(g) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

(*i*) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of conviction, is under the age of 18.

(*ii*) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.

(h) Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency according to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (5), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care facility for people with mental retardation after April 1, 2006 until the psychiatric facility or intermediate care facility for people with mental retardation conducts a criminal history check in compliance with subsection (4). This subsection and subsection (1) do not apply to any of the following:

(a) An individual who is employed by, under independent contract to, or granted clinical privileges in a psychiatric facility or intermediate care facility for people with mental retardation before April 1, 2006. By April 1, 2011, an individual who is exempt under this subdivision shall provide the department of state police with a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subdivision is not limited to working within the psychiatric facility or intermediate care facility for people with mental retardation with which he or she is employed by, under independent contract to, or granted clinical privileges on April 1, 2006. That individual may transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new psychiatric facility or intermediate care facility for people with mental retardation in accordance with subsection (4). If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), then he or she is no longer exempt and shall be terminated from employment or denied employment.

(b) An individual who is an independent contractor with a psychiatric facility or intermediate care facility for people with mental retardation if the services for which he or she is contracted is not directly related to the provision of services to a patient or resident or if the services for which he or she is contracted allows for direct access to the patients or residents but is not performed on an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the psychiatric facility or intermediate care facility for people with mental retardation to provide utility, maintenance, construction, or communications services.

(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a psychiatric facility or intermediate care facility for people with mental retardation and has received a good faith offer of employment, an independent contract, or clinical privileges from the psychiatric facility or intermediate care facility for people with mental retardation shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section, along with identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), a psychiatric facility or intermediate care facility for people with mental retardation that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request shall be made in a manner prescribed by the department of state police. The psychiatric facility or intermediate care facility for people with mental retardation shall make the written consent and identification available to the department of state police. The psychiatric facility or intermediate care facility for people with mental retardation shall make a request to the relevant licensing or regulatory department to conduct a check of all relevant registries established under federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the psychiatric facility or intermediate care facility for people with mental retardation shall pay the cost of the charge. The psychiatric facility or intermediate care facility for people with mental retardation shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. A prospective employee or a prospective independent contractor covered under this section may not be charged for the cost of an initial criminal history check required under this section. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection if the criminal history check contains any criminal history record information. The report shall contain any criminal history record information on the applicant maintained by the department of state police. The department of state police shall provide the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting psychiatric facility or intermediate care facility for people with mental retardation is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check or the federal bureau of investigation determination, the department shall notify the psychiatric facility or intermediate care facility for people with mental retardation and the applicant in writing of the type of crime disclosed on the written report of the criminal history check or the federal bureau of investigation determination without disclosing the details of the crime. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under this subsection. The notice shall include a statement that the applicant has a right to appeal a decision made by the psychiatric facility or intermediate care facility for people with mental retardation regarding his or her employment eligibility based on the criminal background check. The notice shall also include information regarding where to file and describing the

appellate procedures established under section 20173b of the public health code, 1978 PA 368, MCL 333.20173b.

(5) If a psychiatric facility or intermediate care facility for people with mental retardation determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under this section, the psychiatric facility or intermediate care facility for people with mental retardation may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The psychiatric facility or intermediate care facility for people with mental retardation requests the criminal history check under this section upon conditionally employing or conditionally granting clinical privileges to the individual.

(b) The individual signs a statement in writing that indicates all of the following:

(*i*) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) through (g) within the applicable time period prescribed by each subdivision respectively.

(*ii*) That he or she is not the subject of an order or disposition described in subsection (1)(h).

(*iii*) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(*iv*) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statements under subparagraphs (*i*) through (*iii*), his or her employment or clinical privileges will be terminated by the psychiatric facility or intermediate care facility for people with mental retardation as required under subsection (1) unless and until the individual appeals and can prove that the information is incorrect.

(*v*) That he or she understands the conditions described in subparagraphs (*i*) through (*iv*) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

(6) The department shall develop and distribute a model form for the statement required under subsection (5)(b). The department shall make the model form available to psychiatric facilities or intermediate care facilities for people with mental retardation subject to this section upon request at no charge.

(7) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (5), and the report described in subsection (4) does not confirm the individual's statement under subsection (5)(b)(*i*) through (*iii*), the psychiatric facility or intermediate care facility for people with mental retardation shall terminate the individual's employment or clinical privileges as required by subsection (1).

(8) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (5)(b)(*i*) through (*iii*) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(9) A psychiatric facility or intermediate care facility for people with mental retardation shall use criminal history record information obtained under subsection (4) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (5) and (7). A psychiatric facility or intermediate care facility for people with mental retardation or an employee of the psychiatric facility or intermediate care facility for people with mental retardation shall not disclose criminal history record information obtained under subsection (4) to a person who is not directly involved in evaluating the applicant's

qualifications for employment, an independent contract, or clinical privileges. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Upon written request from another psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a psychiatric facility or intermediate care facility for people with mental retardation that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility. Except for a knowing or intentional release of false information, a psychiatric facility or intermediate care facility for people with mental retardation has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.

(10) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall do each of the following:

(a) Agree in writing to report to the psychiatric facility or intermediate care facility for people with mental retardation immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property as described in subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

(b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.

(11) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of a psychiatric facility or intermediate care facility for people with mental retardation who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

(12) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification if and when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective psychiatric facility or intermediate care facility for people with mental retardation with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(13) On or before April 1, 2009, the department shall submit a written report to the legislature outlining a plan to cover the costs of the criminal history checks required under this section if federal funding is no longer available or is inadequate to cover those costs.

(14) The department and the department of state police shall maintain an electronic web-based system to assist those psychiatric facilities or intermediate care facilities for people

with mental retardation required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to those psychiatric facilities or intermediate care facilities for people with mental retardation for those individuals inputted in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(15) As used in this section:

(a) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(b) "Direct access" means access to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.

(c) "Health facility or agency" means a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency and licensed as required under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(d) "Home health agency" means a person certified by medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility 1 or more of the following services: nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services.

(e) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

(f) "Medicare" means benefits under the federal medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395hhh.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

[No. 446]

(SB 1580)

AN ACT to amend 1974 PA 258, entitled "An act to codify, revise, consolidate, and classify the laws relating to mental health; to prescribe the powers and duties of certain state and local agencies and officials and certain private agencies and individuals; to regulate certain agencies and facilities providing mental health services; to provide for certain charges and fees; to establish civil admission procedures for individuals with mental illness or developmental disability; to establish guardianship procedures for individuals with developmental disability; to establish procedures regarding individuals with mental illness or developmental disability who are in the criminal justice system; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending section 134a (MCL 330.1134a), as added by 2006 PA 27.

The People of the State of Michigan enact:

330.1134a Employing, contracting, or granting clinical privileges to individuals; prohibitions; criminal history check; conditional employment or granting clinical privileges; false information; use of information obtained under subsection (4); condition of continued employment; failure to conduct criminal history check; establishment of automated fingerprint identification system database; report to legislature; web-based system; definitions.

Sec. 134a. (1) Except as otherwise provided in subsection (2), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care facility for people with mental retardation after April 1, 2006 if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7, unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract:

(*i*) A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence.

(*ii*) A felony involving cruelty or torture.

(*iii*) A felony under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(*iv*) A felony involving criminal sexual conduct.

(*v*) A felony involving abuse or neglect.

(*vi*) A felony involving the use of a firearm or dangerous weapon.

(*vii*) A felony involving the diversion or adulteration of a prescription drug or other medications.

(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract.

(d) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 10 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

(*i*) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

(*ii*) A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(*iii*) A misdemeanor involving criminal sexual conduct.

(*iv*) A misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e).

(*v*) A misdemeanor involving abuse or neglect.

(e) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 5 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

(*i*) A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.

(*ii*) A misdemeanor involving home invasion.

(*iii*) A misdemeanor involving embezzlement.

(*iv*) A misdemeanor involving negligent homicide or a moving violation causing death.

(*v*) A misdemeanor involving larceny unless otherwise provided under subdivision (g).

(*vi*) A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g).

(*vii*) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g).

(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

(*i*) A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.

(*ii*) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

(*iii*) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided under subdivision (g).

(g) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

(*i*) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of conviction, is under the age of 18.

(*ii*) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.

(h) Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency according to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (5), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care facility for people with mental retardation after April 1, 2006 until the psychiatric facility or intermediate care facility for people with mental retardation conducts a criminal history check in compliance with subsection (4). This subsection and subsection (1) do not apply to any of the following:

(a) An individual who is employed by, under independent contract to, or granted clinical privileges in a psychiatric facility or intermediate care facility for people with mental retardation before April 1, 2006. By April 1, 2011, an individual who is exempt under this subdivision shall provide the department of state police with a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subdivision is not limited to working within the psychiatric facility or intermediate care facility for people with mental retardation with which he or she is employed by, under independent contract to, or granted clinical privileges on April 1, 2006. That individual may transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new psychiatric facility or intermediate care facility for people with mental retardation in accordance with subsection (4). If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), then he or she is no longer exempt and shall be terminated from employment or denied employment.

(b) An individual who is an independent contractor with a psychiatric facility or intermediate care facility for people with mental retardation if the services for which he or she is contracted is not directly related to the provision of services to a patient or resident or if the services for which he or she is contracted allows for direct access to the patients or residents but is not performed on an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the psychiatric facility or intermediate care facility for people with mental retardation to provide utility, maintenance, construction, or communications services.

(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a psychiatric facility or intermediate care facility for people with mental retardation and has received a good faith offer of employment, an independent contract, or clinical privileges from the psychiatric facility or intermediate care facility for people with mental retardation shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section, along with identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), a psychiatric facility or intermediate care facility for people with mental retardation that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history

pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request shall be made in a manner prescribed by the department of state police. The psychiatric facility or intermediate care facility for people with mental retardation shall make the written consent and identification available to the department of state police. The psychiatric facility or intermediate care facility for people with mental retardation shall make a request to the relevant licensing or regulatory department to conduct a check of all relevant registries established under federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the psychiatric facility or intermediate care facility for people with mental retardation shall pay the cost of the charge. The psychiatric facility or intermediate care facility for people with mental retardation shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. A prospective employee or a prospective independent contractor covered under this section may not be charged for the cost of an initial criminal history check required under this section. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection if the criminal history check contains any criminal history record information. The report shall contain any criminal history record information on the applicant maintained by the department of state police. The department of state police shall provide the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting psychiatric facility or intermediate care facility for people with mental retardation is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check or the federal bureau of investigation determination, the department shall notify the psychiatric facility or intermediate care facility for people with mental retardation and the applicant in writing of the type of crime disclosed on the written report of the criminal history check or the federal bureau of investigation determination without disclosing the details of the crime. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under this subsection. The notice shall include a statement that the applicant has a right to appeal a decision made by the psychiatric facility or intermediate care facility for people with mental retardation regarding his or her employment eligibility based on the criminal background check. The notice shall also include information regarding where to file and describing the appellate procedures established under section 20173b of the public health code, 1978 PA 368, MCL 333.20173b.

(5) If a psychiatric facility or intermediate care facility for people with mental retardation determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under this section, the psychiatric facility or intermediate care facility for people with mental retardation may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The psychiatric facility or intermediate care facility for people with mental retardation requests the criminal history check under this section upon conditionally employing or conditionally granting clinical privileges to the individual.

(b) The individual signs a statement in writing that indicates all of the following:

(*i*) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) through (g) within the applicable time period prescribed by each subdivision respectively.

(*ii*) That he or she is not the subject of an order or disposition described in subsection (1)(h).

(*iii*) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(*iv*) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statements under subparagraphs (*i*) through (*iii*), his or her employment or clinical privileges will be terminated by the psychiatric facility or intermediate care facility for people with mental retardation as required under subsection (1) unless and until the individual appeals and can prove that the information is incorrect.

(*v*) That he or she understands the conditions described in subparagraphs (*i*) through (*iv*) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

(6) The department shall develop and distribute a model form for the statement required under subsection (5)(b). The department shall make the model form available to psychiatric facilities or intermediate care facilities for people with mental retardation subject to this section upon request at no charge.

(7) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (5), and the report described in subsection (4) does not confirm the individual's statement under subsection (5)(b)(*i*) through (*iii*), the psychiatric facility or intermediate care facility for people with mental retardation shall terminate the individual's employment or clinical privileges as required by subsection (1).

(8) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (5)(b)(*i*) through (*iii*) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(9) A psychiatric facility or intermediate care facility for people with mental retardation shall use criminal history record information obtained under subsection (4) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (5) and (7). A psychiatric facility or intermediate care facility for people with mental retardation or an employee of the psychiatric facility or intermediate care facility for people with mental retardation shall not disclose criminal history record information obtained under subsection (4) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Upon written request from another psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a psychiatric facility or intermediate care facility for people with mental retardation that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility. Except for a knowing or intentional release of false information, a psychiatric facility or intermediate care facility for people with mental retardation has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.

