution in Michigan. Based largely on the Uniform Act (1955), the MLRC Proposal similarly extended the right of contribution to the settlement and non-party

situations. As with the Uniform Act, the party provision permitted contribution to be sought in a separate action. MLRC Proposal, §2925c(1). However, it added three restrictions to the settlement provision not found in the Uniform Act. These were found in (b), (c) and (d) of §2925a(3):

> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor if (a) liability of the contributee for the injury or wrongful death is not extinguished by the settlement; (b) no reasonable effort was made to notify the contributee of the pendency of the settlement negotiations; (c) no reasonable opportunity was given the contributee to participate in the settlement negotiations; or (d) the settlement was not made in good faith.

Subsection (d) was a modification of the Uniform Act's "reasonable amount limitation." The two additions -- (b)'s notice requirement and (c)'s opportunity to participate requirement -- were completely independent of the Uniform Act.

The MLRC Proposal also added a restriction similar to (b) and (c) in its non-party provision:

> A tortfeasor who satisfies all or part of a judgment entered in an action for injury or wrongful death is not entitled to contribution from a tortfeasor not made a party to the action regarding whom no reasonable effort was made to notify of the commencement of the action. Upon timely motion, any person receiving such notice may intervene in the action and defend as if joined as a third-party. MLRC Proposal, §2925a(4).

Thus in both the non-party and settlement situations, the MLRC Proposal sought to require that a tortfeasor forced to contribute at least have the opportunity to take part in determining the dollar amount. In making this addition to the settlement provision, the MLRC Proposal added the term "contributee" which did not appear in the Uniform Act. That term was not used in the Uniform Act.

Both the notification restrictions and the use of the term "contributee" were modifications which would be peculiar to Michigan. None of the other states which adopted a modified version of the Uniform Act added such restrictions or used this terminology. However, a few cases discussing the right to contribution have referred to a "potential contributor," *Baltimore*

Transit Co. v. State to Use of Schriefer, 183 Md. 674, 39 A.2d 674 (1944), or "proposed contributor." *Mumford v. Robinson*, 231 A.2d 477 (1967).

C. *MCL §600.2925a*

Adopted in 1974, MCL §600.2925a retained in large part both the substance and wording of the MLRC Proposal. The relevant wording change occurred in the notification restriction added to the non-party provision. That change is shown below, with the MLRC language in brackets, and the new language capitalized:

> A tort-feasor who satisfies all or part of a judgment entered in an action for injury or wrongful death is not entitled to contribution [from a tortfeasor] IF THE ALLEGED CONTRIBUTEE WAS not made a party to the action [regarding whom no) AND IF A reasonable effort was NOT made to notify HIM of the commencement of the action. Upon timely motion, [any] A person receiving such notice may intervene in the action and defend as if joined as a third [-] party.

Beyond the obvious change in sentence structure, the statute adopted the new term "alleged contributee" as compared to "contributee" used in the settlement provision of both the MLRC Proposal and the Act, as passed.

The Uniform Comparative Fault Act of 1977, promulgated by the National Conference of Commissioners on Uniform State Laws, likewise provides no help. The Act did not change the right to contribution as provided in the Uniform Contribution Among Tortfeasors Act, nor did it use the terms "contributee" or "contributor."

No Michigan cases appear to interpret the notification restriction to the non-party situation, but at least one did discuss the restriction as applied to the settlement provision. The Michigan Court of Appeals held that a liability insurer who had settled a personal injury case did not make reasonable effort to notify the alleged joint tortfeasor of settlement negotiations. The alleged joint tortfeasor therefore had no reasonable opportunity to participate in the negotiations and therefore could not be forced to contribute. The Court rejected the insurer's argument that it did not become aware of the alleged tortfeasor's liability until after the settlement had been reached. In doing so, the Court did not interpret the statute to include such an exception, especially since the insurer's own negligence prevented it from recognizing the alleged tortfeasor's liability. *State Farm Fire and Cas. Co. v. Super City, Inc.*, 125 Mich. App. 65, 335 N.W.2d 714 (1983).

Sources of Confusion Created by MCL §600.2925a(5)

MCL §600.2925a(5) poses two problems. The first is the use of the term "contributee":

> The person who is seeking to obtain contribution is the contributee; the person who is compelled to make contribution is the contributor. Of course, the statute relates to the person who is called upon to make contribution. Thus, the incorrect term is used in the statute.

The same objection applies to the use of "contributee" rather than "alleged contributee." In addition, possible confusion might arise over the use of different terminology in the two provisions. The best way of avoiding this confusion may be to turn to a term that simply refers to other tortfeasors liable for contribution. Indeed, as recognized in the original MLRC non-party provision, since MCL §600.2925a(1) limits the act to joint or severally liable tortfeasors, it may be possible to simply refer to "a tortfeasor."

The second, and more significant problem with MCL §600.2925a(5) is "the use of 'and' rather than 'or' in the first sentence when addressing the preconditions to obtaining contribution."

> The statute, as it reads, requires two things:
>
> 1. First, that the defendant against whom a judgment has been entered and satisfied must have made the person from whom he is seeking contribution a party to the action;
>
> - and -
>
> 2. The defendant against whom the judgment has been entered and satisfied must have made a reasonable effort to notify the person from whom he is seeking contribution of the commencement of the action.
>
> Such a reading makes very little sense:
>
> If the person from whom contribution is sought was made a party to the action, by definition there would have been a reasonable effort made to notify him of the commencement of the action. As such, the use of the term "and" in the first sentence of the

subsection mandates a second precondition which is wholly unnecessary.

So too, limiting contribution to those made a party runs counter to MCL §600.2925a(1) which states:

> Except as otherwise provided in this act, when 2 or more persons become jointly or severally liable in tort for the same injury to a person or property or for the same wrongful death, there is a right of contribution among them *even though* judgment has not been recovered against all or any of them. (Emphasis added).

An alternative reading of MCL §600.2925a(5) would be that, as to persons not a party to the action, contribution is only available if a reasonable effort to notify is made. This was the apparent purpose of the provision, as indicated by the MLRC Proposal. That proposal does not use an "and", but states that contribution is not available for a non-party tortfeasor where no reasonable effort to give notice has been made. Using the phrase "regarding whom no reasonable effort was made to notify" may have been awkward, but it did avoid the confusion arising from the sentence structure used in the current law.

RECOMMENDATION

The Commission proposes that language along the following lines be used to avoid any confusion in the non-party provision:

> A tort-feasor who satisfies all or part of a judgment entered in an action for injury or wrongful death is not entitled to contribution from another tort-feasor not made a party to the action unless reasonable effort was made to notify the other tort-feasor of the commencement of the action. Upon timely motion, any person receiving such notice may intervene in the action and defend as if joined as a third party.

Furthermore, to avoid the term "contributee," the following change should be made to the settlement provision:

> A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor if any of the following circumstances exist:

(a) The liability of the other tort-feasor for the injury or wrongful death is not extinguished by the settlement.

(b) A reasonable effort was not made to notify the other tort-feasor of the pendency of the settlement negotiations.

(c) The other tort-feasor was not given a reasonable opportunity to participate in the settlement negotiations.

(d) The settlement was not made in good faith.

AMENDMENTS TO MICHIGAN'S ESTATE TAX APPORTIONMENT ACT

Introduction

This report reviews modifications of the Uniform Estate Tax Apportionment Act (UETAA) which have been proposed and enacted in some other states subsequent to Michigan's adoption of the UETAA in 1963. Part I summarizes the general goals of estate tax apportionment statutes. Part II reviews the legislative history of the UETAA, looking in detail at modifications recommended by the National Conference of Commissioners on Uniform State Laws. Part III presents a detailed comparison of Michigan's statute with the 1958 UETAA. Part IV concludes by posing questions to be considered in altering Michigan's estate tax apportionment statute, and explains the Commission's recommendations on these questions. Appendix A sets forth the Michigan version of the UETAA, Appendix B the 1958 UETAA, Appendix C the 1964 UETAA (as amended in 1982) and Appendix D the apportionment provisions of the Uniform Probate Code.

ESTATE TAX APPORTIONMENT STATUTES GENERALLY

The Internal Revenue Code does not specify how the estate tax is to be apportioned among the various assets of an estate except for three types of property -- life insurance, appointive property, and qualified terminable interest property.[1] A decedent's taxable estate may also consist of several other types of assets, some of which, such as jointly held property and inter vivos transfers, never come into the possession of the executor of the estate. Absent either (1) a provision of the will which specifies the decedent's desired apportionment of estate taxes, (2) an estate tax apportionment statute, or (3) the state's recognition of the doctrine of equitable apportionment,[2] the portion of the taxable estate held by the executor bears the burden of taxation for the entire estate. It is therefore possible for the total tax bill to be greater than the value of property held by the executor.

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[1] See 26 U.S.C. §§2206, 2207.

[2] Many of the states which have not enacted apportionment statutes have applied the doctrine of equitable apportionment judicially. Mary Hitt, *Estate of Reno v. Commissioner: One Step Beyond Apportionment?*, 48 U.Pitt.L.Rev. 1093 (1987).

Estate tax apportionment statutes are designed to relieve such inequities in the taxation of a decedent's estate. The decedent is often unaware of the tax consequences discussed in the preceding paragraph, and therefore estate tax apportionment statutes seek to accomplish the likely intent of the decedent when none is expressed. See Kahn, *The Federal Estate Tax Burden Borne by a Dissenting Widow*, 64 Mich.L.R. 1499, 1507 (1966). Any provision of a will which specifies the desired apportionment of taxes is given full effect by apportionment statutes. Absent such an expression of intent, the statutes give the executor a right to recover the amount of taxes chargeable to property held by others. Generally, apportionment statutes assume that the decedent intended to have recipients of property of the taxable estate bear the taxes in proportion to the value of their share in the taxable estate.

LEGISLATIVE HISTORY OF THE UETAA

In 1958, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Estate Tax Apportionment Act (1958 UETAA). At that time, half of the states had laws providing for some form of apportionment of estate taxes, but none of these statutes provided for recovery of a proportionate part of the estate apportioned to a non-resident. The 1958 UETAA was offered as a means of correcting this defect and as a means of remedying the conflict of laws question that arose as to which state's rule of apportionment should apply if property subject to tax in the decedent's estate was located in a state other than that of the decedent's domicile.

Michigan adopted the 1958 UETAA in 1963 (MCL §720.11 et seq.). (See Appendix A). A total of four states adopted this 1958 version.[3] In response to concerns that arose following promulgation of the 1958 UETAA, the NCCUSL and the American Bar Association approved a revised version of the UETAA in 1964 (1964 UETAA). Six states subsequently adopted this version.[4] The Uniform Probate Code (UPC), which incorporates a version of the UETAA as §3-916, was approved in 1967. Eleven states have adopted this

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[3] Mich. -- §720.11 et seq.; N.H. -- §88-A:1 et seq.; and Wyo. -- §2-10-101 et seq.. North Dakota repealed the 1958 Act (N.D. -- §30-21.1-01 et seq.) in 1973 and has since replaced it with the UPC version of the UETAA (N.D. -- §30.1-20-16).

[4] Haw. -- §236A-1 et seq.; Md. -- Tax-General §7-308; R.I. -- §44-23.1-1 et seq.; Vt. -- §7301 et seq.; and Wash. -- §83.110.010 et seq.. Oklahoma repealed the 1964 Act (Okla. -- 58 §2001 et seq.) in 1969. Oklahoma courts have subsequently interpreted the statute dealing with computation of estate tax, Okla. -- t. 68 §825, as imposing the doctrine of equitable apportionment. *LeDonne v. Stearman*, 730 P.2d 519, 522 (Okla.S.Ct. 1986).

version of the UETAA.[5] Thus, there are 19 states that have adopted and currently retain the UETAA in one of its forms.[6]

In 1982 the NCCUSL simultaneously amended the 1964 UETAA and UPC §3-916. Only three states that have adopted the UETAA have incorporated these amendments.[7]

Thus, in considering possible alterations of Michigan's estate tax apportionment statute, there are three lines of change to be examined. First, there are the revisions to the original 1958 UETAA as effected in the 1964 UETAA. Second, there are the revisions to the original 1958 UETAA reflected in the UPC's incorporation of the Act. Third, there are the simultaneous amendments in 1982 to the 1964 UETAA and UPC §3-916.

1. 1964 Revisions to the 1958 UETAA.

There are three changes of possible significance effected in the 1964 UETAA.

