[No. 577]

(HB 4080)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 540e (MCL 750.540e), as amended by 1988 PA 395.

The People of the State of Michigan enact:

750.540e Malicious use of service provided by telecommunications service provider.

Sec. 540e. (1) A person is guilty of a misdemeanor who maliciously uses any service provided by a telecommunications service provider with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person, or to disturb the peace and quiet of another person by any of the following:

(a) Threatening physical harm or damage to any person or property in the course of a conversation or message through the use of a telecommunications service or device.

(b) Falsely and deliberately reporting by message through the use of a telecommunications service or device that a person has been injured, has suddenly taken ill, has suffered death, or has been the victim of a crime or an accident.

(c) Deliberately refusing or failing to disengage a connection between a telecommunications device and another telecommunications device or between a telecommunications device and other equipment provided for the transmission of messages through the use of a telecommunications service or device.

(d) Using vulgar, indecent, obscene, or offensive language or suggesting any lewd or lascivious act in the course of a conversation or message through the use of a telecommunications service or device.

(e) Repeatedly initiating a telephone call and, without speaking, deliberately hanging up or breaking the telephone connection as or after the telephone call is answered.

(f) Making an unsolicited commercial telephone call that is received between the hours of 9 p.m. and 9 a.m. For the purpose of this subdivision, "an unsolicited commercial telephone call" means a call made by a person or recording device, on behalf of a person, corporation, or other entity, soliciting business or contributions.

(g) Deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that causes interruption in telecommunications service or prevents the person from utilizing his or her telecommunications service or device.

(2) A person violating this section may be imprisoned for not more than 6 months or fined not more than $1,000.00, or both. An offense is committed under this section if the communication either originates or terminates in this state and may be prosecuted at the place of origination or termination.

(3) As used in this section, "telecommunications", "telecommunications service", and "telecommunications device" mean those terms as defined in section 540c.

Effective date.

Enacting section 1. This amendatory act takes effect November 1, 2002.

This act is ordered to take immediate effect.
Approved October 3, 2002.
Filed with Secretary of State October 3, 2002.

[No. 578]

(HB 4599)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding part 172.

The People of the State of Michigan enact:

PART 172. MERCURY THERMOMETERS

324.17201 Definitions.

Sec. 17201. As used in this part:

(a) "Manufacturer" means a person that produces, imports, or distributes mercury thermometers in this state.

(b) "Mercury fever thermometer" means a mercury thermometer used for measuring body temperature.

(c) "Mercury thermometer" means a product or component, other than a dry cell battery, of a product used for measuring temperature that contains mercury or a mercury compound intentionally added to the product or component.

324.17202 Mercury thermometer; sale, offer for sale, or offer for promotional purposes.

Sec. 17202. (1) Except as provided in subsection (2), beginning on January 1, 2003, a person shall not sell, offer for sale, or offer for promotional purposes a mercury thermometer in this state or for use in this state. This subsection does not apply if the mercury thermometer is sold or offered for either of the following:

(a) A use for which a mercury thermometer is required by state or federal statute, regulation, or administrative rule.

(b) Pharmaceutical research purposes.

(2) Beginning on January 1, 2003, a person shall not sell, offer for sale, or offer for promotional purposes a mercury fever thermometer in this state or for use in this state, except by prescription. A manufacturer of mercury fever thermometers shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur with each mercury fever thermometer sold by prescription.

324.17203 Enforcement; violation as misdemeanor; penalty.

Sec. 17203. (1) The department of environmental quality shall enforce this part.

(2) A person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 60 days or a fine of not more than $1,000.00, or both, plus the costs of prosecution.

This act is ordered to take immediate effect.
Approved October 3, 2002.
Filed with Secretary of State October 3, 2002.

[No. 579]

(SB 593)

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 15 (MCL 205.65), as amended by 1993 PA 325.

The People of the State of Michigan enact:

205.65 Certificate of dissolution or withdrawal; personal liability of officers.

Sec. 15. (1) A domestic corporation or a foreign corporation authorized to transact business in this state that submits a certificate of dissolution or requests a certificate of withdrawal from this state shall request a certificate from the department stating that taxes are not due under section 27a of 1941 PA 122, MCL 205.27a, not more than 60 days after submitting the certificate of dissolution or requesting the certificate of withdrawal. A corporation that does not request a certificate stating that taxes are not due is subject to the same penalties under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer would be subject to for failure to file a return.

(2) If a corporation licensed under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making the returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for the liability may be assessed and collected as provided in sections 23 and 24 of 1941 PA 122, MCL 205.23 and 205.24.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 595 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 10, 2002.
Filed with Secretary of State October 14, 2002.

Compiler's note: Senate Bill No. 595, referred to in enacting section 1, was filed with the Secretary of State October 14, 2002, and became P.A. 2002, No. 581, Imd. Eff. Oct. 14, 2002.

[No. 580]

(SB 594)

AN ACT to amend 1937 PA 94, entitled "An act to provide for the levy, assessment and collection of a specific excise tax on the storage, use or consumption in this state of tangible personal property and certain services; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 5 (MCL 205.95), as amended by 2002 PA 255.

The People of the State of Michigan enact:

205.95 Registration requirements; seller to collect tax from consumer; foreign corporations; dissolution or withdrawal of corporation; election of lessor on payment of taxes.

Sec. 5. (1) Except as otherwise provided in this subsection, a person engaged in the business of selling tangible personal property for storage, use, or other consumption in this state shall register with the department and give the name and address of each agent operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and any other information that the department requires relevant to the enforcement of this act. However, a seller holding a sales tax license obtained under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is not required to separately register with the department under this act. Every seller shall collect the tax imposed by this act from the consumer.

(2) The corporation, securities, and land development bureau of the department of consumer and industry services shall not issue to any foreign corporation engaged in the business of selling tangible personal property a certificate of authority to do business in this state or approve and file the proposed articles of incorporation submitted to it by any domestic corporation authorizing or permitting that corporation to conduct any business of selling tangible personal property unless the corporation submits with the application for the certificate of authority or proposed articles of incorporation an application for registration of the corporation under this act or an application for a sales tax license under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78. The application shall be transmitted to the department by the corporation, securities, and land development bureau.

(3) A domestic corporation or a foreign corporation authorized to transact business in this state that submits a certificate of dissolution or requests a certificate of withdrawal from this state shall request a certificate from the department stating that taxes are not due under section 27a of 1941 PA 122, MCL 205.27a, not more than 60 days after submitting the certificate of dissolution or requesting the certificate of withdrawal. A corporation that does not request a certificate stating that taxes are not due is subject to the same penalties under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer would be subject to for failure to file a return.

(4) A lessor may elect to pay use tax on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property at the time it is acquired. For tax years that begin after December 31, 2001, in order to make a valid election under this subsection, a lessor of tangible personal property that is an aircraft shall obtain a use tax registration by the earlier of the date set for the first payment of use tax under the lease or rental agreement or 90 days after the lessor first brings the aircraft into this state.

This act is ordered to take immediate effect.
Approved October 10, 2002.
Filed with Secretary of State October 14, 2002.

[No. 581]

(SB 595)

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 451 (MCL 206.451), as amended by 1987 PA 254.

The People of the State of Michigan enact:

206.451 Certificate of dissolution or withdrawal until taxes paid; payment of taxes as condition to closing of estate.

Sec. 451. (1) A domestic corporation or a foreign corporation authorized to transact business in this state that submits a certificate of dissolution or requests a certificate of withdrawal from this state shall request a certificate from the department stating that taxes are not due under section 27a of 1941 PA 122, MCL 205.27a, not more than 60 days after submitting the certificate of dissolution or requesting the certificate of withdrawal. A corporation that does not request a certificate stating that taxes are not due is subject to the same penalties under section 24 of 1941 PA 122, MCL 205.24, that a taxpayer would be subject to for failure to file a return.

(2) An estate of a person subject to tax under this act shall not be closed without the payment of the tax levied by this act, both in respect to the liability of the estate and decedent prior to his or her death.

This act is ordered to take immediate effect.
Approved October 10, 2002.
Filed with Secretary of State October 14, 2002.

[No. 582]

(SB 1020)

AN ACT to amend 1917 PA 74, entitled "An act to fix standards for climax baskets for grapes and other fruits and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and to punish violations of the same," by amending section 4 (MCL 290.134).

The People of the State of Michigan enact:

290.134 Examination and test; compliance; determination by department.

Sec. 4. The examination and test of climax baskets, baskets, or other containers for small fruits, berries, and vegetables, for the purpose of determining whether those

baskets or other containers comply with the provisions of this act shall be made by the department of agriculture.

This act is ordered to take immediate effect.
Approved October 10, 2002.
Filed with Secretary of State October 14, 2002.

[No. 583]

(HB 6041)

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," (MCL 760.1 to 777.69) by adding section 6d to chapter V.

The People of the State of Michigan enact:

CHAPTER V

765.6d Release on bail; waiver of extradition.

Sec. 6d. (1) Except as provided in subsection (2), the court may require an individual to sign a written waiver of extradition to this state before releasing the individual on bail under this chapter. If the individual fails to sign the waiver, the court may consider the failure in determining the amount of bail to be posted by the individual.