(10) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall do each of the following:

(a) Agree in writing to report to the psychiatric facility or intermediate care facility for people with mental retardation immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property as described in subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

(b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.

(11) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of a psychiatric facility or intermediate care facility for people with mental retardation who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

(12) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification if and when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective psychiatric facility or intermediate care facility for people with mental retardation with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(13) April 1, 2009, the department shall submit a written report to the legislature outlining a plan to cover the costs of the criminal history checks required under this section if federal funding is no longer available or is inadequate to cover those costs.

(14) The department and the department of state police shall maintain an electronic web-based system to assist those psychiatric facilities or intermediate care facilities for people with mental retardation required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to those psychiatric facilities or intermediate care facilities for people with mental retardation for those individuals inputted in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(15) As used in this section:

(a) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(b) "Direct access" means access to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.

(c) "Health facility or agency" means a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency and licensed as required under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(d) "Home health agency" means a person certified by medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility 1 or more of the following services: nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services.

(e) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

(f) "Medicare" means benefits under the federal medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395hhh.

Effective date.

Enacting section 1. This amendatory act takes effect October 31, 2010.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

[No. 447]

(HB 6496)

AN ACT to amend 1967 PA 281, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts," by amending section 266 (MCL 206.266), as amended by 2007 PA 94.

The People of the State of Michigan enact:

206.266 Rehabilitation of historic resource; tax credit; plan; certification; revocation of certificate or sale of historic resource; rules; report; definitions.

Sec. 266. (1) A qualified taxpayer with a rehabilitation plan certified after December 31, 1998 may credit against the tax imposed by this act the amount determined pursuant to subsection (2) for the qualified expenditures for the rehabilitation of a historic resource pursuant to the rehabilitation plan in the year in which the certification of completed rehabilitation of the historic resource is issued. Only those expenditures that are paid or incurred during the time periods prescribed for the credit under section 47(a)(2) of the internal revenue code and any related treasury regulations shall be considered qualified expenditures.

(2) The credit allowed under this section shall be 25% of the qualified expenditures that are eligible, or would have been eligible except that the taxpayer elected to transfer the credit under subsection (12), for the credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue

code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, 25% of the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to a historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code, subject to both of the following:

(a) A taxpayer with qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code may not claim a credit under this section for those qualified expenditures unless the taxpayer has claimed and received a credit for those qualified expenditures under section 47(a)(2) of the internal revenue code or the taxpayer has elected to transfer the credit under subsection (12).

(b) A credit under this section shall be reduced by the amount of a credit received by the taxpayer for the same qualified expenditures under section 47(a)(2) of the internal revenue code.

(3) To be eligible for the credit under this section, the taxpayer shall apply to and receive from the Michigan historical center certification that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

(*i*) The historic resource contributes to the significance of the historic district in which it is located.

(*ii*) Both the rehabilitation plan and completed rehabilitation of the historic resource meet the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 CFR part 67.

(*iii*) All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the resource.

(b) The taxpayer has received certification from the national park service that the historic resource's significance, the rehabilitation plan, and the completed rehabilitation qualify for the credit allowed under section 47(a)(2) of the internal revenue code.

(4) If a qualified taxpayer is eligible for the credit allowed under section 47(a)(2) of the internal revenue code, the qualified taxpayer shall file for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code. If the qualified taxpayer has previously filed for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code, additional filing for the credit allowed under this section is not required.

(5) The center may inspect a historic resource at any time during the rehabilitation process and may revoke certification of completed rehabilitation if the rehabilitation was not undertaken as represented in the rehabilitation plan or if unapproved alterations to the completed rehabilitation are made during the 5 years after the tax year in which the credit was claimed. The center shall promptly notify the department of a revocation.

(6) Qualified expenditures for the rehabilitation of a historic resource may be used to calculate the credit under this section if the historic resource meets 1 of the criteria listed in subdivision (a) and 1 of the criteria listed in subdivision (b):

(a) The resource is 1 of the following during the tax year in which a credit under this section is claimed for those qualified expenditures:

(*i*) Individually listed on the national register of historic places or state register of historic sites.

(*ii*) A contributing resource located within a historic district listed on the national register of historic places or the state register of historic sites.

(*iii*) A contributing resource located within a historic district designated by a local unit pursuant to an ordinance adopted under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(b) The resource meets 1 of the following criteria during the tax year in which a credit under this section is claimed for those qualified expenditures:

(*i*) The historic resource is located in a designated historic district in a local unit of government with an existing ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(*ii*) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and has a population of less than 5,000.

(*iii*) The historic resource is located in an unincorporated local unit of government.

(*iv*) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and is located within the boundaries of an association that has been chartered under 1889 PA 39, MCL 455.51 to 455.72.

(*v*) The historic resource is subject to a historic preservation easement.

(7) A credit amount assigned under section 39c(7) of former 1975 PA 228 or section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, may be claimed against the partner's, member's, or shareholder's tax liability under this act as provided in section 39c(7) of former 1975 PA 228 or section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435.

(8) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. For projects for which a certificate of completed rehabilitation is issued for a tax year beginning after December 31, 2008 and for which the credit amount allowed is less than $250,000.00, a qualified taxpayer may elect to forgo the carryover period and receive a refund of the amount of the credit that exceeds the qualified taxpayer's tax liability. The amount of the refund shall be equal to 90% of the amount of the credit that exceeds the qualified taxpayer's tax liability. An election under this subsection shall be made in the year that a certificate of completed rehabilitation is issued and shall be irrevocable.

(9) For tax years beginning before January 1, 2009, if a taxpayer sells a historic resource for which a credit under this section was claimed less than 5 years after the year in which the credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the sale:

(a) If the sale is less than 1 year after the year in which the credit was claimed, 100%.

(b) If the sale is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.

(c) If the sale is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.

(d) If the sale is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.

(e) If the sale is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.

(f) If the sale is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(10) For tax years beginning before January 1, 2009, if a certification of completed rehabilitation is revoked under subsection (5) less than 5 years after the year in which a credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the revocation:

(a) If the revocation is less than 1 year after the year in which the credit was claimed, 100%.

(b) If the revocation is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.

(c) If the revocation is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.

(d) If the revocation is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.

(e) If the revocation is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.

(f) If the revocation is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(11) For tax years beginning after December 31, 2008, if a certificate of completed rehabilitation is revoked under subsection (5) or if the historic resource is sold or disposed of less than 5 years after being placed in service as defined in section 47(b)(1) of the internal revenue code and related treasury regulations, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the qualified taxpayer that received the certificate of completed rehabilitation and not the assignee in the year of the revocation:

(a) If the revocation is less than 1 year after the historic resource is placed in service, 100%.

(b) If the revocation is at least 1 year but less than 2 years after the historic resource is placed in service, 80%.

(c) If the revocation is at least 2 years but less than 3 years after the historic resource is placed in service, 60%.

(d) If the revocation is at least 3 years but less than 4 years after the historic resource is placed in service, 40%.

(e) If the revocation is at least 4 years but less than 5 years after the historic resource is placed in service, 20%.

(f) If the revocation is at least 5 years or more after the historic resource is placed in service, an addback to the qualified taxpayer tax liability shall not be required.

(12) A qualified taxpayer who receives a certificate of completed rehabilitation after December 31, 2008 may elect to forgo claiming the credit and transfer the credit along with the ownership of the property for which the credit may be claimed to a new owner. The new owner shall be treated as the qualified taxpayer having incurred the rehabilitation costs and shall be subject to the recapture provisions under subsection (11) if the new owner sells or disposes of the property within 5 years after the new owner acquired the property. For purposes of this subsection and subsection (11), the placed in service date for a new owner is the date the new owner acquired the property for which the credit is claimed.

(13) The department of history, arts, and libraries through the Michigan historical center may impose a fee to cover the administrative cost of implementing the program under this section.

(14) The qualified taxpayer shall attach all of the following to the qualified taxpayer's annual return under this act:

(a) Certification of completed rehabilitation.

(b) Certification of historic significance related to the historic resource and the qualified expenditures used to claim a credit under this section.

(c) A completed assignment form if the qualified taxpayer is an assignee under section 39c of former 1975 PA 228 or section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, of any portion of a credit allowed under that section.

(15) The department of history, arts, and libraries shall promulgate rules to implement this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(16) The total of the credits claimed under this section and section 39c of former 1975 PA 228 or section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, for a rehabilitation project shall not exceed 25% of the total qualified expenditures eligible for the credit under this section for that rehabilitation project.

(17) The department of history, arts, and libraries through the Michigan historical center shall report all of the following to the legislature annually for the immediately preceding state fiscal year:

(a) The fee schedule used by the center and the total amount of fees collected.

(b) A description of each rehabilitation project certified.

(c) The location of each new and ongoing rehabilitation project.

(18) As used in this section:

(a) "Contributing resource" means a historic resource that contributes to the significance of the historic district in which it is located.

(b) "Historic district" means an area, or group of areas not necessarily having contiguous boundaries, that contains 1 resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

(c) "Historic resource" means a publicly or privately owned historic building, structure, site, object, feature, or open space located within a historic district designated by the national register of historic places, the state register of historic sites, or a local unit acting under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215; or that is individually listed on the state register of historic sites or national register of historic places and includes all of the following:

(*i*) An owner-occupied personal residence or a historic resource located within the property boundaries of that personal residence.

(*ii*) An income-producing commercial, industrial, or residential resource or a historic resource located within the property boundaries of that resource.

(*iii*) A resource owned by a governmental body, nonprofit organization, or tax-exempt entity that is used primarily by a taxpayer lessee in a trade or business unrelated to the governmental body, nonprofit organization, or tax-exempt entity and that is subject to tax under this act.

(*iv*) A resource that is occupied or utilized by a governmental body, nonprofit organization, or tax-exempt entity pursuant to a long-term lease or lease with option to buy agreement.

(*v*) Any other resource that could benefit from rehabilitation.

(d) "Local unit" means a county, city, village, or township.

(e) "Long-term lease" means a lease term of at least 27.5 years for a residential resource or at least 31.5 years for a nonresidential resource.

(f) "Michigan historical center" or "center" means the state historic preservation office of the Michigan historical center of the department of history, arts, and libraries or its successor agency.

(g) "Open space" means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

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

(i) "Qualified expenditures" means capital expenditures that qualify, or would qualify except that the taxpayer elected to transfer the credit under subsection (12), for a rehabilitation credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to a historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code, that were paid. Qualified expenditures do not include capital expenditures for nonhistoric additions to a historic resource except an addition that is required by state or federal regulations that relate to historic preservation, safety, or accessibility.

(j) "Qualified taxpayer" means a person that is an assignee under section 39c of former 1975 PA 228 or section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, or either owns the resource to be rehabilitated or has a long-term lease agreement with the owner of the historic resource and that has qualified expenditures for the rehabilitation of the historic resource equal to or greater than 10% of the state equalized valuation of the property. If the historic resource to be rehabilitated is a portion of a historic or nonhistoric resource, the state equalized valuation of only that portion of the property shall be used for purposes of this subdivision. If the assessor for the local tax collecting unit in which the historic resource is located determines the state equalized valuation of that portion, that assessor's determination shall be used for purposes of this subdivision. If the assessor does not determine that state equalized valuation of that portion, qualified expenditures, for purposes of this subdivision, shall be equal to or greater than 5% of the appraised value as determined by a certified appraiser. If the historic resource to be rehabilitated does not have a state equalized valuation, qualified expenditures for purposes of this subdivision shall be equal to or greater than 5% of the appraised value of the resource as determined by a certified appraiser.

(k) "Rehabilitation plan" means a plan for the rehabilitation of a historic resource that meets the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitation of historic buildings under 36 CFR part 67.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2009.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 973 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

Compiler's note: Senate Bill No. 973, referred to in enacting section 2, was filed with the Secretary of State January 9, 2009, and became 2008 PA 448, Imd. Eff. Jan. 9, 2009.

[No. 448]

(SB 973)

AN ACT to amend 2007 PA 36, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations," by amending section 435 (MCL 208.1435), as amended by 2007 PA 216.