(a) Apportionment of Expenses Incurred. Section 3(c) of the 1964 UETAA is a new provision for the apportionment of the expenses incurred by the estate in connection with determining and apportioning the estate tax. The 1958 UETAA does not explicitly provide for apportionment of such expenses.

(b) Restriction on Out-of-State Fiduciaries. The 1964 UETAA eliminates the provision in the 1958 UETAA (found in 1958 UETAA §8(b)(2) and MCL §720.18(b)(2)) which restricts the ability of out-of-state fiduciaries[8]

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[5] Alaska -- §13.16.610; Colo. -- §15-12-916; Idaho -- §15-3-916; Me. -- tit. 18A §3-916; Minn. -- §524.3-916; Mont. -- §72-16-601 et seq.; N.D. -- §30.1-20-16; N.M. -- §45-3-916; Or. -- §116.303 et seq.; S.C. -- §62-3-916; and Utah -- §75-3-916.

Arizona, Florida, Hawaii, and Nebraska have otherwise adopted the Uniform Probate Code but did not retain §3-916. See Jeffrey N. Pennell, *Tax Payment Provisions and Equitable Apportionment*, ALI-ABA Course of Study: Planning Techniques for Large Estates (1992). Florida, Hawaii, and Nebraska retained their preexisting estate tax apportionment statutes, but Arizona makes no express provision for apportionment of estate taxes.

[6] There is some confusion in the *Uniform Laws Annotated* as to which versions of the UETAA have been adopted in certain states. This confusion seems to arise from a failure to consistently differentiate between the three versions of the UETAA. I have based my classification of the sources of the various statutes on the differences in language and content of the three versions.

[7] See supra notes 13-16 and accompanying text.

[8] Fiduciary means executor or trustee.

to recover from state residents. Section 8(b)(2) of the 1958 UETAA allows an out-of-state fiduciary to recover an apportioned share of federal estate taxes only if the property concerned is of the type the federal tax code identifies as subject to apportionment. The federal tax code specifies that recipients of life insurance proceeds, property taxable due to a power of appointment held by the decedent, and qualified terminable interest property are liable to the executor for their share of the estate tax. 26 U.S.C. §§2206, 2207. No other types of property are mentioned. This means that jointly held property and inter vivos trusts are not subject to recovery by an out-of-state executor under the 1958 UETAA. The 1964 UETAA removes this restriction.

The federal tax code provisions are not intended to limit the types of property which may be subject to a recovery action. Federal law is only concerned with making sure that the estate tax is paid and "leaves its impact and apportionment to the administering state." *Harris v. United States*, 370 F.2d 887, 893 (4th Cir. 1966). Thus, the 1958 UETAA's restriction concerning apportionment of federal estate tax is not compelled by federal law. In 1966, the Taxation Section of the State Bar of Michigan proposed an amendment which would remove this provision from Michigan's estate tax apportionment statute. *Ninth Annual Report, Taxation Section*, Mich.St.B.J., Sept. 1966 at 86. That proposal did not result in enacted legislation.

(c) Clarification of Definitional Provision. A phrase is added to the definitional provision of the statute. Section 1(4), as altered, states:

> "person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent *while alive* or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate.

No explanation was given for this change. It seems not to alter the intended meaning, but only to clarify.

The remaining modifications found in the 1964 revision are minor changes in language and style that clearly do not alter the meaning of the provisions.

2. Uniform Probate Code Version.

The Comment following UPC §3-916 states that "Section 3-916 copies the Uniform Estate Tax Apportionment Act." One might assume that since the

UPC was approved in 1967, it would copy the 1964 UETAA. However, §3-916 does not incorporate the previously discussed substantive changes incorporated in the 1964 UETAA. According to Richard Wellman, Chief Reporter for the Uniform Probate Code, there were no objections to the 1964 version of the UETAA, and the failure to incorporate the 1964 revisions in §3-916 was inadvertent. The UPC was drafted before the 1964 revisions were adopted.

Though the UPC failed fully to incorporate the significant revisions reflected in the 1964 UETAA, two states which initially adopted the UPC version have gone on to amend their apportionment statutes to incorporate features of the 1964 UETAA. Utah amended its version of the UPC in 1983 to add the provision for apportioning expenses incurred in determining and apportioning the estate tax (1964 UETAA §3(c); Utah -- §75-3-916(3)(c)) and to add the reciprocity requirement for out-of-state fiduciaries seeking to collect an apportioned share of estate taxes from Utah residents (1964 UETAA §8; Utah -- §75-3-916(8)). South Carolina amended its version of the UPC in 1990 to add the provision for apportioning expenses incurred in determining and apportioning the estate tax (1964 UETAA §3(c); S.C. -- §62-3-916(c)(5)).

There are numerous modifications of style and language in the UPC version of the UETAA, but only four changes of possible significance:

(a) Will-Exception Provision. A sentence is added to the end of §3-916(b) (compare with 1958 UETAA §2): "If the decedent's will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls."[9] This addition represents a clarification of the intent of the 1958 UETAA as reflected in the opening clause "Unless the will otherwise provides" and as such is not a substantive change.

(b) Restriction on Out-of-State Fiduciaries. In §3-916(h), the UPC drops the restrictions set forth in 1958 UETAA §8(b) that limit the ability of out-of-state fiduciaries to recover apportioned shares from state residents. As noted previously, the 1964 UETAA also eliminates the restriction embodied in 1958 UETAA §8(b)(2) with respect to apportionment specified by federal estate tax law.[10] However, it retains another restriction embodied in the 1958

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[9] As discussed in Part III(c), Michigan incorporates this change in its estate tax apportionment statute. M.C.L. §720.12.

[10] See supra Part II(1)(b).

UETAA (found in 1958 UETAA §8(b)(1) and MCL §720.18(b)(1)) which the UPC drops.

The restriction states: "The provisions of subsection (a) of this section shall apply only if such other state affords a remedy substantially similar to that afforded in subsection (a) hereof." In Michigan, for example, this conditions a non-resident fiduciary's ability to collect an apportioned share of estate taxes from a Michigan resident upon the state where the non-resident fiduciary resides allowing reciprocal action when a fiduciary residing in Michigan seeks to collect an apportioned share of estate taxes from a citizen of that state.

The UPC commentary does not explain why this restriction was dropped. It may be that it was assumed that other jurisdictions would also have the UPC so that each state would provide the same remedy, thus rendering a reciprocity requirement unnecessary. It is also possible that a reciprocity requirement was not regarded as a legitimate reason for denying a fiduciary's request to collect an apportioned share of estate taxes.

(c) Court Approval of Bond Arrangement. Section 4(b) of the 1958 UETAA states:

> If property held by the fiduciary is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the probate court having jurisdiction of the administration of the estate.

Section 3-916(d)(2) of the UPC preserves the fiduciary's right to a security arrangement but eliminates the requirement that the probate court approve it.

The commentary accompanying UPC §3-916 does not explain why this approval requirement was dropped. It is possible that drafters anticipated that this provision would discourage apportionment being handled in an "informal probate proceeding" which does not require a judicial determination.[11] 1958

[11] The UPC offers a "flexible system of administration of decedents' estates" that is designed to provide persons interested in decedents' estates with as little or as much by way of procedural and adjudicative safeguards as may be suitable. Thus two methods of securing probate of wills are provided: informal probate, which involves a non-adjudicative determination with proceedings conducted without notice to interested persons, and formal probate, which involves judicial determination after notice to all interested persons. Comment, UPC Article III.

UETAA §4(b) requires a judicial determination even if the distributee and fiduciary agree on the terms of the security arrangement. Under the UPC, if they agree, the security arrangement can be handled informally, and if they disagree, either party has the option of seeking intervention of the court. The court then has "exclusive jurisdiction" to determine how decedents' estates are to be administered, expended and distributed pursuant to UPC §3-105. This authority would seem to include approval of a bond or security agreement between a fiduciary and a distributee. Thus, the UPC has protected the interested parties, but has also given them the option of proceeding in informal probate.

(d) Alterations of Language and Style. There are two major alterations of language and style. First, the UPC alters the definition of "fiduciary" as set forth in the definitional provision of the 1958 UETAA. UPC §3-916(a)(6) defines a fiduciary as a "personal representative or trustee" while the 1958 UETAA defines fiduciary as "executor, administrator of any description, and trustee." The UPC then goes on to substitute "personal representative" throughout the statute in place of "fiduciary." Second, UPC §3-916(c)(1) represents a complete rewrite of §3(a) of the 1958 UETAA, but the meaning of the subsections is identical.

3. 1982 Amendments of Both UETAA and UPC.

In 1982 the NCCUSL approved amendments to the 1964 UETAA and UPC §3-916 to resolve conflicts between the UETAA and the formula contained in the 1981 Federal Economic Recovery Tax Act (ERTA) for apportionment of the federal estate tax among beneficiaries.

Conflict arises between the UETAAs (i.e., 1958 UETAA, 1964 UETAA, and UPC §3-916) and the ERTA only when the estate in question is one whose earlier dying mate used ERTA's Qualified Terminable Interest Provision (Q-TIP) in the estate plan and the executor elected to treat the qualifying interest as a marital deduction item, thus deferring estate taxes on the qualifying assets until the surviving spouse's death or gift of the life interest in the Q-TIP arrangement.[12] In such a situation ERTA prescribes that the Q-TIP beneficiaries will bear an amount of the estate taxes equal to the difference between the taxes due and the taxes that would have been due had the Q-TIP interests been excluded. In cases where the entire estate is not taxed

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[12] This discussion of the conflict between the Act and ERTA is a summary of that set forth in *Handbook of the National Conference of Commissioners and Proceedings of the Annual Conference Meeting in its Ninety-First Year*, p. 246 (1982).

at the lowest estate tax rate, this formula makes the Q-TIP successors bear the full impact of taxes at the highest bracket reached by the estate. This represents the first point of conflict, since under the UETAAs, all successors bear the same rate of tax on their share as is borne by the entire taxable estate.

The second point of conflict arises because ERTA dictates that each of those who share a Q-TIP benefit is jointly and severally liable for the full tax attributable to inclusion of the Q-TIP benefit. Under the UETAAs, no successor incurs liability for more than his or her share of the tax.

Therefore a new Section 9 was added to the 1964 UETAA and a new subsection (i) was added to UPC §3-916 to clarify that when such conflict occurs, the ERTA will control. A related clause was added to the beginning of 1964 UETAA §2 and UPC §3-916(b): "Except as provided in [§9] [subsection (i)]...."

Of the 17 states that had adopted one of the versions of the UETAA at the time these amendments were approved, only 2 have explicitly adopted the amendments.[13] Washington, which adopted the 1964 UETAA in 1986, incorporated the 1982 amendments.[14] It should also be noted that Utah, which adopted the UPC version and later incorporated features of the 1964 UETAA, has not adopted the 1982 amendments, but has a unique clause which states that the federal estate tax covered by the statute "specifically does not include the federal generation skipping transfer tax."[15] North Carolina, which has an independently authored apportionment statute, incorporated the 1982 amendments in 1986.[16]

It is not clear why so many states have failed to incorporate the 1982 amendments recommended by the NCCUSL. With the exception of South Carolina and Washington, all of the states that currently retain the UETAA in one of its forms enacted their estate tax apportionment statutes prior to 1982.

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[13] Colo. -- §15-12-916(8) and Mont. -- §72-16-602(3).

[14] Wash. -- §83.110.090.

[15] "'Tax' means the federal estate tax and the inheritance, estate, or other death tax payable to this state and interest and penalties imposed in addition to the tax but specifically does not include the federal generation skipping transfer tax." Utah -- §75-3-916(f).

Federal generation skipping transfer tax applies to a taxable gift which is a direct skip. See 26 U.S.C. §2611.

[16] N.C. -- §28A-27-8.

Like Michigan, they may not have felt compelled to alter that legislation. This premise is challenged, however, by South Carolina's failure to incorporate the 1982 amendments in 1986 when it enacted the UPC version of the UETAA (S.C. -- §62-3-916) and again in 1990 when it added the provision for apportionment of expenses incurred in determining and apportioning the estate tax (S.C. -- §62-3-916(c)(5)). Commentary accompanying the South Carolina statute supplies no explanation for the omission.