(2) The court shall require an individual charged with a crime for which bail may be denied under section 15 of article I of the state constitution of 1963 to sign a written waiver of extradition to this state before releasing the individual on bail under this chapter.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2003.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 6042 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 10, 2002.
Filed with Secretary of State October 14, 2002.

Compiler's note: House Bill No. 6042, referred to in enacting section 2, was filed with the Secretary of State October 14, 2002, and became P.A. 2002, No. 584, Eff. Jan. 1, 2003.

[No. 584]

(HB 6042)

AN ACT to amend 1937 PA 144, entitled "An act relative to and to make uniform the procedure on interstate extradition; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending sections 6, 15, 16, 18, and 25 (MCL 780.6, 780.15, 780.16, 780.18, and 780.25) and by adding section 23a.

The People of the State of Michigan enact:

780.6 Governor's warrant; issuance; recitation of facts; revocation of bail.

Sec. 6. If the governor decides that the demand should be complied with, he or she shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person who the governor determines is fit to entrust with the execution of the warrant. The warrant shall substantially recite the facts necessary to the validity of its issuance. If the person was released on bail, the court shall immediately revoke bail and shall not release the person on bail but shall detain the person subject only to habeas corpus review.

780.15 Bail; type of cases; condition of bond.

Sec. 15. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death, by life imprisonment, or by imprisonment for 20 years or more under the laws of the state in which it was committed or is for escaping from custody or confinement, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in an amount that, after reviewing the person's criminal history, the judge or magistrate considers proper, conditioned for the person's appearance before the court at a time specified in the bond, and for the person's surrender, to be arrested upon the warrant of the governor of this state.

780.16 Discharge or recommitment of accused; additional periods; limitation.

Sec. 16. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge the accused or may recommit the accused for additional periods not to exceed a total extension of 60 days, or a judge or magistrate may again take bail for the accused's appearance and surrender, as provided in section 15, but within a period not to exceed 60 days after the date of any new bond.

780.18 Persons under criminal prosecution in state; applicability of restrictions on commitment.

Sec. 18. If a criminal prosecution has been instituted against a person under the laws of this state and is still pending, the governor may surrender the person on demand of the executive authority of another state or hold the person until he or she has been tried and discharged or convicted and punished in this state. If a criminal prosecution has been instituted under the laws of this state against a person charged under section 13, the restrictions on the length of commitment specified in sections 14 and 16 are not applicable during the period that the criminal prosecution is pending in this state.

780.23a Extradition costs; payment.

Sec. 23a. The court may order an individual who is extradited to this state for committing a crime and who is convicted of a crime to pay the actual and reasonable costs of that extradition, including, but not limited to, all of the following:

(a) Transportation costs.

(b) The salaries or wages of law enforcement and prosecution personnel, including overtime pay, for processing the extradition and returning the individual to this state.

780.25 Written waiver of extradition proceedings.

Sec. 25. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his or her bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 6 and 7 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing that states that he or she consents to return to the demanding state. However, before the waiver is executed or subscribed by the person, the judge shall inform the person of his or her rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 9.

When a person's consent has been duly executed, it shall promptly be forwarded to and filed in the office of the governor of this state. The judge shall direct the officer having the person in custody to promptly deliver the person to the accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to that agent or agents a copy of the person's consent.

If a waiver is executed, the judge shall remand the person to custody without bail. The order shall direct the officer having the person in custody to deliver the person to the duly authorized agent of the demanding state together with a copy of the order and the waiver.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2003.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 6041 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved October 10, 2002.

Filed with Secretary of State October 14, 2002.

Compiler's note: House Bill No. 6041, referred to in enacting section 2, was filed with the Secretary of State October 14, 2002, and became P.A. 2002, No. 583, Eff. Jan. 1, 2003.

[No. 585]

(SB 1086)

AN ACT to amend 1954 PA 188, entitled "An act to provide for the making of certain improvements by townships; to provide for paying for the improvements by the issuance of bonds; to provide for the levying of taxes; to provide for assessing the whole or a part of the cost of improvements against property benefited; and to provide for the issuance of bonds in anticipation of the collection of special assessments and for the obligation of the township on the bonds," by amending section 2 (MCL 41.722), as amended by 1995 PA 139.

The People of the State of Michigan enact:

41.722 Types of improvements authorized; approval; conditions.

Sec. 2. (1) The following improvements may be made under this act:

(a) The construction, improvement, and maintenance of storm or sanitary sewers or the improvement and maintenance of, but not the construction of new or expanded, combined storm and sanitary sewer systems.

(b) The construction, improvement, and maintenance of water systems.

(c) The construction, improvement, and maintenance of public roads.

(d) The acquisition, improvement, and maintenance of public parks.

(e) The construction, improvement, and maintenance of elevated structures for foot travel over roads in the township.

(f) The collection and disposal of garbage and rubbish.

(g) The construction, maintenance, and improvement of bicycle paths.

(h) The construction, maintenance, and improvement of erosion control structures or dikes.

(i) The planting, maintenance, and removal of trees.

(j) The installation, improvement, and maintenance of lighting systems.

(k) The construction, improvement, and maintenance of sidewalks.

(*l*) The eradication or control of aquatic weeds and plants.

(m) The construction, improvement, and maintenance of private roads.

(n) The construction, improvement, and maintenance of a lake, pond, river, stream, lagoon, or other body of water or of an improvement to the body of water. This subdivision includes, but is not limited to, dredging.

(o) The construction, improvement, and maintenance of dams and other structures that retain the waters of this state for recreational purposes.

(p) The construction, improvement, and maintenance of sound attenuation walls, pavement, or other sound mitigation treatments unless a written objection is filed in the same manner as provided under section 3 by the record owners of land constituting more than 20% of the total area in the proposed special assessment district. If a written objection is filed, then the township board shall not proceed with the improvement until a petition signed by the record owners of land constituting more than 50% of the total land area in the special assessment district as finally established is filed with the board.

(2) A road under the jurisdiction of either the state transportation department or the board of county road commissioners shall not be improved under this act without the written approval of the state transportation department or the board of county road

commissioners. As a condition to the granting of approval, the state transportation department or the board of county road commissioners may require 1 or more of the following:

(a) That all engineering with respect to the improvement be performed by the state transportation department or the board of county road commissioners.

(b) That all construction, including the awarding of contracts for construction, in connection with the improvement be pursuant to the specifications of the state transportation department or the board of county road commissioners.

(c) That the cost of the engineering and supervision be paid to the state transportation department or the board of county road commissioners from the funds of the special assessment district.

(3) A lake, pond, river, stream, lagoon, or other body of water under the jurisdiction of a county drain commissioner shall not be improved under this act without the written approval of the county drain commissioner of the county in which the lake, pond, river, stream, lagoon, or other body of water is located.

This act is ordered to take immediate effect.
Approved October 10, 2002.
Filed with Secretary of State October 14, 2002.

[No. 586]

(HB 6054)

AN ACT to amend 1999 PA 94, entitled "An act to create the Michigan merit award scholarship trust fund; to create the Michigan merit award scholarship board and prescribe the powers and duties of the board; and to provide for the Michigan merit award scholarship program," by amending section 5 (MCL 390.1455).

The People of the State of Michigan enact:

390.1455 Disbursement of funds.

Sec. 5. Upon appropriation by the legislature, the board shall authorize disbursement of funds from the trust fund for 1 or more of the following purposes:

(a) Michigan merit award scholarships under this act.

(b) Expenses properly incurred by the commission in carrying out its powers and duties.

(c) Costs associated with the development, preparation, distribution, and scoring of the assessment test and any costs associated with dissemination of results of the assessment test.

(d) Funding of the tuition incentive program as described in section 310 of 1998 PA 271 or a successor to that program.

(e) Funding of the Michigan nursing scholarship program as described in the Michigan nursing scholarship act.

(f) Other expenditures as determined by law.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 793 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 14, 2002.
Filed with Secretary of State October 15, 2002.

Compiler's note: Senate Bill No. 793, referred to in enacting section 1, was filed with the Secretary of State October 17, 2002, and became P.A. 2002, No. 591, Imd. Eff. Oct. 17, 2002.

[No. 587]

(SB 1315)

AN ACT to amend 1996 PA 376, entitled "An act to create and expand certain renaissance zones; to foster economic opportunities in this state; to facilitate economic development; to stimulate industrial, commercial, and residential improvements; to prevent physical and infrastructure deterioration of geographic areas in this state; to authorize expenditures; to provide exemptions and credits from certain taxes; to create certain obligations of this state and local governmental units; to require disclosure of certain transactions and gifts; to provide for appropriations; and to prescribe the powers and duties of certain state and local departments, agencies, and officials," by amending section 8a (MCL 125.2688a), as amended by 2002 PA 512.

The People of the State of Michigan enact:

125.2688a Additional renaissance zones; designation; property located in alternative energy zone; "eligible pharmaceutical company" defined.

Sec. 8a. (1) Except as provided in subsections (2), (3), and (4), the board shall not designate more than 9 additional renaissance zones within this state under this section. Not more than 6 of the renaissance zones shall be located in urban areas and not more than 5 of the renaissance zones shall be located in rural areas. For purposes of determining whether a renaissance zone is located in an urban area or rural area under this section, if any part of a renaissance zone is located within an urban area, the entire renaissance zone shall be considered to be located in an urban area.