The People of the State of Michigan enact:

208.1435 Rehabilitation of historic resource; tax credit.

Sec. 435. (1) A qualified taxpayer with a rehabilitation plan certified after December 31, 2007 or a qualified taxpayer that has a rehabilitation plan certified before January 1, 2008 under section 39c of former 1975 PA 228 for the rehabilitation of an historic resource for which a certification of completed rehabilitation has been issued after the end of the taxpayer's last tax year may credit against the tax imposed by this act the amount determined pursuant to subsection (2) for the qualified expenditures for the rehabilitation of an historic resource pursuant to the rehabilitation plan in the year in which the certification of completed rehabilitation of the historic resource is issued. Only those expenditures that are paid or incurred during the time periods prescribed for the credit under section 47(a)(2) of the internal revenue code and any related treasury regulations shall be considered qualified expenditures.

(2) The credit allowed under this subsection shall be 25% of the qualified expenditures that are eligible, or would have been eligible except that the taxpayer entered into an agreement under subsection (13), for the credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, 25% of the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to an historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code, subject to both of the following:

(a) A taxpayer with qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code may not claim a credit under this section for those qualified expenditures unless the taxpayer has claimed and received a credit for those qualified expenditures under section 47(a)(2) of the internal revenue code or the taxpayer has entered into an agreement under subsection (13).

(b) A credit under this subsection shall be reduced by the amount of a credit received by the taxpayer for the same qualified expenditures under section 47(a)(2) of the internal revenue code.

(3) To be eligible for the credit under subsection (2), the taxpayer shall apply to and receive from the Michigan historical center certification that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

(*i*) The historic resource contributes to the significance of the historic district in which it is located.

(*ii*) Both the rehabilitation plan and completed rehabilitation of the historic resource meet the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 CFR part 67.

(*iii*) All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the property.

(b) The taxpayer has received certification from the national park service that the historic resource's significance, the rehabilitation plan, and the completed rehabilitation qualify for the credit allowed under section 47(a)(2) of the internal revenue code.

(4) If a qualified taxpayer is eligible for the credit allowed under section 47(a)(2) of the internal revenue code, the qualified taxpayer shall file for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code. If the qualified taxpayer has previously filed for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code, additional filing for the credit allowed under this section is not required.

(5) The center may inspect an historic resource at any time during the rehabilitation process and may revoke certification of completed rehabilitation if the rehabilitation was not undertaken as represented in the rehabilitation plan or if unapproved alterations to the completed rehabilitation are made during the 5 years after the tax year in which the credit was claimed. The center shall promptly notify the department of a revocation.

(6) Qualified expenditures for the rehabilitation of an historic resource may be used to calculate the credit under this section if the historic resource meets 1 of the criteria listed in subdivision (a) and 1 of the criteria listed in subdivision (b):

(a) The resource is 1 of the following during the tax year in which a credit under this section is claimed for those qualified expenditures:

(*i*) Individually listed on the national register of historic places or state register of historic sites.

(*ii*) A contributing resource located within an historic district listed on the national register of historic places or the state register of historic sites.

(*iii*) A contributing resource located within an historic district designated by a local unit pursuant to an ordinance adopted under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(b) The resource meets 1 of the following criteria during the tax year in which a credit under this section is claimed for those qualified expenditures:

(*i*) The historic resource is located in a designated historic district in a local unit of government with an existing ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(*ii*) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and has a population of less than 5,000.

(*iii*) The historic resource is located in an unincorporated local unit of government.

(*iv*) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and is located within the boundaries of an association that has been chartered under 1889 PA 39, MCL 455.51 to 455.72.

(*v*) The historic resource is subject to a historic preservation easement.

(7) For projects for which a certificate of completed rehabilitation is issued for a tax year beginning before January 1, 2009, if a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or any portion of a credit allowed under this section to its partners, members, or shareholders, based on the partner's, member's, or shareholder's proportionate share of ownership or based on an alternative method approved by the department. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate of completed rehabilitation is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. A partner, member, or shareholder that is an assignee shall not subsequently assign a credit or any portion of a credit assigned to the partner, member, or shareholder under this subsection. A credit amount assigned under this subsection may be claimed against the partner's, member's, or shareholder's tax liability under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. A credit assignment under this subsection shall be made on a form prescribed by the department. The qualified taxpayer and assignees shall attach a copy of the completed assignment form to the department in the tax year in which the assignment is made and attach a copy of the completed assignment form to the annual return required to be filed under this act for that tax year.

(8) For projects for which a certificate of completed rehabilitation is issued for a tax year beginning after December 31, 2008, a qualified taxpayer may assign all or any portion of the credit allowed under this section. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate of completed rehabilitation is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining amount. If the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which a certificate of completed rehabilitation is issued pursuant to this section. An assignee may subsequently assign the credit or any portion of the credit assigned under this subsection to 1 or more assignees. An assignment or subsequent reassignment of a credit can be made in the year the certificate of completed rehabilitation is issued. A credit assignment or subsequent reassignment under this section shall be made on a form prescribed by the department. The department or its designee shall review and issue a completed assignment or reassignment certificate to the assignee or reassignee. A credit amount assigned under this subsection may be claimed against the assignees' tax under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. An assignee or subsequent reassignee shall attach a copy of the completed assignment certificate to the annual return required to be filed under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for the tax year in which the assignment or reassignment is made and the assignee or reassignee first claims the credit, which shall be the same tax year.

(9) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up,

whichever occurs first. An unused carryforward of a credit under section 39c of former 1975 PA 228 that was unused at the end of the last tax year for which former 1975 PA 228 was in effect may be claimed against the tax imposed under this act for the years the carryforward would have been available under section 39c of former 1975 PA 228. For projects for which a certificate of completed rehabilitation is issued for a tax year beginning after December 31, 2008 and for which the credit amount allowed is less than $250,000.00, a qualified taxpayer may elect to forgo the carryover period and receive a refund of the amount of the credit that exceeds the qualified taxpayer's tax liability. The amount of the refund shall be equal to 90% of the amount of the credit that exceeds the qualified taxpayer's tax liability. An election under this subsection shall be made in the year that a certificate of completed rehabilitation is issued and shall be irrevocable.

(10) For tax years beginning before January 1, 2009, if the taxpayer sells an historic resource for which a credit was claimed under this section or under section 39c of former 1975 PA 228 less than 5 years after the year in which the credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the sale:

(a) If the sale is less than 1 year after the year in which the credit was claimed, 100%.

(b) If the sale is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.

(c) If the sale is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.

(d) If the sale is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.

(e) If the sale is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.

(f) If the sale is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(11) For tax years beginning before January 1, 2009, if a certification of completed rehabilitation is revoked under subsection (5) less than 5 years after the year in which a credit was claimed under this section or under section 39c of former 1975 PA 228, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the revocation:

(a) If the revocation is less than 1 year after the year in which the credit was claimed, 100%.

(b) If the revocation is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.

(c) If the revocation is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.

(d) If the revocation is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.

(e) If the revocation is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.

(f) If the revocation is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(12) Except as otherwise provided under subsection (13), for tax years beginning after December 31, 2008, if a certificate of completed rehabilitation is revoked under subsection (5) or (22) or an historic resource is sold or disposed of less than 5 years after the historic

resource is placed in service as defined in section 47(b)(1) of the internal revenue code and related treasury regulations or if a certificate of completed rehabilitation issued after December 1, 2008 is revoked under subsection (5) or (22) during a tax year beginning after December 31, 2008 or an historic resource is sold or disposed of less than 5 years after the historic resource is placed in service during a tax year beginning after December 31, 2008, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the qualified taxpayer that received the certificate of completed rehabilitation and not the assignee in the year of the revocation:

(a) If the revocation is less than 1 year after the historic resource is placed in service, 100%.

(b) If the revocation is at least 1 year but less than 2 years after the historic resource is placed in service, 80%.

(c) If the revocation is at least 2 years but less than 3 years after the historic resource is placed in service, 60%.

(d) If the revocation is at least 3 years but less than 4 years after the historic resource is placed in service, 40%.

(e) If the revocation is at least 4 years but less than 5 years after the historic resource is placed in service, 20%.

(f) If the revocation is at least 5 years or more after the historic resource is placed in service, an addback to the qualified taxpayer tax liability shall not be required.

(13) Subsection (12) shall not apply if the qualified taxpayer enters into a written agreement with the state historic preservation office that will allow for the transfer or sale of the historic resource and provides the following:

(a) Reasonable assurance that subsequent to the transfer the property will remain a historic resource during the 5-year period after the historic resource is placed in service.

(b) A method that the department can recover an amount from the taxpayer equal to the appropriate percentage of credit added back as described under subsection (12).

(c) An encumbrance on the title to the historic resource being sold or transferred, stating that the property must remain a historic resource throughout the 5-year period after the historic resource is placed in service.

(d) A provision for the payment by the taxpayer of all legal and professional fees associated with the drafting, review, and recording of the written agreement required under this subsection.

(14) The department of history, arts, and libraries through the Michigan historical center may impose a fee to cover the administrative cost of implementing the program under this section.

(15) The qualified taxpayer shall attach all of the following to the qualified taxpayer's annual return required under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, if applicable, on which the credit is claimed:

(a) Certification of completed rehabilitation.

(b) Certification of historic significance related to the historic resource and the qualified expenditures used to claim a credit under this section.

(c) A completed assignment form if the qualified taxpayer or assignee has assigned any portion of a credit allowed under this section or if the taxpayer is an assignee of any portion of a credit allowed under this section.

(16) The department of history, arts, and libraries shall promulgate rules to implement this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(17) The total of the credits claimed under subsection (2) and section 266 of the income tax act of 1967, 1967 PA 281, MCL 206.266, for a rehabilitation project shall not exceed 25% of the total qualified expenditures eligible for the credit under subsection (2) for that rehabilitation project.

(18) The department of history, arts, and libraries through the Michigan historical center shall report all of the following to the legislature annually for the immediately preceding state fiscal year:

(a) The fee schedule used by the center and the total amount of fees collected.

(b) A description of each rehabilitation project certified.

(c) The location of each new and ongoing rehabilitation project.

(19) In addition to the credit allowed under subsection (2) and subject to the criteria under this subsection and subsections (21), (22), and (23), for tax years that begin on and after January 1, 2009 a qualified taxpayer that has a preapproval letter issued on or before December 31, 2013 may claim an additional credit that has been approved under this subsection or subsection (20) against the tax imposed by this act equal to a percentage established in the taxpayer's preapproval letter of the qualified taxpayer's qualified expenditures for the rehabilitation of an historic resource or the actual amount of the qualified taxpayer's qualified expenditures incurred during the completion of the rehabilitation of an historic resource, whichever is less. The total amount of all additional credits approved under this subsection shall not exceed $8,000,000.00 in calendar year ending December 31, 2009; $9,000,000.00 in calendar year ending December 31, 2010; $10,000,000.00 in calendar year ending December 31, 2011; $11,000,000.00 in calendar year ending December 31, 2012; and $12,000,000.00 in calendar year ending December 31, 2013 and, except as otherwise provided under this subsection, at least, 25% of the allotted amount for additional credits approved under this subsection during each calendar year shall be allocated to rehabilitation plans that have $1,000,000.00 or less in qualified expenditures. On October 1 of each calendar year, if the total of all credits approved under subsection (19)(a) for the calendar year is less than the minimum allotted amount, the department of history, arts, and libraries may use the remainder of that allotted amount to approve applications for additional credits submitted under subsection (19)(b) for that calendar year. To be eligible for the additional credit under this subsection, the taxpayer shall apply to and receive a preapproval letter and comply with the following:

(a) For a rehabilitation plan that has $1,000,000.00 or less in qualified expenditures, the taxpayer shall apply to the department of history, arts, and libraries for approval of the additional credit under this subsection. Subject to the limitation provided under this subsection, the director of the department of history, arts, and libraries or his or her designee is authorized to approve an application under this subdivision and determine the percentage of at least 10% but not more than 15% of the taxpayer's qualified expenditures for which he or she may claim an additional credit. If the director of the department of history, arts, and libraries or his or her designee approves the application under this subdivision, then he or she shall issue a preapproval letter to the taxpayer that states that the taxpayer is a qualified taxpayer and the maximum percentage of the qualified expenditures on which a credit may be claimed for the rehabilitation plan when it is complete and a certification of completed rehabilitation is issued.

(b) For a rehabilitation plan that has more than $1,000,000.00 in qualified expenditures, the taxpayer shall apply to the department of history, arts, and libraries for approval of the additional credit under this subsection. The director of the department of history, arts, and libraries or his or her designee, subject to the approval of the president of the Michigan strategic fund or his or her designee, is authorized to approve an application under this subdivision and determine the percentage of up to 15% of the taxpayer's qualified expenditures

for which he or she may claim an additional credit. An application shall be approved or denied not more than 15 business days after the director of the department of history, arts, and libraries or his or her designee has reviewed the application, determined the percentage amount of the credit for that applicant, and submitted the same to the president of the Michigan strategic fund or his or her designee. If the president of the Michigan strategic fund or his or her designee does not approve or deny the application within 15 business days after the application is received from the department of history, arts, and libraries, the application is considered approved and the credit awarded in the amount as determined by the director of the department of history, arts, and libraries or his or her designee. If the president of the Michigan strategic fund or his or her designee approves the application under this subdivision, the director of the department of history, arts, and libraries or his or her designee shall issue a preapproval letter to the taxpayer that states that the taxpayer is a qualified taxpayer and the maximum percentage of the qualified expenditures on which a credit may be claimed for the rehabilitation plan when it is complete and a certification of completed rehabilitation is issued.