Another possible explanation for the failure of so many states to incorporate the recommended 1982 amendments is that the states have not yet addressed conflicts between the ERTA and the UETAA. NCCUSL commentary indicates that since Q-TIP trusts are a new feature in estate planning, it may be some time before an estate fiduciary is confronted with the UETAA conflict.[17]

A final possibility is that some states might not wish to stipulate that their estate tax apportionment laws will yield to federal law in the event of a conflict. They may hope for uncontested observance of the state statute or may wish to leave the resolution of such conflicts to the courts. However, this seems unlikely given the preponderance of authority weighing in on the side of federal law in conflicts between state and federal law.

COMPARING MICHIGAN'S STATUTE WITH THE 1958 UETAA

MCL §720.11 et seq. does not vary substantively from the 1958 UETAA. Five changes should be noted:

(a) Defining "Estate." In its definitional provision, Michigan opted for one of two possible bracketed clauses set forth in 1958 UETAA §1(a): "'Estate' means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state." Section 1 offered the option of adding to or replacing the preceding clause with "and the death duty payable by a decedent's estate to this state."

(b) Defining "Tax." In the definition of "tax," MCL §720.11(e) replaced "the estate tax payable to this state" found in 1958 UETAA §1(e) with "the additional inheritance tax provided by section 2b of Act No. 188 of the Public Acts of 1899, being §205.202b of the Compiled Laws of 1948."

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[17] See supra note 12.

(c) Defining "Fiduciary." In MCL §720.11(f), "fiduciary" is defined as "executor, administrator of any description, *or* trustee" while the same is defined in the 1958 UETAA §1 as "executor, administrator of any description and trustee."

(d) Will-Exception. MCL §720.12 varies from 1958 UETAA §2 in that Michigan adds a final clarifying sentence: "In the event the decedent's will directs a method of apportionment of tax different from the method described in this act, the method described in the will shall control." As previously discussed, this sentence was picked up by the Uniform Probate Code, but not by the 1964 UETAA. (See Part II(2)(A)). MCL §720.21 also alters 1958 UETAA §13 to reflect the above noted modification of §2, stating:

> "This act, *except the provision contained in §2 where the decedent's will directs a method of apportionment*, shall not apply to taxes due on account of the death of a person prior to 6 months after the enactment of this act."

Again, this seems not to alter the meaning of the provision, but merely to clarify.

(e) Reciprocity. Michigan slightly altered 1958 UETAA §8, adding "or" between subsections (1) and (2) of MCL §720.18(b):

> (b) The provisions of subsection (a) shall apply only:
> (1) If such other state affords a remedy substantially similar to that afforded in subsection (a); *or*
> (2) With respect to federal estate tax, if apportionment thereof is authorized by congress.

As discussed previously, the 1964 UETAA eliminates clause (2) and the UPC eliminates subsection (b) entirely.

QUESTIONS PRESENTED

The alterations that have ensued since Michigan's adoption of the 1958 UETAA in 1963 seem consistent with the original UETAA, and therefore there seems to be no reason to revoke MCL §720.11 et seq. and replace it with new legislation. The desired changes can be satisfactorily achieved by amending the existing statute. The lines of change reviewed in the preceding discussion give rise to six questions to be considered in altering Michigan's estate tax apportionment statute.

1. Should Michigan adopt the provision for apportionment of expenses incurred in determining and apportioning the estate tax? (As effected in the 1964 UETAA).

This approach seems logical even though UPC §3-916 does not incorporate this provision. Just as recipients of the assets should normally share in the estate tax they should share in the expenses of apportioning and determining the tax. Adoption is supported by the recommendation of the NCCUSL and by the fact that South Carolina and Utah have amended their estate tax apportionment statutes (UPC version) to incorporate this provision. (See Part II(1)(a) and Part II(2)).

2. Should Michigan remove the restriction limiting collection of apportioned shares by out-of-state fiduciaries to cases involving property specified by the federal tax code as subject to apportionment? (As effected in the 1964 UETAA and UPC §3-916).

Removal is strongly recommended given the abandonment of this restriction (found at MCL §720.18(b)(2)) by both the 1964 UETAA and UPC §3-916. Note also the Michigan State Bar's recommendation in 1966 that this restriction be removed from the statute. (See Part II(1)(b) and Part II(2)(b)).

3. Should Michigan remove the restriction limiting collection of apportioned shares by out-of-state fiduciaries to cases involving fiduciaries who reside in states with reciprocal allowances for collections by out-of-state fiduciaries? (As effected in UPC §3-916).

This decision is a matter of policy as discussed previously. Though UPC §3-916 removes this restriction (found at MCL §720.18(b)(1), it may be because the NCCUSL anticipated that all states would have statutes allowing out-of-state fiduciaries to collect apportioned shares from in-state distributees by way of adopting the UPC and thus found the reciprocity requirement redundant. Since most states have not yet enacted such statutes, Michigan should retain its reciprocity requirement for the present. Note that Utah has amended its estate tax apportionment statute (UPC version) to reinstate the reciprocity requirement. (See Part II(2)(b)).

4. Should Michigan remove the requirement that the Probate Court approve security arrangements for apportionment liability between the fiduciary and the distributee of the estate who

receives property prior to final apportionment of the estate tax? (As effected in UPC §3-916).

The likely explanation for the UPC's removal of this requirement was discussed previously. If the intent is to leave open the possibility of a fiduciary and distributee handling apportionment without judicial intervention ("informal probate"), Michigan has statutory provisions that impact on this situation. "Independent probate," as it is called in Michigan, "means probate designed to operate without unnecessary intervention by the probate court as provided in Article 3." MCL §700.7(4). Unlike the UPC, however, Michigan stipulates that "a provision in this act or other law which requires supervision of the court or a judicial proceeding shall not apply to independent probate, except as provided in this article." MCL §700.301(2). There are no cases on this provision, but it seems to say that any action which requires supervision of the court and is not referred to in Article 3 cannot be handled in independent probate. Article 3 makes no separate provision for a distributee posting bond upon collecting property in advance of final apportionment of the estate tax. Thus, a literal reading would seem to indicate that the requirement for the court's approval eliminates the fiduciary's right to obtain security when proceeding under independent probate.

If Michigan wants to require security arrangements when a distributee comes into possession of property prior to final apportionment of the estate tax and does not want to require that all such apportionment proceedings go before the probate court, it could eliminate the approval requirement as did the UPC. Otherwise, there can be no security arrangements unless the parties go before the court which means they are deprived of the option of proceeding under independent probate. It should be noted that Michigan, like the UPC, grants judicial protection to distributees unhappy with the performance of an independent fiduciary by way of statutory authority to file a petition for supervision with the court. MCL §700.351. Thus, removal of the approval requirement will not leave distributees judicially unprotected, yet parties will be free to proceed without judicial intervention should they so agree. (See Part II(2)(c)).

Nevertheless, the Commission recommends that Michigan retain the requirement of Probate Court approval of security arrangements for apportionment liability. Michigan's unique independent probate arrangements militate against opting for the Uniform Probate Code approach in this context.

5. Should Michigan add the minor clarification of "while alive" after "decedent" as found in the definition of "person interested in the estate"? (As effected in the 1964 UETAA).

This change in itself does not seem to justify amending the statute; however, if other changes are to be made, this clarifying phrase can be added without altering the intended meaning of MCL §720.11(c) and could avoid future litigation. (See Part II(1)(c)).

6. Should Michigan add the recommended 1982 amendments which stipulate that federal law will prevail when conflicts arise with Michigan's statute? (As effected in the 1964 UETAA and UPC §3-916).

This is a policy decision as previously discussed. Most states' failure to adopt these amendments stems from either failure to update legislation or the fact that such conflicts have not yet arisen. Michigan should anticipate such conflicts rather than leave their resolution to the courts, and should therefore add the recommended 1982 amendments. (See Part II(3)).

RECOMMENDATIONS

The Michigan Law Revision Commission recommends that four specific modifications be incorporated into Michigan's Estate Tax Apportionment Act:

1. Section 3(c) of the 1964 UETAA, which provides for apportionment of the *expenses* of determining and apportioning the estate tax, should be added to the Michigan statute.

2. MCL §720.18(b)(2), which limits collection of apportioned shares by out-of-state fiduciaries to cases involving property specified by the federal tax code as subject to apportionment, should be repealed.

3. The words "while alive" should be added, for the sake of clarification, after the word "decedent" in the definition of "person interested in the estate" in MCL §720.11(c).

4. The 1982 amendments of both UETAA and UPC proposed by the NCCUSL, which resolve conflicts between state law and the 1981 Federal Economic Recovery Act, should be adopted.

APPENDIX A

UNIFORM ESTATE TAX APPORTIONMENT ACT
Act 144 of 1963

AN ACT to provide for the apportionment of federal estate taxes and additional Michigan inheritance taxes.

History: 1963, Act 144, Eff. Sept. 6, 1963.

The People of the State of Michigan enact:

720.11 Uniform estate tax apportionment act; definitions.

Sec. 1. As used in this act:

(a) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state.

(b) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(c) "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, guardian, and trustee.

(d) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(e) "Tax" means the federal estate tax and the additional inheritance tax provided by section 2b of Act No. 188 of the Public Acts of 1899, being section 205.202b of the Compiled Laws of 1948 and interest and penalties imposed in addition to the tax.

(f) "Fiduciary" means executor, administrator of any description, or trustee.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.12 Apportionment of estate tax; values; wills.

Sec. 2. Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. In the event the decedent's will directs a method of apportionment of tax different from the method described in this act, the method described in the will shall control.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.13 Apportionment of estate tax; determination by probate court; interest, penalties.

Sec. 3. (a) The probate court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the probate court of the county wherein the decedent was domiciled at death upon the application of the person required to pay the tax shall determine the apportionment of the tax.

(b) If the probate court finds that it is inequitable to apportion interest and penalties in the manner provided in section 2, because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(c) If the probate court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(d) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act, the determination of the probate court in respect thereto shall be prima facie correct.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.14 Apportionment of estate tax; responsibility of fiduciary.

Sec. 4. (a) The fiduciary or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act.

(b) If property held by the fiduciary is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the probate court having jurisdiction of the administration of the estate.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.15 Apportionment of estate tax; allowances for exemptions and deductions.

Sec. 5. (a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift shall inure to the benefit of the person bearing such relationship or receiving the gift; except that when an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in section 2 hereof, and to that extent no apportionment shall be made against the property. The sentence immediately preceding shall not apply to any case where the result will be to deprive the estate of a deduction otherwise allowable under section 2053 (d) of the internal revenue code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.16 Apportionment of estate tax; temporary interest in property or fund.

Sec. 6. No interest in income and no estate for years or for life or other temporary interest in any property or fund shall be subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder shall be chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.17 Apportionment of estate tax; collection of apportioned share by fiduciary.

Sec. 7. Neither the fiduciary nor other person required to pay the tax shall be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the 3 months' period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate, who are subject to apportionment.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.18 Apportionment of estate tax; collection of apportioned share by non-resident fiduciary.

Sec. 8. (a) Subject to the conditions in subsection (b) a fiduciary acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of

this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state shall be prima facie correct.

(b) The provisions of subsection (a) shall apply only:

(1) If such other state affords a remedy substantially similar to that afforded in subsection (a); or

(2) With respect to federal estate tax, if apportionment thereof is authorized by congress.

History: 1963, Act 144, Eff. Sept. 6, 1963;--Am. 1965, Act 259, Imd. Eff. July 21, 1965.

720.19 Construction of act.

Sec. 9. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.20 Uniform estate tax apportionment act; short title.

Sec. 10. This act may be cited as the "uniform estate tax apportionment act".

History: 1963, Act 144, Eff. Sept. 6, 1963.

720.21 Application of act.

Sec. 11. This act, except the provision contained in section 2 where the decedent's will directs a method of apportionment, shall not apply to taxes due on account of the death of a person prior to 6 months after the enactment of this act.

History: 1963, Act 144, Eff. Sept. 6, 1963.

APPENDIX B

1958 UNIFORM ESTATE TAX APPORTIONMENT ACT

Sec.

§ 1. [Definitions]

In this Act

(a) "Estate" means the gross estate of a decedent as determined for the purpose of Federal estate tax [and the estate tax payable to this state] [and the death duty payable by a decedent's estate to this state].

(b) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(c) "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, guardian, and trustee.

(d) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(e) "Tax" means the Federal estate tax [and the estate tax payable to this state] [and the death duty payable by a decedent's estate to this state] and interest and penalties imposed in addition to the tax.

(f) "Fiduciary" means executor, administrator of any description, and trustee.

§ 2. [Apportionment]

Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

§ 3. [Procedure for Determining Apportionment]

(a) The [Probate Court] having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the [Probate Court] of the [county] wherein the decedent was domiciled at death upon the application of the person required to pay the tax shall determine the apportionment of the tax.