(2) The board of the Michigan strategic fund described in section 4 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004, may designate not more than 5 additional renaissance zones within this state in 1 or more cities, villages, or townships if that city, village, or township or combination of cities, villages, or townships consents to the creation of a renaissance zone within their boundaries. The board of the Michigan strategic fund may designate not more than 1 of the 5 additional renaissance zones described in this subsection as an alternative energy zone. An alternative energy zone shall promote and increase the research, development, and manufacturing of alternative energy technology as that term is defined in the Michigan next energy authority act. An alternative energy zone shall have a duration of renaissance zone status for a period not to exceed 20 years as determined by the board of the Michigan strategic fund. Not later than 18 months after the effective date of the amendatory act that added subsection (6), the board of the Michigan strategic fund may designate not more than 1 of the 5 additional renaissance zones described in this subsection as a pharmaceutical renaissance zone. A pharmaceutical

renaissance zone shall promote and increase the research, development, and manufacturing of pharmaceutical products of an eligible pharmaceutical company.

(3) In addition to the not more than 9 additional renaissance zones described in subsection (1), the board may designate additional renaissance zones within this state in 1 or more qualified local governmental units if that qualified local governmental unit or units contain a military installation that was operated by the United States department of defense and was closed in 1977 or after 1990.

(4) Land owned by a county or the qualified local governmental unit or units adjacent to a zone as described in subsection (3) may be included in this zone.

(5) Notwithstanding any other provision of this act, property located in the alternative energy zone that is classified as commercial real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, and that the authority, with the concurrence of the assessor of the local tax collecting unit, determines is not used to directly promote and increase the research, development, and manufacturing of alternative energy technology is not eligible for any exemption, deduction, or credit under section 9.

(6) As used in this section, "eligible pharmaceutical company" means a company that meets all of the following criteria:

(a) Is engaged primarily in manufacturing, research and development, and sale of pharmaceuticals.

(b) Has not less than 8,500 employees located in this state, all of whom are located within a 100-mile radius of each other.

(c) Of the total number of employees located in this state, has not less than 5,000 engaged primarily in research and development of pharmaceuticals.

This act is ordered to take immediate effect.
Approved October 16, 2002.
Filed with Secretary of State October 16, 2002.

[No. 588]

(HB 6073)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," (MCL 208.1 to 208.145) by adding section 39f.

The People of the State of Michigan enact:

208.39f Tax credit; taxpayer pharmaceutical based business activity.

Sec. 39f. (1) For tax years that begin after December 31, 2002, an eligible taxpayer may claim a credit against the tax imposed by this act equal to 6-1/2% of the excess of qualified research expenses paid in the tax year that relate to the eligible taxpayer's pharmaceutical based business activity in this state over the average qualified research

expenses that relate to the eligible taxpayer's pharmaceutical based business activity in this state paid during the 3 immediately preceding tax years.

(2) The amount of a credit for any tax year under subsection (1) shall not exceed 200% of the eligible taxpayer's average qualified research expenses that relate to the taxpayer's pharmaceutical based business activity in this state for the 3 immediately preceding tax years.

(3) If the credit allowed under this section for the tax year and any unused carry-forward of the credit allowed under this section exceed the tax liability of the 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 7 tax years or until the excess credit is used up, whichever occurs first.

(4) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine the credit allowed under this section on a consolidated basis.

(5) An eligible taxpayer may assign all or a portion of a credit allowed under this section. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which qualified research expenses are paid. An eligible taxpayer may claim a portion of the credit and assign a portion of the remaining credit amount. However, the eligible taxpayer shall not assign in any tax year more than 40% of the total amount of the credit allowed for that year. If the eligible taxpayer both claims and assigns portions of the credit, the eligible taxpayer shall claim the portion it claims in the tax year in which the qualified research expenses are paid. An assignee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. The credit assignment under this subsection shall be made on a form prescribed by the department. The eligible taxpayer shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made. The assignee shall attach a copy of the completed assignment form to its annual return required under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year.

(6) The total of all credits allowed under this section shall not exceed $10,000,000.00 for any 1 tax year.

(7) As used in this section:

(a) "Eligible taxpayer" means a company that meets all of the following criteria within 18 months after the effective date of the amendatory act that added this section:

(*i*) Is engaged primarily in manufacturing, research and development, and sale of pharmaceuticals.

(*ii*) Has not less than 8,500 employees located in this state. The primary places of employment for all the employees required under this subparagraph shall be located within a 100-mile radius of each other.

(*iii*) Of the total number of employees located in this state, has not less than 5,000 engaged primarily in research and development of pharmaceuticals.

(b) "Qualified research expenses" means that term as defined in section 41 of the internal revenue code.

This act is ordered to take immediate effect.

Approved October 16, 2002.

Filed with Secretary of State October 16, 2002.

[No. 589]

(SB 554)

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 100c (MCL 330.1100c), as added by 1995 PA 290.

The People of the State of Michigan enact:

330.1100c Definitions; P to R.

Sec. 100c. (1) "Peace officer" means an officer of the department of state police or of a law enforcement agency of a county, township, city, or village who is responsible for the prevention and detection of crime and enforcement of the criminal laws of this state. For the purposes of sections 408 and 427, peace officer also includes an officer of the United States secret service with the officer's consent and a police officer of the veterans' administration medical center reservation.

(2) "Peer review" means a process, including the review process required under section 143a, in which mental health professionals of a state facility, licensed hospital, or community mental health services program evaluate the clinical competence of staff and the quality and appropriateness of care provided to recipients. These evaluations are confidential in accordance with section 748(9) and are based on criteria established by the facility or community mental health services program itself, the accepted standards of the mental health professions, and the department of community health.

(3) "Person requiring treatment" means an individual who meets the criteria described in section 401.

(4) "Physician" means an individual licensed by the state to engage in the practice of medicine or osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(5) "Primary consumer" means an individual who has received or is receiving services from the department or a community mental health services program or services from the private sector equivalent to those offered by the department or a community mental health services program.

(6) "Priority" means preference for and dedication of a major proportion of resources to specified populations or services. Priority does not mean serving or funding the specified populations or services to the exclusion of other populations or services.

(7) "Protective custody" means the temporary custody of an individual by a peace officer with or without the individual's consent for the purpose of protecting that individual's health and safety, or the health and safety of the public, and for the purpose of transporting the individual under section 408 or 427 if the individual appears, in the judgment of the peace officer, to be a person requiring treatment or is a person requiring treatment. Protective custody is civil in nature and is not to be construed as an arrest.

(8) "Psychiatric partial hospitalization program" means a nonresidential treatment program that provides psychiatric, psychological, social, occupational, nursing, music therapy, and therapeutic recreational services under the supervision of a physician to adults diagnosed as having serious mental illness or minors diagnosed as having serious emotional disturbance who do not require 24-hour continuous mental health care, and that is affiliated with a psychiatric hospital or psychiatric unit to which clients may be transferred if they need inpatient psychiatric care.

(9) "Psychiatric unit" means a unit of a general hospital that provides inpatient services for individuals with serious mental illness or serious emotional disturbance. As used in this subsection, "general hospital" means a hospital as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(10) "Psychiatrist" means 1 or more of the following:

(a) A physician who has completed a residency program in psychiatry approved by the accreditation council for graduate medical education or the American osteopathic association, or who has completed 12 months of psychiatric rotation and is enrolled in an approved residency program as described in this subsection.

(b) A psychiatrist employed by or under contract with the department or a community mental health services program on March 28, 1996.

(c) A physician who devotes a substantial portion of his or her time to the practice of psychiatry and is approved by the director.

(11) "Psychologist" means an individual licensed to engage in the practice of psychology under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, who devotes a substantial portion of his or her time to the diagnosis and treatment of individuals with serious mental illness, serious emotional disturbance, or developmental disability.

(12) "Recipient" means an individual who receives mental health services from the department, a community mental health services program, or a facility or from a provider that is under contract with the department or a community mental health services program.

(13) "Recipient rights advisory committee" means a committee of a community mental health services program board appointed under section 757 or a recipient rights advisory committee appointed by a licensed hospital under section 758.

(14) "Regional entity" means an entity established under section 204b to provide specialty services and supports.

(15) "Resident" means an individual who receives services in a facility.

(16) "Responsible mental health agency" means the hospital, center, or community mental health services program that has primary responsibility for the recipient's care or for the delivery of services or supports to that recipient.

(17) "Rule" means a rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 555 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 17, 2002.
Filed with Secretary of State October 17, 2002.

Compiler's note: Senate Bill No. 555, referred to in enacting section 1, was filed with the Secretary of State October 17, 2002, and became P.A. 2002, No. 594, Imd. Eff. Oct. 17, 2002.

[No. 590]

(SB 1119)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 16621 (MCL 333.16621), as amended by 2000 PA 160.

The People of the State of Michigan enact:

333.16621 Michigan board of dentistry; creation; appointment and qualifications of members; meetings; voting.

Sec. 16621. (1) The Michigan board of dentistry is created in the department. Subject to subsection (2), the board consists of the following 19 voting members who meet the requirements of part 161:

(a) Eight dentists. Subject to subsection (3), 1 or more of the dentists appointed under this subdivision may have a health profession specialty certification issued under section 16608.