(20) The director of the department of history, arts, and libraries or his or her designee, subject to the approval of the president of the Michigan strategic fund and the state treasurer, may approve 3 additional credits during the 2009 calendar year of up to 15% of the qualified taxpayer's qualified expenditures, and 2 additional credits during the 2010, 2011, 2012, and 2013 calendar years of up to 15% of the qualified taxpayer's qualified expenditures, for certain rehabilitation plans that the director of the department of history, arts, and libraries or his or her designee determines is a high community impact rehabilitation plan that will have a significantly greater historic, social, and economic impact than those plans described under subsection (19)(a) and (b). To be eligible for the additional credit under this subsection, the taxpayer shall apply to and receive a preapproval letter from the department of history, arts, and libraries. An application shall be approved or denied not more than 15 business days after the director of the department of history, arts, and libraries or his or her designee has reviewed the application, determined the percentage amount of the credit for that applicant, and submitted the same to the president of the Michigan strategic fund and the state treasurer. If the president of the Michigan strategic fund and the state treasurer do not approve or deny the application within 15 business days after the application is received from the department of history, arts, and libraries, the application is considered approved and the credit awarded in the amount as determined by the director of the department of history, arts, and libraries or his or her designee. If the president of the Michigan strategic fund and the state treasurer approve the application under this subdivision, the director of the department of history, arts, and libraries or his or her designee shall issue a preapproval letter to the taxpayer that states that the taxpayer is a qualified taxpayer and the maximum percentage of the qualified expenditures on which a credit may be claimed for the high community impact rehabilitation plan when it is complete and a certification of completed rehabilitation is issued. Before approving a credit under this subsection, the director of the department of history, arts, and libraries or his or her designee shall consider all of the following criteria to the extent reasonably applicable:

(a) The importance of the historic resource to the community in which it is located.

(b) If the rehabilitation of the historic resource will act as a catalyst for additional rehabilitation or revitalization of the community in which it is located.

(c) The potential that the rehabilitation of the historic resource will have for creating or preserving jobs and employment in the community in which it is located.

(d) Other social benefits the rehabilitation of the historic resource will bring to the community in which it is located.

(e) The amount of local community and financial support for the rehabilitation of the historic resource.

(f) The taxpayer's financial need of the additional credit.

(g) Whether the taxpayer is eligible for the credit allowed under section 47(a)(2) of the internal revenue code.

(h) Any other criteria that the director of the department of history, arts, and libraries, the president of the Michigan strategic fund, and the state treasurer consider appropriate for the determination of approval under this subsection.

(21) The maximum amount of credit that a taxpayer or an assignee may claim under subsection (20) during a tax year is $3,000,000.00. If the amount of the credit approved in the taxpayer's certificate of completed renovation is greater than $3,000,000.00 that portion that exceeds the cap shall be carried forward to offset tax liability in subsequent tax years until used up.

(22) Before approving a credit, determining the amount of such credit, and issuing a preapproval letter for such credit under subsection (19) or before considering an amendment to the preapproval letter, the director of the department of history, arts, and libraries or his or her designee shall consider the following criteria to the extent reasonably applicable:

(a) The importance of the historic resource to the community.

(b) The physical condition of the historic resource.

(c) The taxpayer's financial need of the additional credit.

(d) The overall economic impact the renovation will have on the community.

(e) Any other criteria that the director of the department of history, arts, and libraries and the president of the Michigan strategic fund, as applicable, consider appropriate for the determination of approval under subsection (19).

(23) The director of the department of history, arts, and libraries or his or her designee may at any time before a certification of completed rehabilitation is issued for a credit for which a preapproval letter was issued pursuant to subsection (19) do the following:

(a) Subject to the limitations and parameters under subsection (19), make amendments to the preapproval letter, which may include revising the amount of qualified expenditures for which the taxpayer may claim the additional credit under subsection (19).

(b) Revoke the preapproval letter if he or she determines that there has not been substantial progress toward completion of the rehabilitation plan or that the rehabilitation plan cannot be completed. The director of the department of history, arts, and libraries or his or her designee shall provide the qualified taxpayer with a notice of his or her intent to revoke the preapproval letter 45 days prior to the proposed date of revocation.

(24) If a preapproval letter is revoked under subsection (23)(b), the amount of the credit approved under that preapproval letter shall be added to the annual cap in the calendar year that the preapproval letter is revoked. After a certification of completed rehabilitation is issued for a rehabilitation plan approved under subsection (19), if the director of the department of history, arts, and libraries or his or her designee determines that the actual amount of the additional credit to be claimed by the taxpayer for the calendar year is less than the amount approved under the preapproval letter, the difference shall be added to the annual cap in the calendar year that the certification of completed rehabilitation is issued.

(25) Unless otherwise specifically provided under subsections (19) through (24), all other provisions under this section such as the recapture of credits, assignment of credits, and refundability of credits in excess of a qualified taxpayer's tax liability apply to the additional credits issued under subsections (19) and (20).

(26) In addition to meeting the criteria in subsection (20)(a) through (h), 2 of the 3 credits available under subsection (20) during the 2009 calendar year for a high community impact rehabilitation plan shall be for an application meeting 1 of the following criteria:

(a) All of the following:

(*i*) The historic resource must be at least 80 years old.

(*ii*) The historic resource must comprise at least 75,000 total square feet.

(*iii*) The historic resource must be located in a county with a population of more than 1,500,000.

(*iv*) The historic resource must be located in a city with an unemployment rate that is at least 2% higher than the current state average unemployment rate at the time of the application.

(*v*) The historic resource receives a federal earmark appropriation and is the former home of a former professional sports team.

(b) All of the following:

(*i*) The historic resource must be at least 85 years old.

(*ii*) The historic resource must comprise at least 120,000 total square feet.

(*iii*) The historic resource must be located in a county with a population of more than 400,000 and less than 500,000.

(*iv*) The historic resource must be located in a city with a population of more than 100,000 and less than 125,000.

(*v*) The historic resource must be located in a city with an unemployment rate that is at least 2% higher than the current state average unemployment rate at the time of the application.

(27) For purposes of this section, taxpayer includes a person subject to the tax imposed under chapter 2A or 2B.

(28) As used in this section:

(a) "Contributing resource" means an historic resource that contributes to the significance of the historic district in which it is located.

(b) "Historic district" means an area, or group of areas not necessarily having contiguous boundaries, that contains 1 resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

(c) "Historic resource" means a publicly or privately owned historic building, structure, site, object, feature, or open space located within an historic district designated by the national register of historic places, the state register of historic sites, or a local unit acting under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, or that is individually listed on the state register of historic sites or national register of historic places, and includes all of the following:

(*i*) An owner-occupied personal residence or a historic resource located within the property boundaries of that personal residence.

(*ii*) An income-producing commercial, industrial, or residential resource or an historic resource located within the property boundaries of that resource.

(*iii*) A resource owned by a governmental body, nonprofit organization, or tax-exempt entity that is used primarily by a taxpayer lessee in a trade or business unrelated to the governmental body, nonprofit organization, or tax-exempt entity and that is subject to tax under this act.

(*iv*) A resource that is occupied or utilized by a governmental body, nonprofit organization, or tax-exempt entity pursuant to a long-term lease or lease with option to buy agreement.

(*v*) Any other resource that could benefit from rehabilitation.

(d) "Last tax year" means the taxpayer's tax year under former 1975 PA 228 that begins after December 31, 2006 and before January 1, 2008.

(e) "Local unit" means a county, city, village, or township.

(f) "Long-term lease" means a lease term of at least 27.5 years for a residential resource or at least 31.5 years for a nonresidential resource.

(g) "Michigan historical center" or "center" means the state historic preservation office of the Michigan historical center of the department of history, arts, and libraries or its successor agency.

(h) "Michigan strategic fund" means the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(i) "Open space" means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

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

(k) "Preapproval letter" means a letter issued by the director of the department of history, arts, and libraries or his or her designee that indicates the date that the complete part 2 application was received and the amount of the credit allocated to the project based on the estimated rehabilitation cost included in the application.

(*l*) "Qualified expenditures" means capital expenditures that qualify, or would qualify except that the taxpayer entered into an agreement under subsection (13), for a rehabilitation credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to an historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code that were paid. Qualified expenditures do not include capital expenditures for nonhistoric additions to an historic resource except an addition that is required by state or federal regulations that relate to historic preservation, safety, or accessibility.

(m) "Qualified taxpayer" means a person that either owns the resource to be rehabilitated or has a long-term lease agreement with the owner of the historic resource and that has qualified expenditures for the rehabilitation of the historic resource equal to or greater than 10% of the state equalized valuation of the property. If the historic resource to be rehabilitated is a portion of an historic or nonhistoric resource, the state equalized valuation of only that portion of the property shall be used for purposes of this subdivision. If the assessor for the local tax collecting unit in which the historic resource is located determines the state equalized valuation of that portion, that assessor's determination shall be used for purposes of this subdivision. If the assessor does not determine that state equalized valuation of that portion, qualified expenditures, for purposes of this subdivision, shall be equal to or greater than 5% of the appraised value as determined by a certified appraiser. If the historic resource to be rehabilitated does not have a state equalized valuation, qualified expenditures for purposes of this subdivision shall be equal to or greater than 5% of the appraised value of the resource as determined by a certified appraiser.

(n) "Rehabilitation plan" means a plan for the rehabilitation of an historic resource that meets the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitation of historic buildings under 36 CFR part 67.

Effective date.
Enacting section 1. This amendatory act takes effect January 1, 2009.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

[No. 449]

(HB 6549)

AN ACT to amend 1966 PA 346, entitled "An act to create a state housing development authority; to define the powers and duties of the authority; to establish a housing development revolving fund; to establish a land acquisition and development fund; to establish a rehabilitation fund; to establish a conversion condominium fund; to create certain other funds and provide for the expenditure of certain funds; to authorize the making and purchase of loans, deferred payment loans, and grants to qualified developers, sponsors, individuals, mortgage lenders, and municipalities; to establish and provide acceleration and foreclosure procedures; to provide tax exemption; to authorize payments instead of taxes by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations; and to prescribe criminal penalties for violations of this act," by amending section 22 (MCL 125.1422), as amended by 2008 PA 216.

The People of the State of Michigan enact:

125.1422 Powers of authority.

Sec. 22. The authority shall possess all powers necessary or convenient to carry out this act, including the following powers in addition to other powers granted by other provisions of this act:

(a) To sue and to be sued; to have a seal and to alter the seal at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make, amend, and repeal bylaws and rules.

(b) To undertake and carry out studies and analyses of housing needs within this state and ways of meeting those needs, including data with respect to population and family groups, the distribution of population and family groups according to income, and the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages, and other factors affecting housing needs and the meeting of housing needs; to make the results of those studies and analyses available to the public and the housing and supply industries; and to engage in research and disseminate information on housing.

(c) To agree and comply with conditions attached to federal financial assistance.

(d) To survey and investigate housing conditions and needs, both urban and rural, throughout this state and make recommendations to the governor and the legislature regarding legislation and other measures necessary or advisable to alleviate any existing housing shortage in this state.

(e) To establish and collect fees and charges in connection with the sale of the authority's publications and the authority's loans, commitments, and servicing, including, but not limited to, the reimbursement of costs of financing by the authority, service charges, and

insurance premiums as the authority determines to be reasonable and as approved by the authority. Fees and charges shall be determined by the authority and shall not be considered to be interest. The authority may use any accumulated fees and charges and interest income for achieving any of the corporate purposes of the authority, to the extent that the fees, charges, and interest income are not pledged to the repayment of bonds and notes of the authority or the interest on those bonds and notes.

(f) To encourage community organizations to assist in initiating housing projects as provided in this act.

(g) To encourage the salvage of all possible usable housing scheduled for demolition because of highway, school, urban renewal, or other programs by seeking authority for the sponsors of the programs to use funds provided for the demolition of the buildings, to be allocated to those sponsors approved by the authority to defray moving and rehabilitation costs of the buildings.

(h) To engage and encourage research in, and to formulate demonstration projects to develop, new and better techniques and methods for increasing the supply of housing for persons eligible for assistance as provided in this act; and to provide technical assistance in the development of housing projects and in the development of programs to improve the quality of life for all the people of this state.