(b) If the [Probate Court] finds that it is inequitable to apportion interest and penalties in the manner provided in section 2, because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(c) If the [Probate Court] finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(d) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act, the determination of the [Probate Court] in respect thereto shall be prima facie correct.

§ 4. [Method of Proration]

(a) The fiduciary or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act.

(b) If property held by the fiduciary is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the [Probate Court] having jurisdiction of the administration of the estate.

§ 5. [Allowance for Exemptions, Deductions and Credits]

(a) In making an apportionment, allowances shall be made for any exemptions granted, [any classification made of persons interested in the estate] and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift shall inure to the benefit of the person bearing such relationship or receiving the gift; except that when an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in Section 2 hereof, and to that extent no apportionment shall be made against the property. The sentence immediately preceding shall not apply to any case where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for State death taxes on transfers for public, charitable or religious uses.

§ 6. [No Apportionment between Temporary and Remainder Interests]

No interest in income and no estate for years or for life or other temporary interest in any property or fund shall be subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder shall be chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

§ 7. [Exoneration of Fiduciary]

Neither the fiduciary nor other person required to pay the tax shall be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the [three months] next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within [a reasonable time] after [the three months' period] shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate, who are subject to apportionment.

§ 8. [Action by Non-Resident, Reciprocity]

(a) Subject to the conditions in subsection (b) of this section a fiduciary acting in another state or a person required to pay the tax [domiciled] [resident] in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either [domiciled] [resident] in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state shall be prima facie correct.

(b) The provisions of subsection (a) of this section shall apply only:

(1) If such other state affords a remedy substantially similar to that afforded in subsection (a) hereof;

(2) With respect to Federal estate tax, if apportionment thereof is authorized by Congress.

§ 9. [Uniformity of Interpretation]

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 10. [Short Title]

This act may be cited as the Uniform Estate Tax Apportionment Act.

§ 11. [Severability]

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

§ 12. [Repeal]

The following acts and parts of acts are hereby repealed:

(a)

(b)

(c)

§ 13. [Time of Application of Act]

This act shall not apply to taxes due on account of the death of decedents dying prior to [six months after the enactment of this act.]

APPENDIX C

1964 UNIFORM ESTATE TAX APPORTIONMENT ACT

Sec.

§ 1. [Definitions]

In this Act:

(1) "estate" means the gross estate of a decedent as determined for the purpose of Federal estate tax [and the estate tax payable to this state] [and the death duty payable by a decedent's estate to this state;]

(2) "fiduciary" means executor, administrator of any description, and trustee;

(3) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(4) "person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate;

(5) "state" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(6) "tax" means the Federal estate tax [and the estate tax payable to this state] [and the death duty payable by a decedent's estate to this state] and interest and penalties imposed in addition to the tax.

§ 2. [Apportionment]

Except as provided in Section 9 and, unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

§ 3. [Procedure for Determining Apportionment]

(a) The [Probate Court] having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the [Probate Court] of the [county] wherein the decedent was domiciled at death shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(b) If the [Probate Court] finds that it is inequitable to apportion interest and penalties in the manner provided in this Act because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(c) The expenses reasonably incurred by any fiduciary and by other person interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in section 2 and charged and collected as a part of the tax apportioned. If the [Probate Court] finds it is inequitable to apportion the expenses as provided in section 2, it may direct apportionment thereof equitably.

(d) If the [Probate Court] finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(e) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act, the determination of the [Probate Court] in respect thereto is prima facie correct.

§ 4. [Method of Proration]

(a) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his possession, distributable to any person interested in the estate, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act.

(b) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the [Probate Court] having jurisdiction of the administration of the estate.

§ 5. [Allowance for Exemptions, Deductions and Credits]

(a) In making an apportionment, allowances shall be made for any exemptions granted, [any classification made of persons interested in the estate] and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the pur-

poses of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this Act, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

§ 6. [No Apportionment between Temporary and Remainder Interests]

No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

§ 7. [Exoneration of Fiduciary]

Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of the [three months] next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within [a reasonable time] after [the three months' period] is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

§ 8. [Action by Non-Resident, Reciprocity]

Subject to this section a fiduciary acting in another state or a person required to pay the tax who is [domiciled] [resident] in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax or an estate tax payable to another state or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either [domiciled] [resident] in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

§ 9. [Coordination with Federal Law]

If the liabilities of persons interested in the estate as prescribed by this act differ from those which result under the Federal Estate tax law, the liabilities imposed by the federal law will control and the balance of this Act shall apply as if the resulting liabilities had been prescribed herein.

Added in 1982.

§ 10. [Uniformity of Interpretation]

This Act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

§ 11. [Short Title]

This Act may be cited as the Uniform Estate Tax Apportionment Act.

§ 12. [Severability]

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 13. [Repeal]

The following acts and parts of acts are repealed:

(1)

(2)

(3)

§ 14. [Time of Application of Act]

This Act does not apply to taxes due on account of the death of decedents dying prior to [six months after the enactment of this Act.]

APPENDIX D

UNIFORM PROBATE CODE §3-916: APPORTIONMENT OF ESTATE TAXES

Section 3-916. [Apportionment of Estate Taxes.]

(a) For purposes of this section:

(1) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(3) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

(4) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(5) "tax" means the federal estate tax and the additional inheritance tax imposed by _____ and interest and penalties imposed in addition to the tax;

(6) "fiduciary" means personal representative or trustee.

(b) Except as provided in subsection (i) and, unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls.

(c) (1) The Court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(2) If the Court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the Court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the Court may charge him with the amount of the assessed penalties and interest.

(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code the determination of the Court in respect thereto shall be prima facie correct.

(d) (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(e) (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the Court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

(i) If the liabilities of persons interested in the estate as prescribed by this act differ from those which result under the Federal estate tax law, the liabilities imposed by the federal law will control and the balance of this Section shall apply as if the resulting liabilities had been prescribed herein.

STUDY REPORT

Telephone Conference Call Participation in Public Meetings

A Report of the Michigan Law Revision Commission

This report[1] supplies background information concerning participation in Michigan public meetings by way of telephone conference call. Part I summarizes pertinent Michigan statutory and judicial authority in addition to Opinions of the Attorney General. Part II surveys the legal authority in jurisdictions that do not have specific statutory provisions referring to teleconferences. Part III generally reviews states with open meetings laws that incorporate specific references to the use of telephonic communications, focusing in particular on those that prohibit or severely limit meetings by telephone conference call. Part IV summarizes issues suggested by statutes authorizing teleconferencing, looking in detail at the requirements set forth by these statutes.

I. MICHIGAN LAW

A. *Statute*

Michigan's Open Meetings Act, MCL §15.261 et seq. (see App. A), provides that all meetings of a public body shall be open to the public and shall be held in a place available to the general public. There is no language in the act explicitly permitting or prohibiting meetings conducted by telephone conference call.

B. *Courts' Interpretation*

In *Goode v. Dept. of Social Services*[2], plaintiffs contended that the Department of Social Services violated the Open Meetings Act by conducting

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[1] Professor Jerold Israel and Debbie Walker, of the Michigan Law School, provided research assistance to the Commission in connection with this report.

[2] 143 Mich.App. 756, 373 N.W.2d 210 (1985).

contested case hearings by telephone conference call.[3] The Michigan Court of Appeals ruled that requirements of the Open Meetings Act were not violated where calls were heard through speaker phones and were audible to all in the room and where persons who wished to attend the hearing were allowed to do so and were able to attend at either location.[4]

> The conference call set-up actually increases the accessibility of the public to attend, as now more than one location is open to the public. While we recognize that to actually see and observe all the witnesses and the hearing officer is desirable, we do not find it necessary.... The policy of promptly conducting the hearings and quickly resolving the claims far outweighs the benefits of members of the public actually seeing the hearing.[5]

Following the *Goode* decision, the Department of Social Services instituted a policy stating that telephone hearings would be routinely conducted in cases involving applicants for, or recipients of, public assistance who contested a denial, reduction, or termination of their public assistance. This policy was challenged by numerous welfare rights organizations in *Detroit Base Coalition for Human Rights of the Handicapped v. Dept. of Social Services*.[6] The Supreme Court of Michigan held that the newly instituted policy providing for telephonically-conducted hearings violated Department of Social Services rules for conducting hearings that existed apart from Open Meetings Act requirements.[7] The Court did not directly address the Court of Appeals' holding in *Goode*, stating that "[t]he decision in *Goode* has no applicability to the instant case."[8] Disagreeing with the defendant's claim that a hearing conducted by telephone conference call takes place both at the place where the hearing referee is located and at the local office where the claimant attends, the Court found that the situs of the meeting was only where the

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[3] M.C.L.A. § 400.9 (Rules for conduct of hearings for applicants for or recipients of assistance or service) stipulates that all such Dept. of Social Services hearings are to be conducted pursuant to the Open meetings act. Mich. Comp. Laws Ann. § 400.9 (West 1992).

[4] Id. at 212.

[5] Id.

[6] 431 Mich. 172, 428 N.W.2d 335 (1988).

[7] Id. at 336.

[8] Id. at 338 (noting that the Court of Appeals discussed only the question of whether the teleconference calls satisfied the requirement that the hearings be open to the public and not whether additional rules governing DSS meetings were satisfied).

hearing officer was located.[9] Thus, a hearing conducted by telephone conference call violated the rule requiring that Department of Social Services hearings take place "in the county in which the claimant resides."[10]

C. *Opinions of the Attorney General*

No Opinions of the Attorney General are directly on point, and only two might be considered relevant. In 1943, the Attorney General opined that county supervisors had no authority for holding a meeting over the telephone and that votes cast by telephone were a nullity.[11] It should be noted that these telephonic communications did not constitute a conference call per se, but a series of private telephone conversations.

In 1979 the Attorney General opined that public meetings of public bodies could not be held at distances from the governmental units which would make it difficult or inconvenient for citizens residing in the area served by the public bodies to attend.[12] The significance of this opinion lies in its going beyond the statutory requirement that meetings be held in places available to the general public,[13] to insist that meetings be held in places that are convenient for members of the public.

II. JURISDICTIONS WITHOUT STATUTORY REFERENCE TO THE USE OF TELEPHONE CONFERENCE CALLS

All 50 states[14] and the federal system[15] have open meetings laws providing for public access to the meetings of governmental bodies. As discussed in Parts III and IV, sixteen states have open meetings laws with some

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9 Id. at 340.

10 Id. The Court also found that implementation of the new teleconferencing policy violated rule-making requirements of the Administrative Procedure Act which allow claimants to participate in promulgation of Dept. of Social Services policies.

11 Mich. Op. Att'y Gen. No. 0-722, p. 393 (1943-44).

12 Mich. Op. Att'y Gen. No. 5560 (1979).

13 Mich., § 15.263(1). See App. A.

14 For a list of the states' open meetings laws, see Note, *New Jersey's Open Public Meetings Act: Has Five Years Brought "Sunshine" Over the Garden State?*, 12 Rutgers L.J. 561, n.4 (1981).

15 5 U.S.C. § 552b "Government in the Sunshine Act."

reference to the use of telephonic communication.[16] In this part, the discussion will focus on existing legal authority in the remaining jurisdictions which lack such statutory references.

A. *Courts' Interpretation in Absence of Statute*

Few state courts and no federal courts have faced the question of whether a teleconference, otherwise satisfying the requirements of an open meetings law, can qualify as an "open meeting" in the absence of a statute explicitly so providing, and the results have been contradictory.

The Pennsylvania Commonwealth Court recently reaffirmed its earlier holding that telephonic communication employing a speakerphone cannot substitute for actual attendance at a public meeting without specific legislative authorization, stating:

> The obvious intent of the Sunshine Act is to allow the public to see their representatives at work and observe their demeanor. Having Board members conduct a meeting by speakerphone, instead of attending in person, seriously violates the public's right to observe and assess the quality of the representation they are receiving.[17]

The Supreme Court of Virginia[18] and the Supreme Court of Vermont[19] reached similar conclusions prior to the passage of legislation directly addressing the use of telephone conference calls.[20]

In contrast, the Michigan Court of Appeals found that hearings conducted by telephone did not violate requirements of the Open Meetings Act.[21]

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[16] See supra notes 29-32 and accompanying text.

[17] Finucane v. Pennsylvania Milk Marketing Board, 136 Pa. Commw. 681, 685, 584 A.2d 1069 (1990).