(b) Subject to subsection (3), 2 dentists who have been issued a health profession specialty certification under section 16608.

(c) Four dental hygienists.

(d) Two dental assistants.

(e) Three public members.

(2) A dentist, dental hygienist, public member, or other individual who is a member of the board on July 14, 2000 may serve out his or her term.

(3) The board meeting dates and times shall be concurred in by a vote of not less than 13 board members. One member of the board shall be a dentist who is a dental school faculty member.

(4) A board member licensed to practice as a dental hygienist or a dental assistant votes as an equal member of the board in all matters except those designated in section 16148(1) or (2) that apply only to dentists and not to dental hygienists or dental assistants.

This act is ordered to take immediate effect.
Approved October 17, 2002.
Filed with Secretary of State October 17, 2002.

[No. 591]

(SB 793)

AN ACT to establish an educational scholarship program for eligible resident students enrolled in certain nursing programs; to prescribe conditions for repayment of the scholarships; to provide for the administration of the Michigan nursing scholarship program; and to prescribe certain powers and duties of certain state officers, agencies, and departments.

The People of the State of Michigan enact:

390.1181 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan nursing scholarship act".

390.1182 Definitions.

Sec. 2. As used in this act:

(a) "Authority" means the Michigan higher education assistance authority created by 1960 PA 77, MCL 390.951 to 390.961.

(b) "Eligible costs" means tuition and fees charged by an eligible institution; related costs for room, board, books, supplies, transportation, or day care; and other costs determined by the authority.

(c) "Eligible employment" means a registered nurse or licensed practical nurse providing full-time nursing care, or part-time nursing care if section 7 applies, in a ward, emergency department, emergency room, operating room, or trauma center of a hospital licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, in a nursing home or hospice licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, in a health facility or agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, that provides nonemergency health care to patients without receiving compensation for providing that nonemergency health care, or in a clinic or other health care program operated by a local health department that provides 1 or more required services under part 24 of the public health code, 1978 PA 368, MCL 333.2401 to 333.2498, or as an employee of a home health care agency providing home patient care.

(d) "Eligible institution" means a degree or certificate granting public or independent nonprofit college or university, junior college, or community college in this state.

(e) "Licensed practical nurse" means an individual licensed to engage in the practice of nursing as a licensed practical nurse as defined in section 17201 of the public health code, 1978 PA 368, MCL 333.17201.

(f) "Nursing program" means a program for the training of individuals to become registered nurses or licensed practical nurses operated in this state by an eligible institution and approved by the Michigan board of nursing.

(g) "Registered professional nurse" means that term as defined in section 17201 of the public health code, 1978 PA 368, MCL 333.17201.

390.1183 Michigan nursing scholarship program; creation; administration; duties of authority.

Sec. 3. The Michigan nursing scholarship program is created, to be administered by the authority. The authority shall do all of the following:

(a) Award scholarships to eligible students pursuant to this act.

(b) Develop a scholarship agreement to be entered into by a scholarship recipient and the authority that contains the terms of a scholarship made under this act and the rights and obligations of the scholarship recipient and the authority.

(c) Collect repayment of scholarships if required under section 7.

(d) Conduct periodic audits of scholarship recipients to ensure compliance with the terms of the scholarship agreement and take necessary steps to enforce the terms of the scholarship agreement.

(e) Publicize the Michigan nursing scholarship program and recruit qualifying students to participate in the Michigan nursing scholarship program.

(f) Promulgate rules, as necessary to implement this act, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules may include additional standards of eligibility for students to receive scholarships under this act.

390.1184 Scholarship award; criteria.

Sec. 4. The authority may award a scholarship under this act to an individual determined by the authority to meet all of the following eligibility criteria:

(a) Is a United States citizen or permanent resident of the United States.

(b) Has resided continuously in this state for the 12 months immediately preceding the date of his or her application and is not a resident of any other state.

(c) Is enrolled or has been accepted into a nursing program.

(d) Has signed a written scholarship agreement with the authority stating the individual's intention to pursue nursing as a career and to serve in eligible employment in this state for not less than 1 of the following periods:

(*i*) One year if the individual received scholarship assistance under this act in 1 academic year of full-time enrollment in a nursing program.

(*ii*) Two years if the individual received scholarship assistance under this act in 2 academic years of full-time enrollment in a nursing program.

(*iii*) Three years if the individual received scholarship assistance under this act in 3 academic years of full-time enrollment in a nursing program.

(*iv*) Four years if the individual received scholarship assistance under this act in 4 academic years of full-time enrollment in a nursing program.

(e) Is in compliance with this act and the rules promulgated under this act.

(f) Has not been convicted of a felony involving an assault, physical injury, or death.

(g) Meets any other standards established in rules promulgated by the authority under section 3.

390.1185 Scholarship amount; determination; limitation.

Sec. 5. (1) Subject to subsection (2), each scholarship recipient shall receive a $4,000.00 scholarship for 1 academic year of full-time enrollment, or a partial scholarship for part-time enrollment, in a nursing program. The authority shall determine the amount of a partial scholarship by multiplying $4,000.00 by the number of credit hours for which a student enrolls in an academic year, and dividing the product by 30 if the nursing program uses semester credits or by 45 if the nursing program uses term credits.

(2) A scholarship described in subsection (1) shall not exceed an amount equal to the recipient's eligible costs minus any other grants or scholarships the recipient receives in any academic year in a nursing program.

(3) An individual shall not receive scholarship assistance for more than 4 academic years.

390.1186 Duration of payments.

Sec. 6. Recipients of scholarship assistance under this act shall continue to receive scholarship payments only during periods that the authority finds that the recipient is both of the following:

(a) Enrolled as a full-time or part-time student in a nursing program.

(b) Maintaining satisfactory progress as determined by the eligible institution.

390.1187 Agreement; provisions; disclosure of terms and conditions; noncompliance; deferred or excused repayment.

Sec. 7. (1) An individual shall not receive a scholarship under this act unless he or she enters into a written agreement with the authority, in which he or she agrees to all of the following:

(a) To obtain a license from this state as a registered professional nurse or licensed practical nurse within 1 year after completing the nursing program for which the scholarship was awarded.

(b) Beginning within 1 year after completing the nursing program for which the scholarship was awarded, to serve for the period of eligible employment applicable to the individual under section 4(d) in this state.

(c) To provide the authority evidence of compliance with section 6 as required by the authority.

(d) Except as provided in subsection (4), (5), (6), or (7), if the conditions in subdivisions (a) and (b) are not satisfied, to repay all or part of a scholarship award received under this act plus interest and, if applicable, reasonable collection fees, in compliance with rules promulgated by the authority.

(2) The agreement described in subsection (1) must fully disclose the terms and conditions under which scholarship assistance under this act is provided and under which repayment may be required. The agreement must include a description of both of the following:

(a) The appeals procedures established by the authority under which a recipient may appeal a determination of noncompliance with any provision under this act.

(b) The procedures under which a recipient of assistance received under this act who serves in eligible employment in this state for less than the period required under subsection (1) may have the repayment requirements extended under subsection (4) or excused under subsection (5), (6), or (7).

(3) The authority shall require recipients found by the authority to be in noncompliance with the agreement entered into under this section to repay the scholarship awards received, plus interest, but in no event at an interest rate higher than the rate applicable to other student loans guaranteed by the authority in that time period and, where applicable, reasonable collection fees, on a schedule and at a rate of interest to be prescribed by the authority by rule.

(4) A recipient is not in violation of the agreement entered into pursuant to subsection (1) and any repayment obligation is deferred during any period in which the recipient meets 1 of the following:

(a) Is pursuing a full-time course of study related to the field of nursing at an eligible institution.

(b) Is serving as a member of the armed services of the United States for a period of 3 years or less.

(c) Is temporarily totally disabled for a period of 3 years or less, as established by sworn affidavit of a qualified physician.

(d) Satisfies the provisions of any other repayment exceptions prescribed by the authority by rule.

(5) A recipient is not in violation of the agreement entered into pursuant to subsection (1), and the recipient may be excused from repayment of any scholarship assistance received under this act, if the recipient is employed providing part-time nursing care and all of the following are met:

(a) The department by rule has established a minimum average number of hours per week a recipient must be employed providing nursing care to qualify as providing part-time nursing care for the purposes of this subsection, and the recipient meets this requirement.

(b) The recipient is engaged in eligible employment in this state.

(c) The recipient provides part-time nursing care for not less than 1 of the following periods:

(*i*) Two years if the recipient received a $4,000.00 scholarship under this act for 1 academic year of full-time enrollment in a nursing program. If the recipient received a partial scholarship for 1 academic year of part-time enrollment, this 2-year time period is reduced to a time period determined by multiplying 2 years by a fraction, the numerator of which is the dollar amount of the partial scholarship and the denominator of which is $4,000.00.

(*ii*) Four years if the recipient received two $4,000.00 scholarships under this act for 2 academic years of full-time enrollment in a nursing program. If the recipient received partial scholarships for 2 academic years of part-time enrollment, this 4-year time period is reduced to a time period determined by multiplying 4 years by a fraction, the numerator of which is the dollar amount of the partial scholarships and the denominator of which is $8,000.00.