(i) To make or purchase loans, including loans for condominium units as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104, and including loans to mortgage lenders, which are unsecured or the repayments of which are secured by mortgages, security interests, or other forms of security; to purchase and enter into commitments for the purchase of securities, certificates of deposits, time deposits, or mortgage loans from mortgage lenders; to participate in the making or purchasing of unsecured or secured loans and undertake commitments to make or purchase unsecured or secured loans; to sell mortgages, security interests, notes, and other instruments or obligations evidencing or securing loans, including certificates evidencing interests in 1 or more loans, at public or private sale; in connection with the sale of an instrument or obligation evidencing or securing 1 or more loans, to service, guarantee payment on, or repurchase the instrument or obligation, whether or not it is in default; to modify or alter mortgages and security interests; to foreclose on any mortgage, security interest, or other form of security; to finance housing units; to commence an action to protect or enforce a right conferred upon the authority by law, mortgage, security agreement, contract, or other agreement; to bid for and purchase property that was the subject of the mortgage, security interest, or other form of security, at a foreclosure or at any other sale, and to acquire or take possession of the property. Upon acquiring or taking possession of the property, the authority may complete, administer, and pay the principal and interest of obligations incurred in connection with the property, and may dispose of and otherwise deal with the property in any manner necessary or desirable to protect the interests of the authority in the property. If the authority or an entity that provides mortgage insurance to the authority acquires property upon the default of a borrower, the authority may make a mortgage loan to a subsequent purchaser of that property even if the purchaser does not meet otherwise applicable income limitations and purchase price limits.

(j) To set standards for housing projects that receive loans under this act and to provide for inspections to determine compliance with those standards. The standards for construction and rehabilitation of mobile homes, mobile home parks, and mobile home condominium projects shall be established jointly by the authority and the mobile home commission, created in the mobile home commission act, 1987 PA 96, MCL 125.2301 to 125.2349. However, financing standards shall be established solely by the authority.

(k) To accept gifts, grants, loans, appropriations, or other aid from the federal, state, or local government, from a subdivision, agency, or instrumentality of a federal, state, or local government, or from a person, corporation, firm, or other organization.

(*l*) To acquire or contract to acquire from a person, firm, corporation, municipality, or federal or state agency, by grant, purchase, or otherwise, leaseholds or real or personal property, or any interest in a leasehold or real or personal property; to own, hold, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber any interest in a leasehold or real or personal property. This act shall not impede the operation and effect of local zoning, building, and housing ordinances, ordinances relating to subdivision control, land development, or fire prevention, or other ordinances having to do with housing or the development of housing.

(m) To procure insurance against any loss in connection with the property and other assets of the authority.

(n) To invest, at the discretion of the authority, funds held in reserve or sinking funds, or money not required for immediate use or disbursement, in obligations of this state or of the United States, in obligations the principal and interest of which are guaranteed by this state or the United States, or in other obligations as may be approved by the state treasurer.

(o) To promulgate rules necessary to carry out the purposes of this act and to exercise the powers expressly granted in this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(p) To enter into agreements with nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations that provide for regulation by the authority of the planning, development, and management of any housing project undertaken by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations and that provide for the disposition of the property and franchises of those corporations, cooperatives, and associations.

(q) To appoint to the board of directors of a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association, a number of new directors sufficient to constitute a majority of the board notwithstanding other provisions of the articles of incorporation or other provisions of law. Directors appointed under this subsection need not be stockholders or members or meet other qualifications that may be described by the certificate of incorporation or bylaws. In the absence of fraud or bad faith, directors appointed under this subsection shall not be personally liable for debts, obligations, or liabilities of the corporation or association. The authority may appoint directors under this subsection only if 1 or more of the following occur:

(*i*) The nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association has received a loan or advance, as provided for in this act, and the authority determines that the loan or advance is in jeopardy of not being repaid.

(*ii*) The nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association received a loan or advance as provided for in this act and the authority determines that the proposed housing project for which the loan or advance was made is in jeopardy of not being constructed.

(*iii*) The authority determines that some part of the net income or net earnings of the nonprofit housing corporation is inuring to the benefit of a private individual, firm, corporation, partnership, or association; the authority determines that an unreasonable part of the net income or net earnings of the consumer housing cooperative is inuring to the benefit of a private individual, firm, corporation, partnership, or association; or the authority determines

that some part of the net income or net earnings of the limited dividend housing corporation, in excess of that permitted by other provisions of this act, is inuring to the benefit of a private individual, firm, corporation, partnership, or association.

(*iv*) The authority determines that the nonprofit corporation or consumer housing cooperative is in some manner controlled by, under the direction of, or acting in the substantial interest of a private individual, firm, corporation, partnership, or association seeking to derive benefit or gain from, or seeking to eliminate or minimize losses in any dealings or transactions with, the nonprofit corporation or consumer housing cooperative. However, this subparagraph shall apply to individual cooperators in consumer housing cooperatives only in circumstances defined by the authority in its rules.

(*v*) The authority determines that the nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is in violation of the rules promulgated under this section.

(*vi*) The authority determines that the nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is in violation of 1 or more agreements entered into with the authority that provide for regulation by the authority of the planning, development, and management of a housing project undertaken by the nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association or that provide for the disposition of the property and franchises of the corporation, or cooperative, or association.

(r) To give approval or consent to the articles of incorporation submitted to the authority by a corporation seeking approval as a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, or mobile home park corporation under chapter 4, 5, 6, or 8; to give approval or consent to the partnership agreement, joint venture agreement, trust agreement, or other document of basic organization of a limited dividend housing association under chapter 7 or mobile home park association under chapter 9.

(s) To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice.

(t) To lease real or personal property and to accept federal funds for, and participate in, federal programs of housing assistance.

(u) To review and approve rental charges for authority-financed housing projects and require whatever changes the authority determines to be necessary. The changes shall become effective after not less than 30 days' written notice is given to the residents of the affected authority-financed housing projects.

(v) To set forth in the various loan documents of the authority those restrictions on the sale, conveyance by land contract, or transfer of residential real property, housing projects, or housing units for which a note is held by the authority and restrictions on the assumption by subsequent purchasers of loans originated by and held by, or originated for purchase by and held by, the authority as the authority determines to be necessary in order to comply with requirements of federal statutes, federal rules or regulations promulgated under sections 551 to 559 of title 5 of the United States Code, 5 USC 551 to 559, state statutes, or state rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or to obtain and maintain the tax exempt status of authority bonds and notes. However, the authority shall not use a due on sale or acceleration clause solely for the purpose of renegotiating the interest rate on a loan made with respect to an owner-occupied single-family housing unit. Without limiting the authority's power to establish other restrictions, as provided in this section, on the sale, conveyance by land contract, or transfer of residential real property, housing projects, or housing units for which a note is held by the

authority and the assumption by subsequent purchasers of loans made or purchased by the authority, the authority shall provide in its loan documents relating to a single family loan that the single family loan may be assumed by a new purchaser only when the new purchaser qualifies under the authority income limitations rules except where such a restriction diminishes or precludes the insurance or a guarantee by an agency of the federal government with respect to the single family loan. A loan made for a mobile home that the borrower does not intend to permanently affix to real property shall become immediately due and payable in the event the mobile home is moved out of the state. Any restrictions on conveyance by sale, conveyance by land contract, or transfer that are authorized in this section shall apply only to loans originated by and held by, or originated for purchase by and held by, the authority and may, at the option of the authority, be enforced by accelerating and declaring immediately due and payable all sums evidenced by the note held by the authority. An acceleration and declaration of all sums to be due and payable on conveyance by sale, land contract, or transfer is not an unreasonable restraint on alienation. An acceleration and declaration, unless otherwise prohibited in this subdivision, of all sums to be due and payable under this subdivision is enforceable in any court of competent jurisdiction. This subdivision is applicable to secured and unsecured loans. This subdivision is also applicable to loan documents utilized in conjunction with an authority-operated program of residential rehabilitation by an entity cooperating or participating with the authority under section 22a(4), which loans are originated with the intent to sell those loans to the authority.

(w) To set forth in the various loan documents of the authority those remedies for the making of a false statement, representation, or pretense or a material misstatement by a borrower during the loan application process. Without limiting the authority's power to pursue other remedies, the authority shall provide in its loan documents that, if a borrower makes a false statement, representation, or pretense or a material misstatement during the loan application process, the authority, at its option, may accelerate and declare immediately due and payable all sums evidenced by the note held by the authority. An acceleration and declaration of all sums to be due as authorized under this subdivision and payable as provided in this subdivision is enforceable in any court of competent jurisdiction. This subdivision is applicable to secured and unsecured loans.

(x) To collect interest on a real estate loan, the primary security for which is not a first lien on real estate, at the rate of 15% or less per annum on the unpaid balance. This subdivision does not impair the validity of a transaction or rate of interest that is lawful without regard to this subdivision.

(y) To encourage and engage or participate in programs to accomplish the preservation of housing in this state available for occupancy by persons and families of low or moderate income.

(z) To verify for the state treasurer statements submitted by a city, village, township, or county as to exempt properties under section 7d of the general property tax act, 1893 PA 206, MCL 211.7d.

(aa) For the purpose of more effectively managing its debt service, to enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the authority.

(bb) To make working capital loans to contractors or subcontractors on housing projects financed by the authority. The authority shall submit an annual report to the legislature containing the amount, recipient, duration, circumstance, and other related statistics for each capital loan made to a contractor or subcontractor under this subdivision. The authority shall include in the report statistics related to the cost of improvements made

to adapt property for use by disabled individuals as provided in section 32b(5) or (6) or section 44(2)(a).

(cc) Subject to rules of the civil service commission, to adopt a code of ethics with respect to its employees that requires disclosure of financial interests, defines and precludes conflicts of interest, and establishes reasonable post-employment restrictions for a period of up to 1 year after an employee terminates employment with the authority.

(dd) To impose covenants running with the land in order to satisfy requirements of applicable federal law with respect to housing assisted or to be assisted through federal programs such as the low income housing tax credit program or the home investment partnerships program by executing and recording regulatory agreements between the authority or such municipality or other entity as may be designated by the authority and the person or entity to be bound. These covenants shall run with the land and be effective with respect to the parties making the covenants and other intended beneficiaries of the covenants, even though there is no privity of estate or privity of contract between the authority and the persons or entities to be bound.

(ee) To impose covenants running with the land in order to satisfy requirements of applicable state or federal law with respect to housing financed by the authority by executing and recording regulatory agreements between the authority and the person or entity to be bound. These covenants shall run with the land and be effective with respect to the parties making the covenants and other intended beneficiaries of the covenants, even though there is no privity of estate or privity of contract between the authority and the persons or entities to be bound. With respect to the application of any applicable environmental laws, this subdivision shall not be construed to grant to the authority any additional rights, privileges, or immunities not otherwise afforded to a private lender that is not in the chain of title for the land.

(ff) To participate in programs designed to assist persons and families whose incomes do not exceed 115% of the greater of statewide median gross income or the area median gross income become homeowners where loans are made by private lenders for purchase by the government national mortgage association, federal national mortgage association, federal home loan mortgage corporation, or other federally chartered organizations. Participation may include providing or funding homeownership counseling and providing some or all of a reserve fund to be used to pay for losses in excess of insurance coverage.

(gg) To invest up to 20% of funds held by or for the authority in escrow accounts for the benefit of the authority or mortgagors of authority-financed housing in loans originated or purchased by the authority, under the conditions prescribed in this subdivision and without the consent of the escrow depositors. In connection with loans described in this subdivision, the authority may charge and retain fees in amounts similar to those charged with respect to similar loans for which the source of funding does not come from escrow funds. The investment authorized by this subdivision shall not be made unless both of the following requirements are met:

(*i*) The return on the loan is approximately equivalent to that which could be obtained from investments of substantially similar credit quality and maturity, as determined by the authority.

(*ii*) The authority agrees to repurchase from its own funds and at the same prices at which the loans were sold to the escrow funds, as adjusted for the accretion of discount or amortization of premium, plus accrued interest, any loans that become delinquent in excess of 30 days. This subdivision does not obligate the authority to purchase a delinquent loan so long as with respect to that loan the authority advances money from its own funds in the amount of the delinquent payments. The authority's election to advance payments does not

in any manner abate or cure the delinquency of the loan and the authority may resort to any remedies that would exist in the absence of that payment.

(hh) To acquire, develop, rehabilitate, own, operate, and enter into contracts with respect to the management and operation of real and personal property to use as office facilities by the authority and to enter into leases with respect to facilities not immediately necessary for the activities of the authority.

(ii) To make loans to certain qualified buyers and resident organizations and to make grants to resident organizations as provided in the following:

(*i*) The urban homestead act, 1999 PA 127, MCL 125.2701 to 125.2709.