[18] Roanoke City School Board v. Times-World Corp., 226 Va. 185, 307 S.E.2d 256, 259 (1983).

[19] State v. Vermont Emergency Board, 136 Vt. 506, 394 A.2d 1360 (1978).

[20] See Va. Code Ann. §§ 2.1-341, 2.1-343.1 (1991); Vt. Stat. Ann. tit. 1, § 312 (1991).

[21] See supra notes 1-4 and accompanying text.

B. *State Attorney General Opinions in Absence of Statute*

There has been much more extensive discussion of the teleconference issue in state Attorney General Opinions. Opinions from six states indicate that in the absence of specific statutory authority, a public meeting may be conducted via telephone conference call, if all requirements of the open meetings law are met.[22]

Opinions from two states allow for qualified use of telephone conference calls in the absence of statutory authority.[23] The Arizona Attorney General approved telephonically aided meetings of the Community College District Governing Board and stated that members present through an electronic medium may be counted as "present" for purposes of determining whether quorum requirements are met, stressing, however, that Board members should always strive to be physically present and should be "present" through electronic media only when no reasonable alternatives exist.[24] The Mississippi Attorney General opined that a telephone conference call may be used by a board member to participate in a board meeting provided there is a quorum "physically present."[25]

An opinion from Nebraska indicates that, in the absence of statutory authority for teleconferences, the open meetings law does not authorize the use of telephone conference calls where separate statutory provisions have been made for telephone conference calls in emergency situations, thus making it clear that the legislature did not contemplate the use of telephone conference calls in non-emergency situations.[26] The Colorado Attorney General reached an identical conclusion[27] prior to the passage of legislation approving the use of telephone conference calls.[28]

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[22] Ga. Op. Att'y Gen. No. 85-26 (1985); Ill. Op. Att'y Gen. No. 82-041 (1982); Kan. Op. Att'y Gen. No. 86-153 (1986); Ky. Op. Att'y Gen. No. 78-808 (1978); Nev. Op. Att'y Gen. No. 85-19 (1985); Wis. Op. Att'y Gen. No. 39-80 (1980).

[23] See supra notes 22-23.

[24] Ariz. Op. Att'y Gen. No. I91-033 (R91-036) (1991).

[25] Miss. Op. Att'y Gen., Sept. 26 (1990).

[26] Neb. Op. Att'y Gen. No. 92019 (1992).

[27] Colo. Op. Att'y Gen. No. OLS8502678/ERE (1985).

[28] Colo., § 24-6-402. See App. B.

Florida's open meetings law does not address the teleconference issue, but the Attorney General has opined that official meetings of the board of county commissioners are forbidden by teleconference.[29]

III. STATE LAW: WHERE STATUTES ADDRESS THE USE OF TELEPHONE CONFERENCE CALLS

Sixteen states have open meetings laws that make reference to the use of telephone conference calls.[30] Seven of these states allow public meetings to be conducted either in person or by telephone with no special requirements for the latter.[31] Six states allow public meetings to be conducted by telephonic means subject to special requirements.[32] Two states expressly prohibit members of public bodies from participating in public meetings by way of telephone conference call,[33] and one state, Texas, specifically allows the use of telephonic communications for the meetings of only one public agency.[34]

The particulars of the thirteen statutes allowing meetings by means of telephone conference call will be examined in Part IV. This part provides a brief look at the three statutes that prohibit or drastically limit meetings by teleconference.

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[29] Fla. 20 Op. Att'y Gen. No. 89-39 (1989) (sq concluding based on rule requiring presence of a quorum to conduct business in conjunction with 20 C.J.S. Counties §§ 88b, 88c; 62 C.J.S. Municipal Corporations § 399 requiring that members be actually present at the meeting to constitute a quorum).

[30] See supra notes 29-32 and accompanying text.

[31] Colo. Rev. Stat. § 24-6-402(b) (1991); Conn. Gen. Stat. Ann. §§ 1-18a(b) (West 1992); Mont. Rev. Code Ann. § 2-3-202 (1985); N.J. Stat. Ann. § 10:4-8(b) (West 1991); S.C. Code Ann. § 30-4-20(d) (1991); Utah Code Ann. § 52-4-2(1) (1992); Vt. Stat. Ann. tit. 1, § 312(a) (1991). These definitional provisions are set forth in App B.

[32] Alaska Stat. § 44.62.310(a) (1991); Iowa Code Ann. §§ 21.2, 21.8 (West 1992); N.C. Gen. Stat. §§ 143-318.10, 143-318.13 (1991); Or. Rev. Stat. § 192.670 (1989); S.D. Codified Laws Ann. §§ 1-25-1, 1-25-1.2 (1992); Tenn. Code Ann. §§ 8-44-102, 8-44-108 (1991). These open meetings statutes are set forth in full in Apps. C-H.

[33] Okla. Stat. Ann. tit. 25, § 306 (West 1992); Va. Code Ann. §§ 2.1-341, 2.1-343.1 (West 1991).

[34] Tex. Rev. Civ. Stat. Ann. art. 6252-17 § 2(r) (West 1992).

1. *States prohibiting meetings by teleconference*

Under a provision titled "Circumvention of the act,"[35] Oklahoma forbids meetings of a public body to be conducted by telephone conference call. "No informal gatherings or any electronic or telephonic communications among a majority of the members of a public body shall be used to decide any action or to take any vote on any matter." Given that the title of this provision is "Circumvention of the act" and that telephonic communications are paired with informal gatherings, this provision seems intended to bar private discussions, by telephone or otherwise, in which issues might be decided apart from the open meeting. However, the broad language suggests that a meeting conducted by means of electronic communication is also prohibited.

Virginia prohibits public bodies from employing "telephonic, video, electronic or other communication means" where the members are not physically assembled,[36] but includes in its definition of "meetings" those "when sitting physically or through telephonic or video equipment."[37] This seems to leave open the possibility of non-members participating via electronic means, while strictly forbidding the participation of any member of the public body who is not physically present. An exception is made for meetings conducted by electronic means when specifically provided for in the statute governing summary suspension of professional licenses.[38]

2. *Texas' provision for limited use of teleconferences*

The topic of telephone conference calls arises in the Texas Open Meetings Act only as specifically granted to one class of public agency. "This Act does not prohibit the board of regents or other governing body of an institution of higher education ... from holding an open or executive meeting by telephone conference call."[39] This might imply that telephonic meetings are generally allowable under the Act; however, the Attorney General has opined that in the absence of specific legislative authorization such as that provided

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35 Okla. Stat. Ann. tit. 25, § 306 (West 1992).

36 Va. Code Ann. § 2.1-343.1 (West 1991).

37 Va. Code Ann. § 2.1-341 (West 1991).

38 Id.

39 Tex. Rev. Civ. Stat. Ann. art. 6252-17 § 2(r) (West 1992).

for the board of regents, a governmental body that meets by telephone conference call will not comply with the Open Meetings Act.[40]

IV. ISSUES SUGGESTED BY STATUTES AUTHORIZING TELECONFERENCING

Thirteen states specifically allow public meetings to be conducted by telephone conference call.[41] Rather than describe the provisions of each seriatim, the provisions will be grouped according to the basic issues presented once it is decided to allow teleconferencing.

1. *Should the provision for telephonic meetings refer only to meetings by teleconference or employ a more inclusive term, thus leaving open the possibility of using other forms of communication technology?*

Two states specifically refer only to "teleconferences."[42] Nine of the thirteen states with provisions permitting meetings by teleconference use the term "electronic means" independently or in conjunction with "telephone" or "teleconference" (for example, "by telephone or other electronic means").[43] Colorado refers to meetings "by telephone, or by other means of communication,"[44] and New Jersey refers to meetings "by way of communications equipment."[45]

As to what is entailed in a teleconference or an electronically-conducted meeting, only two states provide clarification. South Dakota defines teleconference as "information exchanged by audio or video medium."[46] Tennessee requires that all members participating in the electronically-

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[40] Tex. Op. Att'y Gen. No. 88-238 (1988).

[41] See supra notes 29-30.

[42] Alaska, § 44.62.310(a); S.D., § 1-25-1 (see Apps. C & G).

[43] Conn., § 1-18a(b); Iowa, §§ 21.2(2), 21.8; Mont., § 2-3-202; N.C., § 143-318.10(d), 143-318.13; Or., § 192.670; S.C., § 30-4-20(d); Tenn., § 8-44-108; Utah, § 52-4-2(1); and Vt., tit. 1, § 312(a) (see Apps. B, D, E, F, & H).

[44] Colo., § 24-6-402(b). See App. B.

[45] N.J., § 10:4-8(b). See App. B.

[46] S.D., § 1-2.5-1.2. See App. G.

conducted meeting be able to simultaneously hear each other and speak to each other during the meeting.[47]

2. *Should the provision allowing for telephonic meetings simply be incorporated in the definitional provision of the open meetings statute without any further requirements?*

There are seven states that specifically allow meetings conducted by telephone conference call but provide no additional requirements.[48] Six of these states incorporate the allowance for telephonically-conducted meetings in the definition of "meeting" set forth at the beginning of the open meetings statute.[49] Employing this approach, telephonically-conducted meetings are subject to no special requirements beyond those generally applicable to in-person meetings under the open meetings law. Vermont does not refer to telephonic or electronic means in its definition of "meeting," but separately provides that "[a] meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met."[50]

The result of this approach is that, beyond the basic definitional provisions, there are no restrictions upon members of a public body participating by teleconference (see infra question 3); there is no requirement for a certain number of members of the convening body to be physically present (see infra question 4); there is no stipulation as to whether the public has a right to participate in or merely listen to the teleconference (see infra question 5); there is no requirement as to the number of locations that must be made available for public attendance (see infra question 6); there is no provision for the distribution of materials considered at the teleconference (see infra question 7); the use of telephonic meetings is not restricted to situations where in-person meetings are impossible or impractical (see infra question 8); certain public agencies are not barred from meeting by teleconference (see infra question 9); there are no special requirements for voting at teleconferences (see infra question 10); and there is no cautionary provision that telephonic communication may not be employed to deliberate

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47 Tenn., § 8-44-108(2)(b). See App. H.

48 See supra notes 46-47. Appendix B contains the definitional, provisions of these statutes.

49 Colo., § 24-6-402(b); Conn., § 1-18a(b); Mont., § 2-3-202; N.J., § 10:4-8(b); S.C., § 30-4-20(d); and Utah, § 52-4-2(1). See App. B.

50 Vt., tit. 1, § 312. See App. B.

public business in circumvention of the open meetings statute (see infra question 11).

3. *When conducting a meeting by teleconference, should members of the convening public body be allowed to participate by teleconference?*

Of the six states that have special requirements for meetings conducted by teleconference, all explicitly allow members of the convening bodies to attend and participate by teleconferencing.[51]

4. *Must a designated number of members of the public body be physically present at the meeting?*

Two states directly address the issue of whether a member who participates telephonically is "present." South Dakota stipulates that members are present if they answer the roll call taken by teleconference.[52] Tennessee states that a member participating telephonically is deemed present for purposes of quorum requirements and voting, but not for purposes of determining per diem eligibility.[53]

The "presence" of a member is significant because a meeting subject to an open meetings law is often defined, as in Michigan, in terms of the "presence" of either a quorum or majority of members of the public body.

5. *Does the public have the right to participate in a meeting conducted by teleconference, or merely to listen?*

Only Alaska and South Dakota explicitly provide for participation of the public by teleconferencing.[54] Three states require only that the public be able to listen to the electronic meeting,[55] and Iowa limits this requirement to "public access to the conversation of the meeting to the extent reasonably possible." Tennessee makes no explicit provision for public participation in

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[51] Alaska, § 44.62.310; Iowa, § 21.2(2); N.C., § 143-318.13(a); Or., § 192.670; S.D., § 1-25-1; and Tenn., § 8-44-108(b). See Apps. C-H.

[52] S.D., § 1-25-1. See App. G.

[53] Tenn., § 8-44-108(b). See App. H.

[54] Alaska, § 44.62.310; S.D., § 1-25-1. See Apps. C & G.

[55] Iowa, § 21.8(1)(a); N.C., § 143.318.13(a); and Or., § 192.670(2). See Apps. D-F.

meetings conducted by electronic means, stating only that such meetings "must conform to the requirements of the Open Meetings Act."[56]

It is presumed that merely requiring that the public be able to listen to public meetings conducted by teleconference would prove inadequate in Michigan since the state's Open Meetings Act creates a general right to address public meetings of an agency within limits the agency may prescribe by rule.[57] This would seem to require that participation be allowed by way of a phone provided at at least one officially designated location. The requirement for more than one officially designated location is discussed in point 6 below.