(*iii*) Six years if the recipient received three $4,000.00 scholarships under this act for 3 academic years of full-time enrollment in a nursing program. If the recipient received partial scholarships for 3 academic years of part-time enrollment, this 6-year time period is reduced to a time period determined by multiplying 6 years by a fraction, the numerator of which is the dollar amount of the partial scholarships and the denominator of which is $12,000.00.

(*iv*) Eight years if the recipient received four $4,000.00 scholarships under this act for 4 academic years of full-time enrollment in a nursing program. If the recipient received partial scholarships for 4 academic years of part-time enrollment, this 8-year time period is reduced to a time period determined by multiplying 8 years by a fraction, the numerator of which is the dollar amount of the partial scholarships and the denominator of which is $16,000.00.

(6) A recipient is not in violation of the agreement entered into pursuant to subsection (1), and the recipient may be excused from repayment of any scholarship assistance received under this act, if the recipient meets both of the following:

(a) Received 1 or more partial scholarships under this act for part-time enrollment in a nursing program.

(b) Is engaged in full-time, eligible employment in this state for not less than 1 of the following time periods:

(*i*) If the recipient received a partial scholarship for 1 academic year of part-time enrollment, a time period determined by multiplying 1 year by a fraction, the numerator

of which is the dollar amount of the partial scholarship and the denominator of which is $4,000.00.

(*ii*) If the recipient received partial scholarships for 2 academic years of part-time enrollment, a time period determined by multiplying 2 years by a fraction, the numerator of which is the dollar amount of the partial scholarships and the denominator of which is $8,000.00.

(*iii*) If the recipient received partial scholarships for 3 academic years of part-time enrollment, a time period determined by multiplying 3 years by a fraction, the numerator of which is the dollar amount of the partial scholarships and the denominator of which is $12,000.00.

(*iv*) If the recipient received partial scholarships for 4 academic years of part-time enrollment, a time period determined by multiplying 4 years by a fraction, the numerator of which is the dollar amount of the partial scholarships and the denominator of which is $16,000.00.

(7) A recipient is excused from repayment of any scholarship assistance received under this act if the recipient becomes permanently and totally disabled as established by sworn affidavit of a qualified physician or dies or if circumstances occur that the authority considers as a compelling reason to excuse repayment.

390.1188 Restricted account; reversion.

Sec. 8. (1) The department of treasury shall establish and administer a restricted account in the general fund for the Michigan nursing scholarship program. The department of treasury shall credit to the account money appropriated from the Michigan merit award trust fund established in section 3 of the Michigan merit award scholarship act, 1999 PA 94, MCL 390.1453, or received from any other source including, but not limited to, amounts repaid to the authority on scholarships awarded under this act and earnings in the account. The department of treasury shall use the money in the account only to provide money to the authority for scholarships awarded under this act.

(2) Money in the account at the end of a fiscal year shall not revert to the general fund but shall be carried over in the account to the next fiscal year.

390.1189 Report.

Sec. 9. Not later than November 1, the authority shall annually submit a report to the state budget director, the house and senate appropriation subcommittees on higher education, and the house and senate fiscal agencies for the preceding fiscal year on the nursing scholarship program. The report shall include, but is not limited to, the number of full and partial scholarships, the total dollar amount of scholarships awarded, the type of eligible institutions in which the scholarship recipients enrolled, and the number of scholarships, if any, for which students have incurred a repayment obligation under section 7(3).

Conditional effective date.

Enacting section 1. This act does not take effect unless House Bill No. 6054 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved October 17, 2002.

Filed with Secretary of State October 17, 2002.

Compiler's note: House Bill No. 6054, referred to in enacting section 1, was filed with the Secretary of State October 15, 2002, and became P.A. 2002, No. 586, Eff. Oct. 17, 2002.

[No. 592]

(SB 562)

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, and intermediate school districts; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, and intermediate school districts; 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," (MCL 380.1 to 380.1852) by adding section 1279a.

The People of the State of Michigan enact:

380.1279a Report of irregularities; notice to school district or public school academy.

Sec. 1279a. If the department of treasury has reason to suspect that there are irregularities in a school district's or public school academy's administration of, or preparation of pupils for, a Michigan educational assessment program (MEAP) test, the department of treasury shall not report the suspected irregularities to any person or entity not involved in the scoring or administration of the test before notifying the school district or public school academy of the suspected irregularities and allowing at least 5 business days for school officials to respond.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5049 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 17, 2002.
Filed with Secretary of State October 17, 2002.

Compiler's note: House Bill No. 5049, referred to in enacting section 1, was filed with the Secretary of State December 23, 2002, and became P.A. 2002, No. 640, Imd. Eff. Dec. 23, 2002.

[No. 593]

(SB 1316)

AN ACT to create and provide for the operation of the Michigan next energy authority; to provide for the powers and duties of the authority; to promote alternative energy technology and economic growth; and to exempt property of an authority from tax.

The People of the State of Michigan enact:

207.821 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan next energy authority act".

207.822 Definitions.

Sec. 2. As used in this act:

(a) "Advanced battery cell" means a rechargeable battery cell with a specific energy of not less than 80 watt hours per kilogram.

(b) "Alternative energy marine propulsion system" means an onboard propulsion system or detachable outboard propulsion system for a watercraft that is powered by a fuel cell energy system, photovoltaic energy system, or advanced battery cell energy system and that is the singular propulsion system for the watercraft. Alternative energy marine propulsion system does not include battery powered motors designed to assist in the propulsion of the watercraft during fishing or other recreational use.

(c) "Alternative energy system" means the small-scale generation or release of energy from 1 or any combination of the following types of energy systems:

(*i*) A fuel cell energy system.

(*ii*) A photovoltaic energy system.

(*iii*) A solar-thermal energy system.

(*iv*) A wind energy system.

(*v*) A CHP energy system.

(*vi*) A microturbine energy system.

(*vii*) A miniturbine energy system.

(*viii*) A Stirling cycle energy system.

(*ix*) A battery cell energy system.

(*x*) A clean fuel energy system.

(*xi*) An electricity storage system.

(d) "Alternative energy technology" means equipment, component parts, materials, electronic devices, testing equipment, and related systems that are solely related to the following:

(*i*) The storage or generation of hydrogen for use in an alternative energy system.

(*ii*) The process of generating and putting into a usable form the energy generated by an alternative energy system. Alternative energy technology does not include those component parts of an alternative energy system that are required regardless of the energy source.

(*iii*) A microgrid. As used in this subparagraph, "microgrid" means the lines, wires, and controls to connect 2 or more alternative energy systems.

(e) "Alternative energy technology business" means a business engaged solely in the research, development, or manufacturing of alternative energy technology.

(f) "Alternative energy vehicle" means a motor vehicle manufactured by an original equipment manufacturer that fully warrants and certifies that the motor vehicle meets federal motor vehicle safety standards for its class of vehicles as defined by the Michigan

vehicle code, 1949 PA 300, MCL 257.1 to 257.923, and certifies that the motor vehicle meets local emissions standards, that is propelled by an alternative energy system. Alternative energy vehicle includes the following:

(*i*) An alternative fueled vehicle. As used in this subparagraph, "alternative fueled vehicle" means a motor vehicle that can only be powered by a clean fuel energy system and can only be fueled by a clean fuel.

(*ii*) A fuel cell vehicle. As used in this subparagraph, "fuel cell vehicle" means a motor vehicle powered solely by a fuel cell energy system.

(*iii*) An electric vehicle. As used in this subparagraph, "electric vehicle" means a motor vehicle powered solely by a battery cell energy system.

(*iv*) A hybrid vehicle. As used in this subparagraph, "hybrid vehicle" means a motor vehicle that can only be powered by 2 or more alternative energy systems.

(*v*) A solar vehicle. As used in this subparagraph, "solar vehicle" means a motor vehicle powered solely by a photovoltaic energy system.

(*vi*) A hybrid electric vehicle. As used in this subparagraph, "hybrid electric vehicle" means a motor vehicle powered by an integrated propulsion system consisting of an electric motor and combustion engine. Hybrid electric vehicle does not include a retrofitted conventional diesel or gasoline engine. A hybrid electric vehicle obtains the power necessary to propel the motor vehicle from a combustion engine and 1 of the following:

(A) A battery cell energy system.

(B) A fuel cell energy system.

(C) A photovoltaic energy system.

(g) "Alternative energy zone" means a renaissance zone designated as an alternative energy zone by the board of the Michigan strategic fund under section 8a of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2688a.

(h) "Authority" means the Michigan next energy authority created under section 3.

(i) "Battery cell" means a closed electrochemical system that converts chemical energy from oxidation and reduction reactions directly into electric energy without combustion and without external fuel and consists of an anode, a cathode, and an electrolyte.

(j) "Battery cell energy system" means 1 or more battery cells and an inverter or other power conditioning unit used to perform 1 or more of the following functions:

(*i*) Propel a motor vehicle or an alternative energy marine propulsion system.

(*ii*) Provide electricity that is distributed within a dwelling or other structure.

(*iii*) Provide electricity to operate a portable electronic device including, but not limited to, a laptop computer, a personal digital assistant, or a cell phone. For purposes of this subparagraph only, a battery cell energy system shall only use advanced battery cells.