(*ii*) The urban homesteading on vacant land act, 1999 PA 129, MCL 125.2741 to 125.2748.

(*iii*) The urban homesteading in single-family public housing act, 1999 PA 128, MCL 125.2761 to 125.2770.

(*iv*) The urban homesteading in multifamily public housing act, 1999 PA 84, MCL 125.2721 to 125.2734.

(jj) To implement and administer a housing and community development program as described in this act.

(kk) To implement, administer, or execute administrative, substantive, or supervisory powers pursuant to the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

[No. 450]

(SB 1636)

AN ACT to amend 2006 PA 513, entitled "An act to permit the establishment and maintenance of individual or family development accounts; to provide for certain tax deductions and tax credits; to prescribe the requirements of and restrictions on individual or family development accounts; to provide for the promulgation of rules; and to provide penalties and remedies," by amending sections 2, 3, 4, 5, 7, 8, 9, and 10 (MCL 206.702, 206.703, 206.704, 206.705, 206.707, 206.708, 206.709, and 206.710).

The People of the State of Michigan enact:

206.702 Definitions.

Sec. 2. As used in this act:

(a) "Account holder" means a person who is the owner of an individual or family development account or the family if the account is a family account.

(b) "Agency" means the Michigan state housing development authority of the department of energy, labor, and economic growth.

(c) "Contributor" means a person that makes a contribution to an individual or family development account reserve fund and is not an account holder.

(d) "Department" means the department of energy, labor, and economic growth.

(e) "Education expenses" means tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and expenses for fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(f) "Eligible educational institution" means any of the following:

(*i*) A college, university, community college, or junior college described in section 4, 5, or 6 of article VIII of the state constitution of 1963 or established under section 7 of article VIII of the state constitution of 1963.

(*ii*) An independent nonprofit college or university located in this state.

(*iii*) A state-licensed vocational or technical education program.

(*iv*) A state-licensed proprietary school.

(g) "Federal poverty level" means the poverty guidelines published annually in the federal register by the United States department of health and human services under its authority to revise the poverty line under section 673(2) of subtitle B of title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 USC 9902.

(h) "Fiduciary organization" or "organization" means a charitable organization exempt from taxation under section 501(c)(3) of the internal revenue code that is approved by the agency to manage a reserve fund. A fiduciary organization may also be a program site.

(i) "Financial institution" means a state chartered bank, state chartered savings bank, savings and loan association, credit union, or trust company; or a national banking association or federal savings and loan association or credit union.

(j) "Financial literacy" means personal financial planning and education.

(k) "Individual or family development account" or "account" means an account established under section 4.

(*l*) "Individual or family development account reserve fund" or "reserve fund" means an account established and managed by a fiduciary organization housed at a financial institution. The reserve fund holds money that will be used to match participant savings based on a participant savings plan agreement.

(m) "Program" means the individual or family development account program established in section 3.

(n) "Program site" means a charitable organization exempt from taxation under section 501(c)(3) or 501(c)(14) of the internal revenue code that is approved by the agency to implement the individual or family development account program.

(o) "Qualified home improvement" means the purchase and installation of any qualified energy star product intended for residential or noncommercial use that meets or exceeds the applicable energy star energy efficiency guidelines developed by the United States environmental protection agency and the United States department of energy, including, but not limited to, windows, doors, insulation, high efficiency heating and cooling equipment, and any appliances such as dishwashers, clothes washers, and refrigerators.

206.703 Individual or family development account; establishment; purpose; policies and procedures; approving and reviewing qualifications of fiduciary organizations and program sites; factors; implementation of programs.

Sec. 3. (1) The individual or family development account program is established within the agency. The program shall provide eligible individuals and families with an opportunity to establish accounts to be used for education, first-time purchase of a primary residence, qualified home improvements, or business capitalization as provided in section 4.

(2) The agency, in consultation with the department, shall establish policies and procedures for the program taking into consideration the policies and procedures adopted by the department of human services to implement the individual development account program under section 57k of the social welfare act, 1939 PA 280, MCL 400.57k. Except as otherwise provided under this subsection, the agency shall be responsible for approving fiduciary organizations and program sites and for all activities related to the program. The department shall be responsible for approving all activities related to these programs that relate solely to accounts to be used for education or business capitalization as provided in section 4.

(3) In reviewing the qualifications of fiduciary organizations and program sites, the agency shall consider all of the following factors:

(a) The not-for-profit status of the organization.

(b) The fiscal accountability of the organization.

(c) The ability of the organization to provide or raise money for matching contributions.

(d) The significance and quality of proposed auxiliary services to support the goals of the program.

(e) The availability of a financial literacy program for account holders.

(f) The ability to maintain and manage necessary program data for tracking account holders and participants in the program and for development of reports as required under section 9.

(4) The agency shall select fiduciary organizations to provide technical assistance and support to program sites and oversee program sites' reserve accounts on a not-for-profit basis. In reviewing the qualifications of fiduciary organizations, the agency shall consider the ability of the fiduciary organizations to do all of the following:

(a) Administer 1 or more reserve funds to provide matching funds for account holders according to participant savings plan agreements.

(b) Administer any money appropriated by this state for the purposes of this act.

(c) Collaborate with program sites on a regional basis.

(d) Provide technical assistance and support to program sites to assist them to effectively administer programs.

(e) Work in conjunction with approved program sites to hold, manage, and disburse matching funds for accounts as provided in section 5.

(f) Maintain and manage necessary program data for tracking account holders and participants in the program and for development reports as required under section 9.

(5) The agency shall select program sites to administer the accounts under the oversight of a fiduciary on a not-for-profit basis. In reviewing the qualifications of program sites, the agency shall consider the ability of the program site to do all of the following:

(a) Develop and implement participant savings plan agreements to be used with account holders that include at least all of the following:

(*i*) The purpose for which the account holder's account is established.

(*ii*) The schedule of deposits that the account holder will make to the account.

(*iii*) The agreed-upon amount of matching funds and the projected date when those matching funds will be provided.

(*iv*) A plan to provide financial literacy; homeownership training; education, career, or business planning assistance, if appropriate; and any other services designed to increase the independence of the account holder or the account holder's family through the achievement of the designated purpose of the account.

(b) Develop a partnership with all account holders with whom the program site has a participant savings plan agreement to assist the account holder to effectively make financial decisions relating to the use of the funds available through the account and to offer support services to maximize the opportunities provided by the individual or family development account program.

(6) The agency shall work cooperatively with financial institutions, fiduciary organizations, program sites, and the department to implement the programs under this act.

206.704 Eligibility; approval or rejection of applicant by program site; limitation on number of accounts; duties of individual; establishment of account; purposes; signatures for withdrawals.

Sec. 4. (1) An individual or family whose household income is less than or equal to 200% of the federal poverty level for an individual or for that family's family size may apply to a program site to establish an individual or family development account.

(2) A program site may approve applications to the extent that the program site has matching funds available to meet matching commitments in participant savings plan agreements.

(3) A program site may reject an application made under subsection (1) if approving the application would result in the establishment of an individual or family development account by 1 or more of the members of a family that has established an individual or family development account for the same person for the same purpose.

(4) A household shall not have more than 1 account for the same purpose if that purpose is a first-time purchase of a primary residence or start-up capitalization of a business.

(5) If the program site approves the individual's or the family's application to establish an individual or family development account, the individual shall do all of the following:

(a) Establish the individual or family development account with a financial institution.

(b) Enter into a participant savings plan agreement with a program site.

(c) Declare, with the approval of the program site, the purpose for which the account is established.

(d) Any other criteria required by the program site.

(6) An account may be established only to pay qualified expenses as provided in subsection (7).

(7) An account shall be established for 1 or more of the following purposes:

(a) To pay educational expenses for the individual account holder who will be 17 years of age or older when the funds in the account will be used if the account is an account for educational purposes.

(b) For the first-time purchase of a primary residence by the individual account holder if the account is an account for the purchase of a primary residence.

(c) For start-up capitalization of a business for the individual account holder who is 18 years of age or older if the account is an account for capitalization of a business based on a business plan approved by the program site.

(d) For qualified home improvements.

(8) An account established under this section shall be an account that requires 2 signatures for withdrawals. The 2 required signatures shall be those of the account holder and an administrator of the program site with which the account holder has a participant savings plan agreement.

206.705 Participant savings plan agreement; matching funds; distributions; manner.

Sec. 5. (1) A program site shall enter into a participant savings plan agreement with each account holder who is approved to establish an individual or family development account.

(2) Upon request from a program site, the fiduciary organization shall provide matching funds for contributions to an account by an account holder according to a participant savings plan agreement. Only the fiduciary organization shall expend funds to provide matching funds or for account holder support services.

(3) Matching fund distributions shall be made on behalf of an account holder according to participant savings plan agreements at the same time that an account holder withdraws money to pay qualified expenses. Matching distributions shall be at least a match of $1.00 for every $1.00 withdrawn from an account by an account holder to pay expenses for a purpose described in section 4(7) or for a purpose approved by the agency.

(4) Matching distributions under this section shall be made by check to the order of the account holder and the entity the account holder is paying.

206.707 Eligibility for tax credit.

Sec. 7. An individual who is not an account holder and who is subject to the tax imposed by the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, or a taxpayer who is subject to the tax imposed by the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, if applicable, may claim a credit under section 276 of the income tax act of 1967, 1967 PA 281, MCL 206.276, equal to 75% of the contributions made to the reserve fund of a fiduciary organization against the tax imposed by the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, if applicable.

206.708 Tax credits; total; limitation; reserve fund; application for credits; certificate.

Sec. 8. (1) The total of all credits under section 276 of the income tax act of 1967, 1967 PA 281, MCL 206.276, and under the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, if applicable, shall not exceed $1,000,000.00 per calendar year.

(2) A taxpayer that makes a contribution to a reserve fund as provided under section 7 shall apply to the agency for certification that the contribution qualifies for a credit under section 276 of the income tax act of 1967, 1967 PA 281, MCL 206.276, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, if applicable. An application shall be approved or denied not more than 45 days after receipt of the application. If the application is not approved or denied 45 days after the application is received by the agency, the application is considered approved and the agency shall issue a certificate under this subsection. If the agency approves an application under this section, the director or his or her designee shall issue a certificate that states that the taxpayer is eligible to claim a credit based on the contribution and the amount of the credit. If an application is denied under this section, a taxpayer is not prohibited from subsequently applying under this section for another contribution.

(3) In reviewing applications for credits, the agency shall consider all of the following criteria:

(a) The funds available to match contributions are deposited into a reserve fund in the same year that the credit will be claimed.

(b) The approval of the credit will not exceed the annual maximum amount under subsection (1).

(c) The overall benefit to the program of the contribution for which a credit is requested.

(4) The agency may delegate responsibility for subsections (2) and (3) to fiduciary organizations.

(5) A taxpayer shall not claim a credit in excess of the amount approved under subsection (2).

(6) A taxpayer shall attach the certificate received according to subsection (2) to the return filed under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, on which a credit allowed under section 276 of the income tax act of 1967, 1967 PA 281, MCL 206.276, is claimed.

206.709 Administration of individual or family development account program by fiduciary organization; report.

Sec. 9. (1) A fiduciary organization selected to administer an individual or family development account program under this act shall file with the agency an annual report of the fiduciary organization's individual development account program activity related to accounts established for the first-time purchase of a primary residence or for qualified home improvements. The report shall be filed no later than September 30 each year. The report shall include, but is not limited to, all of the following:

(a) The number of individual development accounts established for the first-time purchase of a primary residence and for qualified home improvements and administered by the fiduciary organization.

(b) The amount of deposits and matching deposits for each account.

(c) The purpose of each account.

(d) The number of withdrawals made.

(e) The number of terminated accounts and the reasons for termination.

(f) Any other information the agency may require for the purpose of making a return on investment analysis.

(2) A fiduciary organization selected to administer an individual or family development account program under this act shall file with the department an annual report of the fiduciary organization's individual development account program activity related to accounts established either for educational purposes or capitalization of a business. The report shall be filed no later than September 30 each year. The report shall include, but is not limited to, all of the following:

(a) The number of individual development accounts established either for educational purposes or capitalization of a business and administered by the fiduciary organization.

(b) The amount of deposits and matching deposits for each account.

(c) The purpose of each account.

(d) The number of withdrawals made.

(e) The number of terminated accounts and the reasons for termination.

(f) Any other information the department may require for the purpose of making a return on investment analysis.

(3) Not later than December 31 of each year, the agency and the department shall jointly file with the clerk of the house of representatives and the secretary of the senate a report that includes all of the information under subsections (1) and (2) and copies of any changes in policies or procedures used to administer this act that occurred during the year.