> 6. *Should specific requirements be made for the number of locations available to the public and/or for the collection of fees from the public in order to offset the costs of providing necessary equipment?*

Three states have specific requirements for the number of locations to be made available for the public to "attend" the electronically-conducted meeting. Of these, two states require that at least one location be provided,[58] and South Dakota requires that two locations be provided except for certain executive meetings, in which case only one location is required.[59] North Carolina also allows that "a fee of up to $25.00 may be charged each such listener to defray in part the cost of providing the necessary location and equipment."[60] Oregon further stipulates that "the place provided may be a place where no member of the governing body of the public body is present."[61] This provision addresses the issue of whether public "attendance" at the teleconference is possible when no member of the public body is physically present at the place where the public is observing or listening to the meeting.

In fashioning the Michigan provision, consideration must be given to the Michigan Supreme Court's finding in *Detroit Base Coalition Rights of the*

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[56] Tenn., § 8-44-108(c). See App. H.

[57] Mich., § 15.263(5). See App. A.

[58] N.C., § 143.318.13(a); Or., § 192.670(2). See Apps. E & F.

[59] S.D., § 1-25-1. See App. G.

[60] N.C., § 143-318.13(a). See App. E.

[61] Or., § 192.670(2). See App. F.

Handicapped v. Dept. of Social Services[62] that the situs of a hearing includes only the location of the hearing officer and does not include the location of the claimant who is participating telephonically. Thus, if an officially designated location for public observation and participation is provided apart from where the public body is convening, the question could be raised as to whether the meeting is being conducted in both locations.

7. *Should there be special requirements for the distribution of materials during a teleconference so that members of public body and of the public not physically attending will be assured access to all information those physically present possess?*

Alaska requires that agency materials to be considered at the meeting be made available at teleconference locations.[63] Tennessee states that any member of the public body not physically present at the meeting shall be provided with any documents to be discussed at the meeting.[64]

8. *Should meetings by teleconference be limited to those situations in which meetings in person are impractical or impossible?*

Two states limit the use of meetings by electronic means to situations in which a meeting in person is impossible or impractical, thus making it clear that meetings in person are preferable. Iowa stipulates that an electronic meeting may be conducted only in circumstances where meeting in person is impossible or impractical.[65] Electronic means of communication are to be used at public meetings in Tennessee only upon a determination that the matters to be considered require timely action, that physical presence of all members of the public body is not possible within the requisite time period, and that participation by some members by electronic or other means of communication is therefore necessary.[66]

9. *Should certain public bodies be barred from meeting by teleconference?*

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[62] See infra notes 5-9 and accompanying text.

[63] Alaska, § 44.62.310. See App. C.

[64] Tenn., § 8-44-108(e). See App. H.

[65] Iowa, § 21.8(1). See App. D.

[66] Tenn., § 8-44-108(d). See App. H.

Alaska generally allows meetings by teleconference with the exception of meetings of the legislature.[67] South Dakota generally allows teleconferences, but prohibits them in "conducting hearings or taking final disposition pursuant to §1-26-4 (hearings for adoption of rules)."[68]

10. *Should there be special requirements for conducting votes at electronic meetings?*

Two states require that votes at electronic meetings be conducted by roll call,[69] Alaska further clarifying that votes be conducted in such a manner that the public may know the vote of each person.

11. *Should it be explicitly stipulated that telephonic communications are not to be used to deliberate public business in circumvention of the open meetings law?*

Tennessee stipulates that electronic communications shall not be used "to decide or deliberate public business in circumvention of the spirit or requirements of this part."[70] This provision anticipates the possibility that telephone calls might be employed for discussion and resolution of public business that should be conducted publicly.

Michigan's Open Meetings Act states that a meeting is not subject to requirements of the law unless a "quorum is present,"[71] thus, the statute has no impact on private telephone conversations in which less than a quorum of the convening body participates. It should be noted that allowing meetings by teleconference in no way magnifies the risks of circumvention of open meetings requirements since the law is just as easily circumvented by face-to-face conversations between members of the public body. Therefore, a cautionary provision addressing circumvention of the act might include face-to-face as well as telephonic discussions among less than a quorum, or it might state that any conversation conducted with the intent of circumventing the

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[67] Alaska, § 44.62.310(a). See App. C.

[68] S.D., § 1-25-1. See App. G.

[69] Alaska, § 44.62.310(a); S.D., § 1-25-1. See Apps. C & G.

[70] Tenn., § 8-44-102(d). See App. H.

[71] Mich., § 15.262(b). See App. A.

public access requirements of the law will be considered within the purview of the open meetings law.

LIST OF APPENDIXES

APPENDIX A

OPEN MEETINGS ACT
Act 267 of 1976

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

History: 1976, Act 267, Eff. Mar. 31, 1977.

The People of the State of Michigan enact:

15.261 Short title; effect of act on certain charter provisions, ordinances, or resolutions.

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.262 Definitions.

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

(b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

(c) "Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

History: 1976, Act 267, Eff. Mar. 31, 1977.

Cited in other sections: Section 15.262 is cited in § 333.12601.

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the first extra session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;--Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;--Am. 1988, Act 158, Imd. Eff. June 14, 1988;--Am. 1988, Act 278, Imd. Eff. July 27, 1988.

Cited in other sections: Section 15.263 is cited in § 88.9.

Administrative rules: R 35.621 of the Michigan Administrative Code.

15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1984, Act 87, Imd. Eff. Apr. 19, 1984.

15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; time for posting; statement of date, time, and place; applicability of subsection (4); recess or adjournment; emergency sessions; meeting in residential dwelling; notice.

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18-hour notice shall not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting. This subsection does not apply to a public meeting held pursuant to section 4(2) to (5) of Act No. 239 of the Public Acts of 1955, as amended, being section 200.304 of the Michigan Compiled Laws.

(5) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice, which is equivalent to that required under subsection (4), has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section shall bar a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body which is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the

meeting is held, and shall state the date, time, and place of the meeting. The notice, which shall be at the bottom of the display advertisement and which shall be set off in a conspicuous manner, shall include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1978, Act 256, Imd. Eff. June 21, 1978;--Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;--Am. 1984, Act 167, Imd. Eff. June 29, 1984.

15.266 Providing copies of public notice on written request; fee.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.267 Closed sessions; roll call vote; separate set of minutes.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving shall be required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), and (g). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, shall not be available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

History: 1976, Act 267, Eff. Mar. 31, 1977.

Cited in other sections: Section 15.267 is cited in § 339.316.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered thereafter only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education which the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review the specific contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1984, Act 202, Imd. Eff. July 3, 1984.

Cited in other sections: Section 15.268 is cited in §§ 15.243, 46.1, 338.1720, 380.132, 380.471a, and 722.135.

15.269 Minutes generally.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. Corrections in the minutes shall be made not later than the next meeting after the meeting to which the minutes refer. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying.

(3) Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1982, Act 130, Imd. Eff. Apr. 20, 1982.

15.270 Decisions of public body; presumption; civil action to invalidate; jurisdiction; venue; reenactment of disputed decision.

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.272 Violation as misdemeanor; penalty.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than $1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than $2,000.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273 Violation; liability.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.274 Repeal of §§ 15.251 to 15.253.

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.275 Effective date.

Sec. 15. This act shall take effect January 1, 1977.

History: 1976, Act 267, Eff. Mar. 31, 1977.

APPENDIX B

DEFINITIONAL PROVISIONS OF OPEN MEETINGS STATUTES THAT PROVIDE NO ADDITIONAL REQUIREMENTS FOR TELEPHONIC MEETINGS

Colo. Rev. Stat. § 24-6-402(b)

OPEN MEETINGS LAW

24-6-402. Meetings - open to public. (1) For the purposes of this section:

(b) "Meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, or by other means of communication.

Conn. Gen. Stat. Ann. § 1-18a(b)

PUBLIC RECORDS AND MEETINGS

§ 1–18a. Definitions

As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(b) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" shall not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. "Caucus" means a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision.

Mont. Rev. Code Ann. § 2-3-202

OPEN MEETINGS

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

N.J. Stat. Ann. § 10:4-8(b)

OPEN PUBLIC MEETINGS ACT

10:4–8. Definitions

As used in this act:

b. "Meeting" means and includes any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

S.C. Code Ann. § 30-4-20(d)

FREEDOM OF INFORMATION ACT

§ 30–4–20. Definitions.

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

Utah Code Ann. § 52-4-2(1)

OPEN AND PUBLIC MEETINGS

52-4-2. Definitions.

As used in this chapter:

(1) "Meeting" means the convening of a public body, with a quorum present, whether in person or by means of electronic equipment, for the purpose of discussing or acting upon a matter over which the public body has jurisdiction or advisory power. This chapter shall not apply to chance meetings. "Convening," as used in this subsection, means the calling of a meeting of a public body by a person or persons authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction.

Vt. Stat. Ann. tit. 1, § 312(a)

PUBLIC INFORMATION

§ 312. Right to attend meetings of public agencies

(a) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under section 313(a)(2) of this title. A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met.

APPENDIX C

ALASKA - OPEN MEETINGS OF GOVERNMENTAL BODIES

Alaska Stat. §§ 44.62.310 - 44.62.312

Article 6. Open Meetings of Governmental Bodies.

Section
310. Government meetings public
312. State policy regarding meetings

Sec. 44.62.310. Government meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except for meetings of a house of the legislature, attendance and participation at meetings by members of the public or by members of a body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a public body described in this subsection.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. In addition to the publication required by AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given by using a combination of print and broadcast media.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976; am §§ 2, 3 ch 54 SLA 1985; am § 2 ch 201 SLA 1990; am § 7 ch 74 SLA 1991)

Effect of amendments. — The 1990 amendment added the last sentence of subsection (e).

The 1991 amendment, effective September 22, 1991, in subsection (e), made a punctuation change in the first sentence and rewrote the second sentence.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies that serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment added paragraph (6) of subsection (a).

APPENDIX D

IOWA - OFFICIAL MEETINGS OPEN TO PUBLIC

Iowa Code Ann. §§ 21.1 - 21.11

21.1. Intent—declaration of policy

This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness.

Acts 1978 (67 G.A.) ch. 1037, §§ 1, 2, eff. Jan. 1, 1979.

21.2. Definitions

As used in this chapter:

1. "Governmental body" means:

a. A board, council, commission or other governing body expressly created by the statutes of this state or by executive order.

b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.

c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs "a" and "b" of this subsection.

d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.

e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.

f. A nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

3. "Open session" means a meeting to which all members of the public have access.

Acts 1978 (67 G.A.) ch. 1037, § 3, eff. Jan. 1, 1979. Amended by Acts 1989 (73 G.A.) ch. —— (H.F. 647), § 1.

21.3. Meetings of governmental bodies

Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and the vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

Acts 1978 (67 G.A.) ch. 1037, § 4, eff. Jan. 1, 1979.

21.4. Public notice

1. A governmental body, except township trustees, shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to handicapped or disabled individuals.

When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

3. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

Acts 1978 (67 G.A.) ch. 1037, § 5, eff. Jan. 1, 1979.

21.5. Closed session

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

a. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.

b. To discuss application for letters patent.

c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

f. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.

g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

i. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

j. To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and tape recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and tape recording of any closed session for a period of at least one year from the date of that meeting.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

Acts 1978 (67 G.A.) ch. 1037, § 6, eff. Jan. 1, 1979.

21.6. Enforcement

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

(1) Voted against the closed session.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.

(3) Reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body.

b. Shall order the payment of all costs and reasonable attorneys fees to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a" of this subsection. If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in two prior violations of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

Acts 1978 (67 G.A.) ch. 1037, § 7, eff. Jan. 1, 1979.

21.7. Rules of conduct at meetings

The public may use cameras or recording devices at any open session. Nothing in this chapter shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.

Acts 1978 (67 G.A.) ch. 1037, § 8, eff. Jan. 1, 1979.

21.8. Electronic meetings

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.

b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.

c. Minutes are kept of the meeting.

The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph "a" of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

Acts 1978 (67 G.A.) ch. 1037, § 9, eff. Jan. 1, 1979.

21.9. Employment conditions discussed

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, "employment conditions" mean areas included in the scope of negotiations listed in section 20.9.