(k) "Board" means the governing body of an authority under section 4.

(*l*) "CHP energy system" means an integrated unit that generates power and either cools, heats, or controls humidity in a building or provides heating, drying, or chilling for an industrial process that includes and is limited to both of the following:

(*i*) An absorption chiller, a desiccant dehumidifier, or heat recovery equipment.

(*ii*) One of the following:

(A) An internal combustion engine, an external combustion engine, a microturbine, or a miniturbine, fueled solely by a clean fuel.

(B) A fuel cell energy system.

(m) "Clean fuel" means 1 or more of the following:

(*i*) Methane.

(*ii*) Natural gas.

(*iii*) Methanol neat or methanol blends containing at least 85% methanol.

(*iv*) Denatured ethanol neat or ethanol blends containing at least 85% ethanol.

(*v*) Compressed natural gas.

(*vi*) Liquefied natural gas.

(*vii*) Liquefied petroleum gas.

(*viii*) Hydrogen.

(n) "Clean fuel energy system" means a device that is designed and used solely for the purpose of generating power from a clean fuel. Clean fuel energy system does not include a conventional gasoline or diesel fuel engine or a retrofitted conventional diesel or gasoline engine.

(o) "Department" means the department of management and budget.

(p) "Electricity storage device" means a device, including a capacitor, that directly stores electrical energy without conversion to an intermediary medium.

(q) "Electricity storage system" means 1 or more electricity storage devices and inverters or other power conditioning equipment.

(r) "Fuel cell energy system" means 1 or more fuel cells or fuel cell stacks and an inverter or other power conditioning unit. A fuel cell energy system may also include a fuel processor. As used in this subdivision:

(*i*) "Fuel cell" means an electrochemical device that uses an external fuel and continuously converts the energy released from the oxidation of fuel by oxygen directly into electricity without combustion and consists of an anode, a cathode, and an electrolyte.

(*ii*) "Fuel cell stack" means an assembly of fuel cells.

(*iii*) "Fuel processor" means a device that converts a fuel, including, but not limited to, methanol, natural gas, or gasoline, into a hydrogen rich gas, without combustion for use in a fuel cell.

(s) "Microturbine energy system" means a system that generates electricity, composed of a compressor, combustor, turbine, and generator, fueled solely by a clean fuel with a capacity of not more than 250 kilowatts. A microturbine energy system may include an alternator and shall include a recuperator if the use of the recuperator increases the efficiency of the energy system.

(t) "Miniturbine energy system" means a system that generates electricity, composed of a compressor, combustor, turbine, and generator, fueled solely by a clean fuel with a capacity of not more than 2 megawatts. A miniturbine energy system may also include an alternator and a recuperator.

(u) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(v) "Photovoltaic energy system" means a solar energy device composed of 1 or more photovoltaic cells or photovoltaic modules and an inverter or other power conditioning unit. A photovoltaic system may also include batteries for power storage or an electricity storage device. As used in this subdivision:

(*i*) "Photovoltaic cell" means an integrated device consisting of layers of semiconductor materials and electrical contacts capable of converting incident light directly into electricity.

(*ii*) "Photovoltaic module" means an assembly of photovoltaic cells.

(w) "Small-scale" means a single energy system with a generating capacity of not more than 2 megawatts or an integrated energy system with a generating capacity of not more than 10 megawatts.

(x) "Solar thermal energy system" means an integrated unit consisting of a sunlight collection device, a system containing a heat transfer fluid to receive the collected sunlight, and heat exchangers to transfer the solar energy to a thermal storage tank to heat or cool spaces or water or to generate electricity.

(y) "Stirling cycle energy system" means a closed-cycle, regenerative heat engine that is fueled solely by a clean fuel and uses an external combustion process, heat exchangers, pistons, a regenerator, and a confined working gas, such as hydrogen or helium, to convert heat into mechanical energy. A Stirling cycle energy system may also include a generator to generate electricity.

(z) "Wind energy system" means an integrated unit consisting of a wind turbine composed of a rotor, an electrical generator, a control system, an inverter or other power conditioning unit, and a tower, which uses moving air to produce power.

207.823 Michigan next energy authority; creation; powers and duties; contract; records and accounts.

Sec. 3. (1) There is created by this act a public body corporate and politic known as the Michigan next energy authority. The authority shall be located within the department.

(2) The authority shall exercise its prescribed statutory powers, duties, and functions independently of the director of the department. The budgeting, procurement, and related administrative functions of the authority shall be performed under the direction and supervision of the director of the department.

(3) The authority may contract with the department for the purpose of maintaining the rights and interests of the authority.

(4) The accounts of the authority may be subject to annual financial audits by the state auditor general. Records of the authority shall be maintained according to generally accepted accounting principles.

207.824 Powers and duties of board.

Sec. 4. (1) An authority created under this act is governed by a board consisting of the members of the authority under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(2) The board shall organize and adopt its own policies, procedures, schedule of regular meetings, and a regular meeting date, place, and time. The board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) A board may act only by resolution. A majority of the members of the board then in office, or of any committee of the board, shall constitute a quorum for the transaction of business.

(5) The board may employ legal and technical experts, private consultants, accountants, and other agents or employees for rendering professional and technical assistance and advice as may be necessary. The authority shall determine the qualifications, duties, and compensation of those it employs.

207.825 Powers and duties of authority.

Sec. 5. (1) Except as otherwise provided in this act, the authority may do all things necessary to implement the purposes of this act, including, but not limited to, all of the following:

(a) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal and alter the seal at the pleasure of the board.

(c) Sue and be sued in its own name and plead and be impleaded.

(d) Solicit and accept gifts, grants, loans, and other assistance from any person or the federal, the state, or a local government or any agency of the federal, the state, or a local government or participate in any other way in any federal, state, or local government program.

(e) Research and publish studies, investigations, surveys, and findings on the development and use of alternative energy technology.

(f) Promote the research, development, and manufacturing of alternative energy technology.

(g) Do all other things necessary to promote and increase the research, development, and manufacturing of alternative energy technology and to otherwise achieve the objectives and purposes of the authority.

(2) The authority shall certify all of the following personal property and shall provide proof of certification to the assessor of the local tax collecting unit in which the following personal property is located:

(a) Alternative energy marine propulsion systems, alternative energy systems, and alternative energy vehicles that meet both of the following requirements:

(*i*) Were not previously subject to the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(*ii*) Were not previously exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, except for personal property exempt under section 9c or 9i of the general property tax act, 1893 PA 206, MCL 211.9c and 211.9i.

(b) Tangible personal property of a business that is an alternative energy technology business that meets both of the following requirements:

(*i*) Was not previously subject to the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(*ii*) Was not previously exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, except for personal property exempt under section 9c or 9i of the general property tax act, 1893 PA 206, MCL 211.9c and 211.9i.

(c) Tangible personal property of a business that is not an alternative energy technology business that is used solely for the purpose of researching, developing, or manufacturing an alternative energy technology that meets both of the following requirements:

(*i*) Was not previously subject to the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(*ii*) Was not previously exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, except for personal property exempt under section 9c or 9i of the general property tax act, 1893 PA 206, MCL 211.9c and 211.9i.

(3) The authority shall certify and provide proof of certification of the following business entities:

(a) An alternative energy technology business. The authority shall provide proof of certification to the assessor of the local tax collecting unit in which the alternative energy technology business is located.

(b) A taxpayer as an eligible taxpayer for the purposes of claiming the credit under section 39e(2) of the single business tax act, 1975 PA 228, MCL 208.39e.

(4) The authority shall certify and provide proof of certification of the qualified business activity of a taxpayer eligible under subsection (3)(b). As used in this subsection, "qualified business activity" means that term as defined in section 39e of the single business tax act, 1975 PA 228, MCL 208.39e.

(5) The authority shall not operate an alternative energy technology business or otherwise engage in the manufacturing of any commercial products.

207.826 Tax exemption.

Sec. 6. The authority created under this act shall be exempt from and shall not be required to pay taxes on property, both real and personal, belonging to the authority, which is used for a public purpose. Property of the authority is public property devoted to an essential public and governmental function and purpose.

207.827 Construction of act.

Sec. 7. This act shall be construed liberally to effectuate the legislative intent and its purposes. All powers granted shall be cumulative and not exclusive and shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

This act is ordered to take immediate effect.
Approved October 17, 2002.
Filed with Secretary of State October 17, 2002.

[No. 594]

(SB 555)

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," (MCL 330.1001 to 330.2106) by adding section 204b.

The People of the State of Michigan enact:

330.1204b Regional entity.

Sec. 204b. (1) A combination of community mental health organizations or authorities may establish a regional entity by adopting bylaws that satisfy the requirements of this

section. A community mental health agency may combine with a community mental health organization or authority to establish a regional entity if the board of commissioners of the county or counties represented by the community mental health agency adopts bylaws that satisfy the requirements of this section. All of the following shall be stated in the bylaws establishing the regional entity:

(a) The purpose and power to be exercised by the regional entity to carry out the provisions of this act, including the manner by which the purpose shall be accomplished or the power shall be exercised.

(b) The manner in which a community mental health services program will participate in governing the regional entity, including, but not limited to, all of the following:

(*i*) Whether a community mental health services program that subsequently participates in the regional entity may participate in governing activities.