206.710 Rules.

Sec. 10. The Michigan state housing development authority and the department, in consultation with one another, may promulgate rules as needed to implement their respective responsibilities under this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

[No. 451]

(SB 1020)

AN ACT to amend 2007 PA 36, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations," (MCL 208.1101 to 208.1601) by adding section 426.

The People of the State of Michigan enact:

208.1426 Contributions to reserve fund of fiduciary organization under the individual or family development account program act; tax credit; carrying forward excess credit; limitation; definitions.

Sec. 426. (1) For the 2009 tax year and each tax year after 2009, a qualified financial institution or taxpayer may claim a credit against the tax imposed by this act equal to 75% of the contributions made by the qualified financial institution or by the taxpayer in the tax year to the reserve fund of a fiduciary organization pursuant to the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

(2) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the qualified financial institution or taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 10 tax years or until the excess credit is used up, whichever occurs first.

(3) The credits under this section and section 276 of the income tax act of 1967, 1967 PA 281, MCL 206.276, shall not exceed an annual cumulative maximum amount of $1,000,000.00. The determination of the maximum allowed under this subsection shall be made as provided in the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

(4) As used in this section:

(a) "Individual or family development account" means an account established pursuant to the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

(b) "Fiduciary organization" and "reserve fund" mean those terms as defined in the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

(c) "Qualified financial institution" means a financial institution as defined in the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

[No. 452]

(HB 6619)

AN ACT to amend 1948 (1st Ex Sess) PA 31, entitled "An act to provide for the incorporation of authorities to acquire, furnish, equip, own, improve, enlarge, operate, and maintain buildings, automobile parking lots or structures, recreational facilities, stadiums, and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for the use of any county, city, village, or township, or for the use of any combination of 2 or more counties, cities, villages, or townships, or for the use of any school district and any city, village, or township wholly or partially within the district's boundaries, or for the use of any school district and any combination of 2 or more cities, villages, or townships wholly or partially within the district's boundaries, or for the use of any intermediate school district and any constituent school district or any city, village, or township, wholly or partially within the intermediate school district's boundaries; to provide for compensation of authority commissioners; to permit transfers of property to authorities; to authorize the execution of contracts, leases, and subleases pertaining to authority property and the use of authority property; to authorize incorporating units to impose taxes without limitation as to rate or amount and to pledge their full faith and credit for the payment of contract of lease obligations in anticipation of which bonds are issued by an authority; to provide for the issuance of bonds by such authorities; to validate action taken and bonds issued; to provide other powers, rights, and duties of authorities and incorporating units, including those for the disposal of authority property; and to prescribe penalties and provide remedies," by amending section 11 (MCL 123.961), as amended by 1980 PA 74.

The People of the State of Michigan enact:

123.961 Building authority bonds or building authority refunding bonds; purpose; prerequisites; issuance of negotiable bonds to make cash rental payments.

Sec. 11. (1) For the purpose of defraying all or part of the cost of acquiring, improving, and enlarging any building or buildings, automobile parking lots or structures, recreational facilities, stadiums, and the necessary site or sites for the property, together with appurtenant properties and facilities necessary or convenient for the effective use of the property, furnishing and equipping the same, or refunding outstanding bonds, the authority, after execution and delivery of a full faith and credit general obligation contract of lease, as provided in this act, and pursuant to ordinance or resolution duly adopted by a majority vote of the elected members of the commission, may issue its negotiable bonds in anticipation of the contract obligations of the incorporating unit or units to make cash rental payments to the authority and may pledge the receipts from the payments for payment of bonds and interest on the bonds. Bonds shall not be issued unless the property has been leased by the authority to its incorporating unit or units for a period extending beyond the last maturity of the bonds and until the contract of lease is fully effective. The bonds shall be called building

authority bonds, or, in the case of bonds issued to refund outstanding bonds, the bonds shall be called building authority refunding bonds.

(2) For the purpose of defraying all or part of the cost of refunding capital appreciation bonds originally issued on May 17, 1990, the authority, pursuant to resolution duly adopted by a majority vote of the elected members of the commission, may issue its negotiable bonds in anticipation of the contract obligations of the incorporating unit to make cash rental payments to the authority under a full faith and credit general obligation contract of lease dated November 14, 1989, and may pledge the receipts from the contract of lease for payment of bonds and interest on the bonds. If issued before January 1, 2011, the refunding bonds are not subject to the requirements of section 305(2), (3), (5), or (6), 501, or 503 of the revised municipal finance act, 2001 PA 34, MCL 141.2305, 141.2501, and 141.2503. Notwithstanding the bond maturity dates contained in the notice of intention of entering into the full faith and credit general obligation contract of lease published by the incorporating unit as required by section 8b(3), the refunding bonds may be payable through 2039.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

[No. 453]

(HB 6620)

AN ACT to amend 1980 PA 450, entitled "An act to prevent urban deterioration and encourage economic development and activity and to encourage neighborhood revitalization and historic preservation; to provide for the establishment of tax increment finance authorities and to prescribe their powers and duties; to authorize the acquisition and disposal of interests in real and personal property; to provide for the creation and implementation of development plans; to provide for the creation of a board to govern an authority and to prescribe its powers and duties; to permit the issuance of bonds and other evidences of indebtedness by an authority; to permit the use of tax increment financing; to reimburse authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state agencies and officers," by amending section 1 (MCL 125.1801), as amended by 2005 PA 29.

The People of the State of Michigan enact:

125.1801 Definitions.

Sec. 1. As used in this act:

(a) "Advance" means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority. Evidence of the intent to repay an advance is required and may include, but is not limited to, an executed agreement to repay, provisions contained in a tax increment financing plan approved before the advance or before August 14, 1993, or a resolution of the authority or the municipality.

(b) "Assessed value" means 1 of the following:

(*i*) For valuations made before January 1, 1995, the state equalized valuation as determined under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(*ii*) For valuations made after December 31, 1994, taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) "Authority" means a tax increment finance authority created under this act.

(d) "Authority district" means that area within which an authority exercises its powers and within which 1 or more development areas may exist.

(e) "Board" means the governing body of an authority.

(f) "Captured assessed value" means the amount in any 1 year by which the current assessed value of the development area, including the assessed value of property for which specific local taxes are paid in lieu of property taxes as determined in subdivision (w), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

(g) "Chief executive officer" means the mayor or city manager of a city, the president of a village, or the supervisor of a township.

(h) "Development area" means that area to which a development plan is applicable.

(i) "Development area citizens council" or "council" means that advisory body established pursuant to section 20.

(j) "Development plan" means that information and those requirements for a development set forth in section 16.

(k) "Development program" means the implementation of the development plan.

(*l*) "Eligible advance" means an advance made before August 19, 1993.

(m) "Eligible obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority before August 19, 1993 and its subsequent refunding by a qualified refunding obligation. Eligible obligation includes an authority's written agreement entered into before August 19, 1993 to pay an obligation issued after August 18, 1993 and before December 31, 1996 by another entity on behalf of the authority. Eligible obligation also includes an ongoing management contract or contract for professional services or development services that was entered into by the authority or a municipality on behalf of the authority in 1991, and related similar written agreements executed before 1984, if the 1991 agreement both provides for automatic annual renewal and incorporates by reference the prior related agreements; however, receipt by an authority of tax increment revenues authorized under subdivision (aa)(*ii*) in order to pay costs arising under those contracts shall be limited to:

(*i*) For taxes levied before July 1, 2005, the amount permitted to be received by an authority for an eligible obligation as provided in this act.

(*ii*) For taxes levied after June 30, 2005 and before July 1, 2006, $3,000,000.00.

(*iii*) For taxes levied after June 30, 2006 and before July 1, 2007, $3,000,000.00.

(*iv*) For taxes levied after June 30, 2007 and before July 1, 2008, $3,000,000.00.

(*v*) For taxes levied after June 30, 2008 and before July 1, 2009, $3,000,000.00.

(*vi*) For taxes levied after June 30, 2009 and before July 1, 2010, $3,000,000.00.

(*vii*) For taxes levied after June 30, 2010 and before July 1, 2011, $2,650,000.00.

(*viii*) For taxes levied after June 30, 2011 and before July 1, 2012, $2,400,000.00.

(*ix*) For taxes levied after June 30, 2012 and before July 1, 2013, $2,125,000.00.

(*x*) For taxes levied after June 30, 2013 and before July 1, 2014, $1,500,000.00.

(*xi*) For taxes levied after June 30, 2014 and before July 1, 2015, $1,150,000.00.

(*xii*) For taxes levied after June 30, 2015, $0.00.

(n) "Fiscal year" means the fiscal year of the authority.

(o) "Governing body" means the elected body of a municipality having legislative powers.

(p) "Initial assessed value" means the assessed value, as equalized, of all the taxable property within the boundaries of the development area at the time the resolution establishing the tax increment financing plan is approved as shown by the most recent assessment roll of the municipality for which equalization has been completed at the time the resolution is adopted. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero. For the purpose of determining initial assessed value, property for which a specific local tax is paid in lieu of a property tax shall not be considered property that is exempt from taxation. The initial assessed value of property for which a specific tax was paid in lieu of a property tax shall be determined as provided in subdivision (w).

(q) "Municipality" means a city.

(r) "Obligation" means a written promise to pay, whether evidenced by a contract, agreement, lease, sublease, bond, or note, or a requirement to pay imposed by law. An obligation does not include a payment required solely because of default upon an obligation, employee salaries, or consideration paid for the use of municipal offices. An obligation does not include those bonds that have been economically defeased by refunding bonds issued under this act. Obligation includes, but is not limited to, the following:

(*i*) A requirement to pay proceeds derived from ad valorem property taxes or taxes levied in lieu of ad valorem property taxes.

(*ii*) A management contract or a contract for professional services.

(*iii*) A payment required on a contract, agreement, bond, or note if the requirement to make or assume the payment arose before August 19, 1993.

(*iv*) A requirement to pay or reimburse a person for the cost of insurance for, or to maintain, property subject to a lease, land contract, purchase agreement, or other agreement.

(*v*) A letter of credit, paying agent, transfer agent, bond registrar, or trustee fee associated with a contract, agreement, bond, or note.

(s) "On behalf of an authority", in relation to an eligible advance made by a municipality, or an eligible obligation or other protected obligation issued or incurred by a municipality, means in anticipation that an authority would transfer tax increment revenues or reimburse the municipality from tax increment revenues in an amount sufficient to fully make payment required by the eligible advance made by a municipality, or the eligible obligation or other protected obligation issued or incurred by the municipality, if the anticipation of the transfer or receipt of tax increment revenues from the authority is pursuant to or evidenced by 1 or more of the following:

(*i*) A reimbursement agreement between the municipality and an authority it established.

(*ii*) A requirement imposed by law that the authority transfer tax increment revenues to the municipality.

(*iii*) A resolution of the authority agreeing to make payments to the incorporating unit.

(*iv*) Provisions in a tax increment financing plan describing the project for which the obligation was incurred.

(t) "Other protected obligation" means:

(*i*) A qualified refunding obligation issued to refund an obligation described in subparagraph (*ii*) or (*iii*), an obligation that is not a qualified refunding obligation that is issued to refund an eligible obligation, or a qualified refunding obligation issued to refund an obligation described in this subparagraph.

(*ii*) An obligation issued or incurred by an authority or by a municipality on behalf of an authority after August 19, 1993, but before December 31, 1994, to finance a project described

in a tax increment finance plan approved by the municipality in accordance with this act before December 31, 1993, for which a contract for final design is entered into by the municipality or authority before March 1, 1994.

(*iii*) An obligation incurred by an authority or municipality after August 19, 1993, to reimburse a party to a development agreement entered into by a municipality or authority before August 19, 1993, for a project described in a tax increment financing plan approved in accordance with this act before August 19, 1993, and undertaken and installed by that party in accordance with the development agreement.

(*iv*) An obligation issued or incurred by an authority or by a municipality on behalf of an authority to implement a project described in a tax increment finance plan approved by the municipality in accordance with this act before August 19, 1993, that is located on land owned by a public university on the date the tax increment financing plan is approved, and for which a contract for final design is entered into before December 31, 1993.

(*v*) An ongoing management or professional services contract with the governing body of a county which was entered into before March 1, 1994 and which was preceded by a series of limited term management or professional services contracts with the governing body of the county, the last of which was entered into before August 19, 1993.

(*vi*) An obligation issued or incurred by a municipality under a contract executed on December 19, 1994 as subsequently amended between the municipality and the authority to implement a project described in a tax increment finance plan approved by the municipality under this act before August 19, 1993 for which a contract for final design was entered into by the municipality before March 1, 1994 provided that final payment by the municipality is made on or before December 31, 2001.