Added by Acts 1981 (69 G.A.) ch. 30, § 1.

21.10. Information to be provided

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies.

Added by Acts 1989 (73 G.A.) ch. 73, § 2.

21.11. Applicability to nonprofit corporations

This chapter applies to nonprofit corporations which are defined as governmental bodies subject to section 21.2, subsection 1, paragraph "f", only when the meetings conducted by the nonprofit corporations relate to the conduct of pari-mutuel racing and wagering pursuant to chapter 99D.

Added by Acts 1990 (73 G.A.) ch. 1175, § 2, eff. April 19, 1990.

APPENDIX E

NORTH CAROLINA - MEETINGS OF PUBLIC BODIES

N.C. Gen. Stat. §§ 143.318.9 - 143.318.18

ARTICLE 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s. 1.)

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the State that is composed of two or more members; and

(1) Exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function; and

(2) Is established by (i) the State Constitution, (ii) an act or resolution of the General Assembly, (iii) a resolution or order of a State agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of one or more counties, cities, school administrative units, or other political subdivisions or public corporations, or (v) an executive order of the Governor or comparable formal action of the head of a principal State office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or of a division thereof.

In addition, "public body" means (1) the governing board of a "public hospital" as defined in G.S. 159-39 and (2) each committee of a public body, except a committee of the governing board of a public hospital if the committee is not a policy-making body. In addition, for the purposes of this Article "public body" means any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of that nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include and shall not be construed to include (1) meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b)(2) of this section, or (2) meetings among the medical staff of a public hospital.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, excluding any executive sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of G.S. 132-6. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2.)

Effect of Amendments. — The 1991 amendment, effective September 1, 1991, inserted "G.S. 143-318.14A" in subsection (a), and added subsection (e).

§ 143-318.11. Executive sessions.

(a) Permitted Purposes. — A public body may hold an executive session and exclude the public:

(1) To consider the selection of a site or the acquisition by any means or lease as lessee of interests in real property. At the conclusion of all negotiations with regard to the acquisition or lease of real property, if final authorization to acquire or lease is to be given, it shall be given at an open meeting.

(2) To consider and authorize the acquisition by gift or bequest of personal property offered to the public body or the government of which it is a part.

(3) To consider and authorize the acquisition by any means of paintings, sculptures, objects of virtu, artifacts, manuscripts, books and papers, and similar articles and objects that are or will be part of the collections of a museum, library, or archive.

(4) To consider the validity, settlement, or other disposition of a claim against or on behalf of the public body or an officer or employee of the public body or in which the public body finds that it has a substantial interest; or the commencement, prosecution, defense, settlement, or litigation of a potential or pending judicial action or administrative proceeding in which the public body or an officer or employee of the public body is a party or in which the public body finds that it has a substantial interest. During such an executive session, the public body may give instructions to an attorney or other agent concerning the handling or settlement of a claim, judicial action, or administrative proceeding. If a public body has considered a settlement in executive session, the terms of that settlement shall be reported to the public body and entered into its minutes within a reasonable time after the settlement is concluded.

(5) To consult with an attorney employed or retained to represent the public body, to the extent that confidentiality is required in order to preserve the attorney-client privilege between the attorney and the public body.

(6) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

(7) To consider matters dealing with specific patients (including but not limited to all aspects of admission, treatment, and discharge; all medical records, reports, and summaries; and all charges, accounts, and credit information pertaining to such a patient).

(8) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against a public officer or employee. A public body may consider the appointment or removal of a member of another body in executive session but may not consider or fill a vacancy among its own membership except in an open meeting.

Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting. If a public body considers an appointment to another body, except a committee composed of members of the public body, in executive session, it shall, before making that appointment, present at an open meeting a written list of the persons then being considered for the appointment, and that list shall on the same day be made available for public inspection in the office of the clerk or secretary to the public body. The public body may not make the appointment before the seventh day after the day on which the list was presented.

(9) To consider the employment, performance, or discharge of an independent contractor. Any action employing or authorizing the employment or discharging or directing the discharge of an independent contractor shall be taken at an open meeting.

(10) To hear, consider, and decide (i) disciplinary cases involving students or pupils and (ii) questions of reassignment of pupils under G.S. 115-178.

(11) To identify candidates for, assess the candidates' worthiness for, and choose the recipients of honors, awards, honorary degrees, or citations bestowed by the public body.

(12) To consider information, when State or federal law (i) directs that the information be kept confidential or (ii) makes the confidentiality of the information a condition of State or federal aid.

(13) To consider and adopt contingency plans for dealing with, and consider and take action relating to, strikes, slowdowns, and other collective employment interruptions.

(14) To consider and take action necessary to deal with a riot or civil disorder or with conditions that indicate that a riot or civil disorder is imminent.

(15) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(16) To consider and decide matters concerning specific inmates of the correction system or security problems of the correction system.

(17) To hear, consider, and decide matters involving admission, discipline, or termination of members of the medical staff of a public hospital. Final action on an admission or termination shall be reported at an open meeting.

(18) To consider and give instructions relating to the setting or negotiation of airport landing fees or the negotiation of contracts, including leases, concerning the use of airport facilities. Final action approving landing fees or such a contract shall be taken in an open meeting.

(19) To plan investigations and receive investigative reports requested by a board of elections concerning election frauds, irregularities, election contests, or violations of the election laws. Following a public hearing during which it is alleged or apparent that any election official may have committed an act of misconduct, a board of elections may meet in executive session to deliberate, adjudicate, and reach its decision on whether further action shall be ordered or whether no further action shall be ordered against any election official. Each member's vote on the decision shall be a matter of public record.

(20) To consider and authorize acquisitions, mergers, joint ventures, or other competitive business activities by or on behalf of: (i) a hospital facility and a nonprofit corporation to which it has been sold or conveyed pursuant to G.S. 131E-8; (ii) any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed; or (iii) any subsidiary of either nonprofit corporation.

(b) Repealed by Session Laws 1991, c. 694, s. 4, effective September 1, 1991.

(c) Calling an Executive Session. — A public body may hold an executive session only upon a motion made and adopted at an open meeting. The motion shall state the general purpose of the executive session and must be approved by the vote of a majority of those present and voting.

(d) Minutes of Executive Session. — Notwithstanding the provisions of G.S. 132-6, minutes and other records made of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session. (1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4.)

Effect of Amendments. — The 1991 amendment, effective September 1, 1991, rewrote subsection (a)(5), and repealed subsection (b).

§ 143-318.12. Public notice of official meetings.

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

(1) For public bodies that are part of State government, with the Secretary of State;

(2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) For the governing board and each other public body that is part of a city government, with the city clerk;

(4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed or delivered to each newspaper, wire service, radio station, and television station, which has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed or delivered at least 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars ($10.00) per calendar year, and may require them to renew their requests quarterly.

(3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by Session Laws 1991, c. 694, s. 6, effective September 1, 1991. (1979, c. 655, s. 1; 1991, c. 694, ss. 5, 6.)

Effect of Amendments. — The 1991 amendment, effective September 1, 1991, rewrote subdivision (b)(1), and repealed subsection (c).

§ 143-318.13. Electronic meetings; written ballots; acting by reference.

(a) Electronic Meetings. — If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars ($25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

(b) Written Ballots. — Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

(c) Acting by Reference. — The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting. (1979, c. 655, s. 1.)

§ 143-318.14. Broadcasting or recording meetings.

(a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site. (1979, c. 655, s. 1.)

§ 143-318.14A. Legislative commissions, committees, and standing subcommittees.

(a) Except as provided in subsection (c) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be "commissions, committees, and standing subcommittees of the General Assembly":

(1) The Legislative Research Commission;
(2) The Legislative Services Commission;
(3) The Advisory Budget Commission;
(4) The Joint Legislative Utility Review Committee;
(5) The Joint Legislative Commission on Governmental Operations;
(6) The Joint Legislative Commission on Municipal Incorporations;
(7) The Commission on the Family;
(8) The Joint Select Committee on Low-Level Radioactive Waste;
(9) The Environmental Review Commission;
(10) The Joint Legislative Highway Oversight Committee;
(11) The Joint Legislative Education Oversight Committee;
(12) The Joint Legislative Commission on Future Strategies for North Carolina;
(13) The Commission on Children with Special Needs;
(14) The Legislative Committee on New Licensing Boards;
(15) The Commission on Agriculture, Forestry, and Seafood Awareness;
(16) The North Carolina Study Commission on Aging; and
(17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, "reasonable public notice" includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or
(2) Notice posted on the press room door of the State Legislative Building in Raleigh and delivered to the Legislative Services Office.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17. (1991, c. 694, s. 7.)

Editor's Note. — Session Laws 1991, c. 694, s. 10 made this section effective September 1, 1991.

§ 143-318.15. Advisory Budget Commission and appropriation committees of General Assembly; application of Article.

(a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) This Article does not amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees and subcommittees of the General Assembly. (1979, c. 655, s. 1.)

§ 143-318.16. Injunctive relief against violations of Article.

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 932, s. 3, effective October 1, 1986. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 3.)

Cross References. — As to the award of attorney's fees to the prevailing party, see now § 143-318.16B.

§ 143-318.16A. Additional remedies for violations of Article.

(a) Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of a public body was taken, considered, discussed, or deliberated in violation of this Article. Upon such a finding, the court may declare any such action null and void. Any person may seek such a declaratory judgment, and the plaintiff need not allege or prove special damage different from that suffered by the public at large. The public body whose action the suit seeks to set aside shall be made a party. The court may order other persons be made parties if they have or claim any right, title, or interest that would be directly affected by a declaratory judgment voiding the action that the suit seeks to set aside.

(b) A suit seeking declaratory relief under this section must be commenced within 45 days following the initial disclosure of the action that the suit seeks to have declared null and void; provided, however, that any suit for declaratory judgment brought pursuant to this section that seeks to set aside a bond order or bond referendum shall be commenced within the limitation periods prescribed by G.S. 159-59 and G.S. 159-62. If the challenged action is recorded in the minutes of the public body, its initial disclosure shall be deemed to have occurred on the date the minutes are first available for public inspection. If the challenged action is not recorded in the minutes of the public body, the date of its initial disclosure shall be determined by the court based on a finding as to when the plaintiff knew or should have known that the challenged action had been taken.

(c) In making the determination whether to declare the challenged action null and void, the court shall consider the following and any other relevant factors:

(1) The extent to which the violation affected the substance of the challenged action;

(2) The extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;

(3) The extent to which the violation prevented or impaired public knowledge or understanding of the people's business;

(4) Whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;

(5) The extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;

(6) Whether the violation was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.

(d) A declaratory judgment pursuant to this section may be entered as an alternative to, or in combination with, an injunction entered pursuant to G.S. 143-318.16.

(e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article. (1985 (Reg. Sess., 1986), c. 932, s. 1; 1991, c. 694, s. 8.)

Effect of Amendments. — The 1991 amendment, effective September 1, 1991, added subsection (e).

§ 143-318.16B. Attorney's fees awarded to prevailing party.

In any action brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court shall make written findings specifying the prevailing party or parties, and shall award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. (1985 (Reg. Sess., 1986), c. 932, s. 2.)

§ 143-318.17. Disruptions of official meetings.

A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment for not more than six months, by fine of not more than two hundred fifty dollars ($250.00), or both. (1979, c. 655, s. 1.)

§ 143-318.18. Exceptions.

This Article does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission.

(4) Repealed by Session Laws 1991, c. 694, s. 9, effective September 1, 1991.

(4a) The Legislative Ethics Committee.

(4b) A conference committee of the General Assembly.

(4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.

(5) Law enforcement agencies.

(6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.

(9) Repealed by Session Laws 1991, c. 694, s. 9, effective September 1, 1991.

(10) The Board of Awards.

(11) The General Court of Justice. (1979, c. 655, s. 1; 1985, c. 757, s. 206(e); 1991, c. 694, s. 9.)

APPENDIX F

OREGON - PUBLIC MEETINGS

Or. Rev. Stat. §§ 192.610 - 192.710

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; disabled access; interpreters. (1) All meetings of the governing body of a public

body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographic boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980.

(5)(a) It shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Disabilities Commission or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Written minutes required; content; content of minutes for executive sessions. (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting but such reference shall not affect the status of the document under ORS 192.410 to 192.505.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound tape recording which need not be transcribed unless otherwise provided by law. Material the disclosure of which is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits. (1) Nothing contained in ORS 192.610 to 192.690 shall be construed to prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employee, staff member or individual agent. The exception contained in this paragraph does not apply to:

(A) The filling of a vacancy in an elective office.