(*ii*) The circumstances under which a participating community mental health services program may withdraw from the regional entity and the notice required for that withdrawal.

(*iii*) The process for designating the regional entity's officers and the method of selecting the officers. This process shall include appointing a fiscal officer who shall receive, deposit, invest, and disburse the regional entity's funds in the manner authorized by the bylaws or the regional entity's governing body. A fiscal officer may hold another office or other employment with the regional entity or a participating community mental health services program.

(c) The manner in which the regional entity's assets and liabilities shall be allocated to each participating community mental health services program, including, at a minimum, all of the following:

(*i*) The manner for equitably providing for, obtaining, and allocating revenues derived from a federal or state grant or loan, a gift, bequest, grant, or loan from a private source, or an insurance payment or service fee.

(*ii*) The method or formula for equitably allocating and financing the regional entity's capital and operating costs, payments to reserve funds authorized by law, and payments of principal and interest on obligations.

(*iii*) The method for allocating any of the regional entity's other assets.

(*iv*) The manner in which, after the completion of its purpose as specified in the regional entity's bylaws, any surplus funds shall be returned to the participating community mental health services programs.

(d) The manner in which a participating community mental health services program's special fund account created under section 226a shall be allocated.

(e) A process providing for strict accountability of all funds and the manner in which reports, including an annual independent audit of all the regional entity's receipts and disbursements, shall be prepared and presented.

(f) The manner in which the regional entity shall enter into contracts including a contract involving the acquisition, ownership, custody, operation, maintenance, lease, or sale of real or personal property and the disposition, division, or distribution of property acquired through the execution of the contract.

(g) The manner for adjudicating a dispute or disagreement among participating community mental health services programs.

(h) The effect of a participating community mental health service program's failure to pay its designated share of the regional entity's costs and expenses, and the rights of the other participating community mental health services programs as a result of that failure.

(i) The process and vote required to amend the bylaws.

(j) Any other necessary and proper matter agreed to by the participating community mental health services programs.

(2) Except as otherwise stated in the bylaws, a regional entity has all of the following powers:

(a) The power, privilege, or authority that the participating community mental health services programs share in common and may exercise separately under this act, whether or not that power, privilege, or authority is specified in the bylaws establishing the regional entity.

(b) The power to contract with the state to serve as the medicaid specialty service prepaid health plan for the designated service areas of the participating community mental health services programs.

(c) The power to accept funds, grants, gifts, or services from the federal government or a federal agency, the state or a state department, agency, instrumentality, or political subdivision, or any other governmental unit whether or not that governmental unit participates in the regional entity, and from a private or civic source.

(d) The power to enter into a contract with a participating community mental health service program for any service to be performed for, by, or from the participating community mental health services program.

(e) The power to create a risk pool and take other action as necessary to reduce the risk that a participating community mental health services program otherwise bears individually.

(3) A regional entity established under this section is a public governmental entity separate from the county, authority, or organization that establishes it.

(4) All the privileges and immunity from liability and exemptions from laws, ordinances, and rules provided under section 205(3)(b) to county community mental health service programs and their board members, officers, and administrators, and county elected officials and employees of county government are retained by a regional entity created under this section and the regional entity's board members, officers, agents, and employees.

(5) A regional entity shall provide an annual report of its activities to each participating community mental health services program.

(6) The regional entity's bylaws shall be filed with the clerk of each county in which a participating community mental health services program is located and with the secretary of state, before the bylaws take effect.

(7) If a regional entity assumes the duties of a participating community mental health services program or contracts with a private individual or entity to assume the duties of a participating community mental health services program, the regional entity shall comply with all of the following:

(a) The manner of employing, compensating, transferring, or discharging necessary personnel is subject to the provisions of the applicable civil service and merit systems and the following restrictions:

(*i*) An employee of a regional entity is a public employee.

(*ii*) A regional entity and its employees are subject to 1947 PA 336, MCL 423.201 to 423.217.

(b) At the time a regional entity is established under this section, the employees of the participating community mental health services program who are transferred to the

regional entity and appointed as employees shall retain all the rights and benefits for 1 year. If at the time a regional entity is established under this section a participating community mental health services program ceases to operate, the employees of the participating community mental health services program shall be transferred to the regional entity and appointed as employees who shall retain all the rights and benefits for 1 year. An employee of the regional entity shall not, by reason of the transfer, be placed in a worse position for a period of 1 year with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or another benefit that the employee had as an employee of the participating community mental health services program. A transferred employee's accrued benefits or credits shall not be diminished by reason of the transfer.

(c) If a participating community mental health services program was the designated employer or participated in the development of a collective bargaining agreement, the regional entity assumes and is bound by the existing collective bargaining agreement. Establishing a regional entity does not adversely affect existing rights or obligations contained in the existing collective bargaining agreement. For the purposes of this subsection, "participation in the development of a collective bargaining agreement" means that a representative of the participating community mental health services program actively participated in bargaining sessions with the employer representative and union or was consulted during the bargaining process.

This act is ordered to take immediate effect.
Approved October 17, 2002.
Filed with Secretary of State October 17, 2002.

[No. 595]

(SB 556)

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 226 (MCL 330.1226), as amended by 2000 PA 273.

The People of the State of Michigan enact:

330.1226 Board; powers and duties; appointment of executive director.

Sec. 226. (1) The board of a community mental health services program shall do all of the following:

(a) Annually conduct a needs assessment to determine the mental health needs of the residents of the county or counties it represents and identify public and nonpublic services

necessary to meet those needs. Information and data concerning the mental health needs of individuals with developmental disability, serious mental illness, and serious emotional disturbance shall be reported to the department in accordance with procedures and at a time established by the department, along with plans to meet identified needs. It is the responsibility of the community mental health services program to involve the public and private providers of mental health services located in the county or counties served by the community mental health program in this assessment and service identification process. The needs assessment shall include information gathered from all appropriate sources, including community mental health waiting list data and school districts providing special education services.

(b) Annually review and submit to the department a needs assessment report, annual plan, and request for new funds for the community mental health services program. The standard format and documentation of the needs assessment, annual plan, and request for new funds shall be specified by the department.

(c) In the case of a county community mental health agency, obtain approval of its needs assessment, annual plan and budget, and request for new funds from the board of commissioners of each participating county before submission of the plan to the department. In the case of a community mental health organization, provide a copy of its needs assessment, annual plan, request for new funds, and any other document specified in accordance with the terms and conditions of the organization's inter-local agreement to the board of commissioners of each county creating the organization. In the case of a community mental health authority, provide a copy of its needs assessment, annual plan, and request for new funds to the board of commissioners of each county creating the authority.

(d) Submit the needs assessment, annual plan, and request for new funds to the department by the date specified by the department. The submission constitutes the community mental health services program's official application for new state funds.

(e) Provide and advertise a public hearing on the needs assessment, annual plan, and request for new funds before providing them to the county board of commissioners.

(f) Submit to each board of commissioners for their approval an annual request for county funds to support the program. The request shall be in the form and at the time determined by the board or boards of commissioners.

(g) Annually approve the community mental health services program's operating budget for the year.

(h) Take those actions it considers necessary and appropriate to secure private, federal, and other public funds to help support the community mental health services program.

(i) Approve and authorize all contracts for the provision of services.

(j) Review and evaluate the quality, effectiveness, and efficiency of services being provided by the community mental health services program. The board shall identify specific performance criteria and standards to be used in the review and evaluation. These shall be in writing and available for public inspection upon request.

(k) Subject to subsection (3), appoint an executive director of the community mental health services program who meets the standards of training and experience established by the department.

(*l*) Establish general policy guidelines within which the executive director shall execute the community mental health services program.

(m) Require the executive director to select a physician, a registered professional nurse with a specialty certification issued under section 17210 of the public health code, 1978 PA 368, MCL 333.17210, or a licensed psychologist to advise the executive director on treatment issues.

(2) A community mental health services program may do all of the following:

(a) Establish demonstration projects allowing the executive director to do 1 or both of the following:

(*i*) Issue a voucher to a recipient in accordance with the recipient's plan of services developed by the community mental health services program.

(*ii*) Provide funding for the purpose of establishing revolving loans to assist recipients of public mental health services to acquire or maintain affordable housing. Funding under this subparagraph shall only be provided through an agreement with a nonprofit fiduciary.

(b) Carry forward any surplus of revenue over expenditures under a capitated managed care system. Capitated payments under a managed care system are not subject to cost settlement provisions of section 236.

(c) Carry forward the operating margin up to 5% of the community mental health services program's state share of the operating budget for the fiscal years ending September 30, 2000, 2001, 2002, 2003, and 2004. As used in this subdivision, "operating margin" means the excess of state revenue over state expenditures for a single fiscal year exclusive of capitated payments under a managed care system. In the case of a community mental health authority, this carryforward is in addition to the reserve accounts described in section 205(4)(h).

(d) Pursue, develop, and establish partnerships with private individuals or organizations to provide mental health services.

(e) Share the costs or risks, or both, of managing and providing publicly funded mental health services with other community mental health services programs through participation in risk pooling arrangements, reinsurance agreements, and other joint or cooperative arrangements as permitted by law.