(*vii*) An obligation issued or incurred by an authority or by a municipality on behalf of an authority that meets all of the following qualifications:

(A) The obligation is issued or incurred to finance a project described in a tax increment financing plan approved before August 19, 1993 by a municipality in accordance with this act.

(B) The obligation qualifies as an other protected obligation under subparagraph (*ii*) and was issued or incurred by the authority before December 31, 1994 for the purpose of financing the project.

(C) A portion of the obligation issued or incurred by the authority before December 31, 1994 for the purpose of financing the project was retired prior to December 31, 1996.

(D) The obligation does not exceed the dollar amount of the portion of the obligation retired prior to December 31, 1996.

(*viii*) An obligation incurred by an authority that meets both of the following qualifications:

(A) The obligation is a contract of lease originally executed on December 20, 1994 between the municipality and the authority to partially implement the authority's development plan and tax increment financing plan.

(B) The obligation qualifies as an obligation under subparagraph (*ii*). The obligation described in this subparagraph may be amended to extend cash rental payments for a period not to exceed 30 years through the year 2039. The duration of the development plan and tax increment financing plan described in this subparagraph is extended to 1 year after the final date that the extended cash rental payments are due.

(u) "Public facility" means 1 or more of the following:

(*i*) A street, plaza, or pedestrian mall, and any improvements to a street, plaza, boulevard, alley, or pedestrian mall, including street furniture and beautification, park, parking facility,

recreation facility, playground, school, library, public institution or administration building, right of way, structure, waterway, bridge, lake, pond, canal, utility line or pipeline, and other similar facilities and necessary easements of these facilities designed and dedicated to use by the public generally or used by a public agency. As used in this subparagraph, public institution or administration building includes, but is not limited to, a police station, fire station, court building, or other public safety facility.

(*ii*) The acquisition and disposal of real and personal property or interests in real and personal property, demolition of structures, site preparation, relocation costs, building rehabilitation, and all associated administrative costs, including, but not limited to, architect's, engineer's, legal, and accounting fees as contained in the resolution establishing the district's development plan.

(*iii*) An improvement to a facility used by the public or a public facility as those terms are defined in section 1 of 1966 PA 1, MCL 125.1351, which improvement is made to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(v) "Qualified refunding obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority to refund an obligation if 1 of the following applies:

(*i*) The refunding obligation meets both of the following:

(A) The net present value of the principal and interest to be paid on the refunding obligation, including the cost of issuance, will be less than the net present value of the principal and interest to be paid on the obligation being refunded, as calculated using a method approved by the department of treasury.

(B) The net present value of the sum of the tax increment revenues described in subdivision (aa)(*ii*) and the distributions under section 12a to repay the refunding obligation will not be greater than the net present value of the sum of the tax increment revenues described in subdivision (aa)(*ii*) and the distributions under section 12a to repay the obligation being refunded, as calculated using a method approved by the department of treasury.

(*ii*) The refunding obligation is a tax increment refunding bond issued to refund a refunding bond that is an other protected obligation issued as a capital appreciation bond delivered to the Michigan municipal bond authority on December 21, 1994, and the authority, by resolution of its board, authorized issuance of the refunding obligation before January 1, 2011 with a final maturity not later than 2039. The municipality by majority vote of the members of its governing body may pledge its full faith and credit for the payment of the principal of and interest on the refunding obligation. A refunding obligation issued under this subparagraph is not subject to the requirements of section 305(2), (3), (5), or (6), 501, or 503 of the revised municipal finance act, 2001 PA 34, MCL 141.2305, 141.2501, and 141.2503. The duration of the development plan and the tax increment financing plan relating to the refunding obligations described in this subparagraph is extended to 1 year after the final date of maturity of the refunding obligation.

(w) "Specific local tax" means a tax levied under 1974 PA 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, and 1953 PA 189, MCL 211.181 to 211.182. The initial assessed value or current assessed value of property subject to a specific local tax shall be the quotient of the specific local tax paid divided by the ad valorem millage rate. However, after 1993, the state tax commission shall prescribe the method for calculating the initial assessed value and current assessed value of property for which a specific local tax was paid in lieu of a property tax.

(x) "State fiscal year" means the annual period commencing October 1 of each year.

(y) "Tax increment district" or "district" means that area to which the tax increment finance plan pertains.

(z) "Tax increment financing plan" means that information and those requirements set forth in sections 13 to 15.

(aa) "Tax increment revenues" means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the development area, subject to the following requirements:

(*i*) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions other than the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area for any purpose authorized by this act.

(*ii*) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area in an amount equal to the amount necessary, without regard to subparagraph (*i*), to repay eligible advances, eligible obligations, and other protected obligations.

(*iii*) Tax increment revenues do not include any of the following:

(A) Ad valorem property taxes attributable either to a portion of the captured assessed value shared with taxing jurisdictions within the jurisdictional area of the authority or to a portion of value of property that may be excluded from captured assessed value or specific local taxes attributable to such ad valorem property taxes.

(B) Ad valorem property taxes excluded by the tax increment financing plan of the authority from the determination of the amount of tax increment revenues to be transmitted to the authority or specific local taxes attributable to such ad valorem property taxes.

(*iv*) The amount of tax increment revenues authorized to be included under subparagraph (*ii*), and required to be transmitted to the authority under section 14(1), from ad valorem property taxes and specific local taxes attributable to the application of the levy of the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, a local school district or an intermediate school district upon the captured assessed value of real and personal property in a development area shall be determined separately for the levy by the state, each school district, and each intermediate school district as the product of sub-subparagraphs (A) and (B):

(A) The percentage which the total ad valorem taxes and specific local taxes available for distribution by law to the state, local school district, or intermediate school district, respectively, bear to the aggregate amount of ad valorem millage taxes and specific taxes available for distribution by law to the state, each local school district, and each intermediate school district.

(B) The maximum amount of ad valorem property taxes and specific local taxes considered tax increment revenues under subparagraph (*ii*).

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 9, 2009.

[No. 454]

(HB 5437)

AN ACT to amend 1893 PA 206, entitled "An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts," (MCL 211.1 to 211.155) by adding section 7nn.

The People of the State of Michigan enact:

211.7nn Supporting housing property; tax exemption; rescission; "supportive housing property" defined.

Sec. 7nn. (1) Beginning December 31, 2008, supportive housing property is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that supportive housing property claims an exemption as provided in this section.

(2) An owner of supportive housing property may claim an exemption under this section by filing an affidavit on or before December 31 with the local tax collecting unit in which the supportive housing property is located. The affidavit shall state that the property is owned and occupied as supportive housing property on the date that the affidavit is signed. The affidavit shall be on a form prescribed by the department of treasury. One copy of the affidavit shall be retained by the owner, 1 copy shall be retained by the local tax collecting unit until any appeal or audit period under this act has expired, and 1 copy shall be forwarded to the department of treasury.

(3) Upon receipt of an affidavit filed under subsection (2) and unless the claim is denied under this section, the assessor shall exempt the supportive housing property from the collection of the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, as provided in subsection (1) until December 31 of the year in which the property is no longer supportive housing property.

(4) Not more than 90 days after exempted property is no longer supportive housing property, an owner shall rescind the claim of exemption by filing with the local tax collecting unit a rescission form prescribed by the department of treasury. An owner who fails to file a rescission as required by this subsection is subject to a penalty of $5.00 per day for each separate failure beginning after the 90 days have elapsed, up to a maximum of $200.00. This penalty shall be collected under 1941 PA 122, MCL 205.1 to 205.31, and shall be deposited in the state school aid fund established in section 11 of article IX of the state constitution of 1963. This penalty may be waived by the department of treasury.

(5) If the assessor of the local tax collecting unit believes that the property for which an exemption is claimed is not supportive housing property, the assessor may deny a new or existing claim by notifying the owner and the department of treasury in writing of the reason for the denial and advising the owner that the denial may be appealed to the state

tax commission within 35 days after the date of the notice. The assessor may deny a claim for exemption for the current year and for the 3 immediately preceding calendar years. If the assessor denies an existing claim for exemption, the assessor shall remove the exemption of the property and, if the tax roll is in the local tax collecting unit's possession, amend the tax roll to reflect the denial and the local treasurer shall within 30 days of the date of the denial issue a corrected tax bill for any additional taxes with interest and penalties computed from the date the taxes were last payable without interest or penalty. If the tax roll is in the county treasurer's possession, the tax roll shall be amended to reflect the denial and the county treasurer shall within 30 days of the date of the denial prepare and submit a supplemental tax bill for any additional taxes, together with interest and penalties computed from the date the taxes were last payable without interest or penalty. Taxes levied in a corrected or supplemental tax bill shall be returned as delinquent on the March 1 in the year immediately succeeding the year in which the corrected or supplemental tax bill is issued. However, if the property has been transferred to a bona fide purchaser before additional taxes were billed to the seller as a result of the denial of a claim for exemption, the taxes, interest, and penalties shall not be a lien on the property and shall not be billed to the bona fide purchaser, and the local tax collecting unit if the local tax collecting unit has possession of the tax roll or the county treasurer if the county has possession of the tax roll shall notify the department of treasury of the amount of tax due, interest, and penalties through the date of that notification. The department of treasury shall then assess the owner who claimed the exemption under this section for the tax, interest, and penalties accruing as a result of the denial of the claim for exemption, if any, as for unpaid taxes provided under 1941 PA 122, MCL 205.1 to 205.31, and shall deposit any tax, penalty, and interest collected into the state school aid fund. The denial shall be made on a form prescribed by the department of treasury.

(6) The department of treasury shall make available the affidavit forms and the forms to rescind an exemption, which may be on the same form, to all city and township assessors, county equalization officers, county registers of deeds, and closing agents.

(7) As used in this section, "supportive housing property" means real property certified as supportive housing property under chapter 3B of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1459 to 125.1459b.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) House Bill No. 6492.

(b) House Bill No. 6493.

This act is ordered to take immediate effect.
Approved January 9, 2009.
Filed with Secretary of State January 9, 2009.

Compiler's note: House Bill No. 6492, referred to in enacting section 1, was filed with the Secretary of State January 9, 2009, and became 2008 PA 455, Imd. Eff. Jan. 9, 2009.

House Bill No. 6493, also referred to in enacting section 1, was filed with the Secretary of State January 9, 2009, and became 2008 PA 456. This bill was tie-barred to House Bill No. 5438, which was not enacted by the legislature, and therefore is not effective.

[No. 455]

(HB 6492)

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating

to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts," by amending section 1211 (MCL 380.1211), as amended by 2007 PA 37.

The People of the State of Michigan enact:

380.1211 Mills levied for school operating purposes; limitation; reduction of mills from which homestead, qualified agricultural property, qualified forest property, supportive housing property, and industrial personal property are exempt; effect of insufficient mills allowed to be levied under subsection (1); additional mills; number of mills school district may levy after 1994; exemption of commercial personal property; approval by school electors; excess tax revenue; shortfall; allocation under property tax limitation act; definitions.

Sec. 1211. (1) Except as otherwise provided in this section and section 1211c, the board of a school district shall levy not more than 18 mills for school operating purposes or the number of mills levied in 1993 for school operating purposes, whichever is less. A principal residence, qualified agricultural property, qualified forest property, supportive housing property, and industrial personal property are exempt from the mills levied under this subsection except for the number of mills by which that exemption is reduced under this subsection. The board of a school district that had a foundation allowance calculated under section 20 of the state school aid act of 1979, MCL 388.1620, for the 1994-95 state fiscal year of more than $6,500.00, may reduce the number of mills from which a principal residence, qualified agricultural property, qualified forest property, supportive housing property, and industrial personal property are exempted under this subsection by up to the number of mills, as certified under section 1211a, required to be levied on a principal residence, qualified agricultural property, qualified forest property, supportive housing property, and industrial personal property for the school district's combined state and local revenue per membership pupil for the school fiscal year ending in 1995 to be equal to the school district's foundation allowance for the state fiscal year ending in 1995, and the board also may levy in 1994 or a succeeding year that number of mills for school operating purposes on a principal residence, qualified agricultural property, qualified forest property, supportive housing property, and industrial personal property.

(2) Subject to subsection (3), if the department of treasury determines that the maximum number of mills allowed to be levied under subsection (1) on all classes of property was not sufficient for a school district's combined state and local revenue per membership pupil for the school fiscal year ending in 1995 to be equal to the school district's foundation allowance for that school fiscal year, the board of the school district may levy in 1994 or a succeeding year additional mills uniformly on all property up to the number of mills required for the school district's combined state and local revenue per membership pupil for the school fiscal year ending in 1995 to be equal to the school district's foundation allowance for the state fiscal year ending in 1995. However, the board of a school district described in