(B) The filling of a vacancy on any public committee, commission or other advisory group.

(C) The consideration of general employment policies.

(D) The employment of the chief executive officer, other public officers, employees and staff members of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, unless such public officer, employee, staff member or individual agent requests an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(2) Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. Notwithstanding ORS 192.640, subsequent sessions of the negotiations may continue without further public notice.

(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under paragraph (d) of subsection (1) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information subject of the executive session be undisclosed.

(4) No executive session may be held for the purpose of taking any final action or making any final decision. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2]

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or wilful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of wilful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c. 644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the State Banking Board, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the peer review committees in accordance with the provisions of ORS 441.055 and mediation conducted under sections 2 to 10, chapter 967, Oregon Laws 1989, or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §12]

Note: The amendments to 192.690 by section 14, chapter 967, Oregon Laws 1989, take effect June 30, 1995. See section 17, chapter 967, Oregon Laws 1989. The text is set forth for the user's convenience.

192.690 (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the State Banking Board, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545 and the peer review committees in accordance with the provisions of ORS 441.055 or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

Note: 192.695 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS 192.610 to 192.990 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.710 Smoking in public meetings prohibited. (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

APPENDIX G

SOUTH DAKOTA - MEETINGS OF PUBLIC AGENCIES

S.D. Code Ann. §§ 1-25-1 - 1-25-4

1-25-1. Meetings of public agencies to be open — Teleconference meetings — Misdemeanor. Except as otherwise provided by law, the official meetings of the state and the political subdivisions thereof, including all related boards, commissions and other agencies, and the official meetings of boards, commissions and agencies created by statute or which are nontaxpaying and derive a source of revenue directly from public funds, shall be open to the public, except as provided in this chapter. Meetings, including executive or closed meetings may be conducted by teleconference. Members shall be deemed present if they answer present to the roll call taken by teleconference. Any vote at a meeting held by teleconference shall be taken by roll call. Except for executive or closed meetings held by teleconference, there shall be provided one or more places at which the public may listen to and participate in the proceeding. Except for executive or closed meetings held by teleconference of related boards and commissions of the state, there shall be provided two or more places at which the public may listen to and participate in the proceeding. No teleconference may be used in conducting hearings or taking final disposition pursuant to § 1-26-4. Teleconference meetings are subject to the notice provisions of chapter 1-25.

A violation of this section is a Class 2 misdemeanor.

1-25-1.1. Notice of meetings of public bodies — Violation as misdemeanor. All public bodies shall provide public notice, with proposed agenda, at least twenty-four hours prior to any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting, and, for special or rescheduled meetings, delivering, in person, by mail or by telephone, the information in the notice to members of the local news media who have requested notice. For special or rescheduled meetings, all public bodies shall also comply with the public notice provisions of this section for regular meetings to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

1-25-1.2. Teleconference defined. For the purposes of this chapter, a teleconference is information exchanged by audio or video medium.

1-25-2. Executive or closed meetings — Purposes — Authorization — Misdemeanor. Executive or closed meetings may be held for the sole purposes of:

(1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term "employee" does not include any independent contractor;

(2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student;

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

(4) Preparing for contract negotiations or negotiating with employees or employee representatives;

(5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business.

However, any official action concerning such matters shall be made at an open official meeting. An executive or closed meeting shall be held only upon a majority vote of the members of such body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in § 1-25-1 or this section may be construed to prevent an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a Class 2 misdemeanor.

1-25-3. State agencies to keep and file minutes with auditor-general — Availability to public — Misdemeanor. It shall be the duty of all boards and commissions of the various departments of the state of South Dakota to keep detailed minutes of the proceedings of all regular or special meetings. Within fifteen days after the date of the regular or special meeting, the secretary of the respective board or commission or the person designated by the board or commission to take minutes, unless said board or commission, or its officers or employees is required by law to keep secret facts and information obtained in the discharge of their duties, shall cause to be filed a certified copy of the minutes of the proceedings of the board or commission in the office of the auditor-general of the department of legislative audit at Pierre, South Dakota. The certified copy filed with the auditor-general shall be available for inspection by the public at all times. A violation of this section is a Class 2 misdemeanor.

1-25-4. Exemptions from requirement to file minutes — Availability to public. The provisions of § 1-25-3 shall not apply to the state public utilities commission and such other boards and commissions as shall be designated by the auditor-general, but the minutes of said boards and commissions shall be available for public inspection.

1-25-5. Violation as misdemeanor. Repealed by SL 1980, ch 24, § 12.

APPENDIX H

TENNESSEE - PUBLIC MEETINGS

Tenn. Code Ann. §§ 8-44-101 - 8-44-201

8-44-101. Policy — Construction. — (a) The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

(b) This part shall not be construed to limit any of the rights and privileges contained in Article I, § 19, of the Constitution of Tennessee. [Acts 1974, ch. 442, §§ 1, 8; T.C.A., § 8-4401.]

8-44-102. Open meetings — "Governing body" defined — "Meeting" defined. — (a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Tennessee Constitution.

(b)(1) "Governing body" means the members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times.

(2) "Governing body" also means the board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public, provided community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings.

(3) "Governing body" also means the board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more of counties, cities, towns and local governments pursuant to the provisions of title 7, chapters 54 or 58. The provisions of this subdivision shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more according to the 1980 federal census or any subsequent federal census.

(c) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Meeting does not include any on-site inspection of any project or program.

(d) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part. [Acts 1974, ch. 442, § 2; 1979, ch. 411, §§ 1, 2; T.C.A., § 8-4402; Acts 1985, ch. 290, § 1, 2; 1986, ch. 594, § 1; 1988, ch. 908, §§ 3, 5.]

8-44-103. Notice of public meetings. — (a) Notice of Regular Meetings. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution, shall give adequate public notice of such meeting.

(b) Notice of Special Meetings. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law. [Acts 1974, ch. 442, § 3; T.C.A., § 8-4403.]

Contested Cases Under the Tennessee Uniform Administrative Procedures Act (L. Harold Levinson), 6 Mem. St. U.L. Rev. 215.

8-44-104. Minutes recorded and open to public — Secret votes prohibited. — (a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in event of roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, "public vote" means a vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison. [Acts 1974, ch. 442, § 4; T.C.A., § 8-4404; Acts 1980, ch. 800, § 1.]

8-44-105. Action nullified — Exception. — Any action taken at a meeting in violation of this part shall be void and of no effect; provided, that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned. [Acts 1974, ch. 442, § 5; T.C.A., § 8-4405.]

8-44-106. Enforcement — Jurisdiction. — (a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, shall have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.

(b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.

(c) The court shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meetings not held in accordance with this part shall constitute a separate violation.

(d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part. [Acts 1974, ch. 442, § 6; T.C.A., § 8-4406.]

8-44-107. Board of directors of Performing Arts Center Management Corporation. — The board of directors of the Tennessee Performing Arts Center Management Corporation shall be subject to, and shall in all respects comply with, all of the provisions made applicable to governing bodies by this chapter. [Acts 1981, ch. 375, § 1.]

8-44-108. Participation by electronic or other means. — (a) As used in this section, unless the context otherwise requires:

(1) "Governing body" refers only to boards, agencies and commissions of state government; and

(2) "Meeting" has the same definition as that found in the Public Meetings Act, compiled in § 8-44-102.

(b) Members of any governing body, upon a declaration of necessity, may participate in a regular or special meeting by, or conduct the meeting through the use of any means of communication, electronic or otherwise, by which all members participating may simultaneously hear each other and speak to each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting for purposes of quorum requirements and voting, but not for purposes of determining per diem eligibility.

(c) No governing body is required to allow participation by electronic or other means of communication. Any meeting held pursuant to the terms of this section shall conform to the requirements of the Open Meetings Act, compiled in this part, and shall not circumvent the spirit or requirements of that law.

(d) If electronic or other means of communication are to be used at a public meeting, notices required by the Open Meetings Act or any other notice required by law shall state that the meeting will be conducted with some persons participating by electronic or other means of communication. The governing body shall make a determination that the matters to be considered by the body at that meeting require timely action by the body, that physical presence by all members is not possible within the period of time requiring action, and that participation by some members by electronic or other means of communication is, therefore, necessary.

(e) Any member not physically present at the meeting shall be provided, before the meeting, with any documents that will be discussed at the meeting, with substantially the same content as those documents actually presented. [Acts 1990, ch. 815, § 1.]

Effective Dates. Acts 1990, ch. 815, § 2. April 5, 1990.

8-44-201. Labor negotiations between public employee union and state or local government. — (a) Notwithstanding any other provision of Tennessee law to the contrary, labor negotiations between representatives of public employee unions or associations and representatives of a state or local governmental entity shall be open to the public whether or not the negotiations by the state or local governmental entity are under the direction of the legislative, executive or judicial branch of government.

(b) Nothing contained in this section shall be construed to require that planning or strategy sessions of either the union committee or the governmental entity committee, meeting separately, be open to the public.

(c) Nothing contained in this section shall be construed to grant recognition rights of any sort.

(d) Both sides shall decide jointly and announce in advance of any such labor negotiations where such meetings shall be held. [Acts 1979, ch. 41, § 1; T.C.A., § 8-4421.]

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

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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.

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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.

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MAURA D. CORRIGAN

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Judge Corrigan is a judge on the Michigan Court of Appeals.

She is a graduate of St. Joseph Academy, Cleveland, Ohio; Marygrove College; and the University of Detroit Law School. She is married and has two children.

Prior to her appointment to the Court of Appeals, Judge Corrigan was a shareholder in the law firm of Plunkett & Cooney, P.C. She earlier served as First Assistant United States Attorney for the Eastern District of Michigan, Chief of Appeals in the United States Attorney's Office, Assistant Wayne County Prosecutor, and a law clerk on the Michigan Court of Appeals. She was selected Outstanding Practitioner of Criminal Law by the Federal Bar Association as well as awarded the Director's Award for superior performance as an Assistant United States Attorney by the United States Department of Justice. She has served on numerous professional committees and lectured extensively on law-related matters.

LAWRENCE D. OWEN

Mr. Owen is a public member of the Michigan Law Revision Commission and has served since his appointment in February, 1992.

Mr. Owen is a Senior Partner in the law firm of Miller, Canfield, Paddock and Stone, and serves as the head of the firm's regulation and environmental practice.

He is a cum laude graduate of Michigan State University and the University of Michigan Law School.

Prior to entering private practice, Mr. Owen served as Assistant Director of Policy of the Public Service Commission, and Deputy Commissioner of Insurance. He is the former Mayor of East Lansing and was the Chairman of the Board of Trustees of Michigan State University.

Mr. Owen also currently serves on the Boards of the Michigan Health and Social Security Research Foundation, the Physicians Health Plan, and the Foundation for the Future of Education.

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 Senator representing the 17th Senatorial District. He was first elected to the Michigan House in November 1984 and served in that body until his election to the Senate in November 1990. He is currently Chairman of the Senate Committees on Labor and on Local Government and Urban Development, Vice-Chairman of the Senate Education Committee, and a member of the Legislative Council.

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 and 1988.

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

VIRGIL CLARK SMITH

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 currently serves on the Senate Committees on Finance; Reapportionment; Judiciary; and Family Law, Criminal Law, and Corrections. He is a member of the African American Legislative Caucus.

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 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 Michigan House in November 1972. Among his committee assignments, he has served as Chair of the House Civil Rights Committee and Chair of the House Labor Committee. He is currently Chair of the House Judiciary Committee.

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.

MICHAEL E. NYE

Mr. Nye is a legislative member of the Michigan Law Revision Commission and has served on the Commission since March 1991.

Mr. Nye is a Republican State Representative representing the 58th House District. He was first elected to the Michigan House in November 1982. He is currently Minority Vice Chairman of the House Judiciary Committee and serves on the House Committees on Labor, Tourism and Wildlife and Conservation, Recreation and Environment.

He is a graduate of Purdue University and University of Detroit Law School. He is married and has two children.

Mr. Nye was named the 1991 Legislator of the Year by the Michigan Association of Chiefs of Police and the 1990 Michigan Environmental Legislator of the Year by the Michigan Environmental Defense Association.

Mr. Nye has been a leader against Drunk Driving and has received the GLADD award (Government Leader Against Drunk Driving) from the Mothers Against Drunk Drivers.

Mr. Nye 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.