(3) In the case of a county community mental health agency, the initial appointment by the board of an individual as executive director is effective unless rejected by a 2/3 vote of the county board of commissioners within 15 calendar days.

This act is ordered to take immediate effect.
Approved October 17, 2002.
Filed with Secretary of State October 17, 2002.

[No. 596]

(SB 557)

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 222 (MCL 330.1222), as amended by 1995 PA 290.

The People of the State of Michigan enact:

330.1222 Board; composition; residence of members; exclusions; approval of contract; exception; size of board in excess of § 330.1212; compliance.

Sec. 222. (1) The composition of a community mental health services board shall be representative of providers of mental health services, recipients or primary consumers of mental health services, agencies and occupations having a working involvement with mental health services, and the general public. At least 1/3 of the membership shall be primary consumers or family members, and of that 1/3 at least 2 members shall be primary consumers. All board members shall be 18 years of age or older.

(2) Not more than 4 members of a board may be county commissioners, except that if a board represents 5 or more counties, the number of county commissioners who may serve on the board may equal the number of counties represented on the board, and the total of 12 board memberships shall be increased by the number of county commissioners serving on the board that exceeds 4. Not more than half of the total board members may be state, county, or local public officials. For purposes of this section, public officials are defined as individuals serving in an elected or appointed public office or employed more than 20 hours per week by an agency of federal, state, city, or local government.

(3) A board member shall have his or her primary place of residence in the county he or she represents.

(4) An individual shall not be appointed to and shall not serve on a board if he or she is 1 or more of the following:

(a) Employed by the department or the community mental health services program.

(b) A party to a contract with the community mental health services program or administering or benefiting financially from a contract with the community mental health services program, except for a party to a contract between a community mental health services program and a regional entity or a separate legal or an administrative entity created by 2 or more community mental health services programs under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or under 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536.

(c) Serving in a policy-making position with an agency under contract with the community mental health services program, except for an individual serving in a policy-making position with a joint board or commission established under 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, or a regional entity to provide community mental health services.

(5) If a board member is an employee or independent contractor in other than a policy-making position with an agency with which the board is considering entering into a contract, the contract shall not be approved unless all of the following requirements are met:

(a) The board member shall promptly disclose his or her interest in the contract to the board.

(b) The contract shall be approved by a vote of not less than 2/3 of the membership of the board in an open meeting without the vote of the board member in question.

(c) The official minutes of the meeting at which the contract is approved contains the details of the contract including, but not limited to, names of all parties and the terms of the contract and the nature of the board member's interest in the contract.

(6) Subsection (5) does not apply to a board member who is an employee or independent contractor in other than a policy-making position with a joint board or commission established under 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, a separate legal or administrative entity established under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501

to 124.512, a combination of municipal corporations joined under 1951 PA 35, MCL 124.1 to 124.13, or a regional entity to provide community mental health services.

(7) In order to meet the requirement under subsection (1) related to the appointment of primary consumers and family members without terminating the appointment of a board member serving on the effective date of this subsection, the size of a board may exceed the size prescribed in section 212. A board that is different in size than that prescribed in section 212 shall be brought into compliance within 3 years after the appointment of the additional board members.

This act is ordered to take immediate effect.
Approved December 3, 2002.
Filed with Secretary of State December 3, 2002.

[No. 597]

(SB 1337)

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," (MCL 330.1001 to 330.2106) by adding section 232b.

The People of the State of Michigan enact:

330.1232b Specialty prepaid health plans.

Sec. 232b. (1) The department shall establish standards for community mental health services programs designated as specialty prepaid health plans under the medicaid managed care program described in section 109f of the social welfare act, 1939 PA 280, MCL 400.109f. The standards established under this section shall reference applicable federal regulations related to medicaid managed care programs and specify additional state requirements for specialty prepaid health plans. The standards established under this section shall be published in a departmental bulletin or by an updating insert to a departmental manual.

(2) As a condition for contracting and for receiving payment under the medicaid managed care program, a community mental health services program designated as a specialty prepaid health plan shall certify both of the following:

(a) That the program is in substantial compliance with the standards promulgated by the department and with applicable federal regulations.

(b) That the program has established policies and procedures to monitor compliance with the standards promulgated by the department and with applicable federal regulations and to ensure program integrity.

(3) The department shall conduct an annual review of all community mental health services programs designated as specialty prepaid health plans to verify the declarations made by the community mental health services program and to monitor compliance with the standards promulgated for specialty prepaid health plans and with applicable federal

regulations. The annual review process established under this section shall be published in a departmental bulletin or by an updating insert to a departmental manual.

(4) The department may conduct separate reviews of a specialty prepaid health plan in response to beneficiary complaints, financial status considerations, or health and safety concerns.

(5) Contracts with specialty prepaid health plans shall indicate the sanctions that the department may invoke if it makes a determination that a specialty prepaid health plan is not in substantial compliance with promulgated standards and with established federal regulations, that the specialty prepaid health plan has misrepresented or falsified information reported to the state or to the federal government, or that the specialty prepaid health plan has failed substantially to provide necessary covered services to recipients under the terms of the contract. Sanctions may include intermediate actions including, but not limited to, a monetary penalty imposed on the administrative and management operation of the specialty prepaid health plan, imposition of temporary state management of a community mental health services program operating as a specialty prepaid health plan, or termination of the department's medicaid managed care contract with the community mental health services program.

(6) Before imposing a sanction on a community mental health services program that is operating as a specialty prepaid health plan, the department shall provide that specialty prepaid health plan with timely written notice that explains both of the following:

(a) The basis and nature of the sanction.

(b) The opportunity for a hearing to contest or dispute the department's findings and intended sanction, prior to the imposition of the sanction. A hearing under this section is subject to the provisions governing a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, unless otherwise agreed to in the specialty prepaid health plan contract.

This act is ordered to take immediate effect.
Approved December 3, 2002.
Filed with Secretary of State December 3, 2002.

[No. 598]

(SB 3)

AN ACT to amend 1947 PA 179, entitled "An act to provide for the incorporation of certain municipal authorities for the collection or disposal, or both, of garbage or rubbish, or both, and for the operation of a dog pound; and to prescribe the powers, rights and duties thereof," (MCL 123.301 to 123.310) by adding section 11.

The People of the State of Michigan enact:

123.311 Entering or extending contract, obligation, bond, or note; sale or transfer of property; determination of current market value; withdrawal of member from qualified authority; payment; dissolution of authority; payment of environmental activities; distribution of assets; articles of incorporation; definitions.

Sec. 11. (1) After the effective date of the 2002 amendatory act that added this section, a qualified authority shall not enter into or extend any contract, obligation, bond, or note

that has, or as extended would have, a termination date after the termination date of the authority's most recently approved contract under section 5(1), unless the contract, obligation, bond, or note or extension thereof, is approved by all members.

(2) Within 90 days after a qualified authority decides to sell or transfer real property located within the territory of a member or former member, the member or former member may exercise the right of first refusal to purchase the real property at a price not less than the greater of the real property's current market value or the highest price offered for the real property in an arm's length, bona fide offer by a third party. The current market value of such real property shall be determined by an appraiser acceptable to the authority and the interested member. Any dispute regarding a determination of current market value shall be resolved by independent arbitration.

(3) Unless its withdrawal would cause an impairment of any contract, a member may withdraw from a qualified authority if all of the following requirements are met:

(a) The legislative body of the member adopts a resolution stating that the authority is no longer effectively serving the member's needs and declaring its decision to withdraw from the authority on a date specified in the resolution.

(b) The withdrawal date specified in the resolution under subdivision (a) is not either of the following:

(*i*) Less than 60 days after the date the resolution is adopted.

(*ii*) Within 1 year before the termination date of the authority's most recently approved contract under section 5(1) unless the filings required by subdivision (c) are made more than 1 year before the specified withdrawal date.

(c) The clerk of the member promptly files a certified copy of the resolution adopted under subdivision (a) with the authority and the secretary of state.

(4) By the withdrawal date, the withdrawing member, at its option, either shall pay to the authority the amount of the withdrawing member's fair share of the negative equity of the authority, if any, determined as of the withdrawal date, or shall provide the authority with a bond or other independent, insured guarantee that any such amount will be paid not later than 30 days after the expiration date of the authority's most recently approved contract under section 5(1). This subsection does not relieve the withdrawing member from either of the following:

(a) The member's fair share of any obligation to reimburse the authority following the member's withdrawal for any environmental liabilities subsequently incurred by the authority, to the extent that the environmental liabilities result from the authority's disposal of the withdrawn former member's municipal solid waste, recyclable materials, or yard waste.

(b) The member's payment of any money damages, owed on account of its or the authority's default under a contract under section 6 if the default and damages result directly and solely from the member's withdrawal and are necessary to prevent an impairment of the contract. If 2 or more members withdraw, they are jointly liable for damages under this subdivision.

(c) The member's fair share of any obligation to reimburse the authority following the member's withdrawal for liability incurred by the authority as a result of litigation or arbitration proceedings that were initiated before the date of withdrawal, or litigation or arbitration involving a cause of action arising before the date of withdrawal, if the total amount of the member's fair share of the obligation cannot be exactly determined by the date of withdrawal.

(5) At the option of the authority, by the withdrawal date, the authority shall pay to the withdrawing member the withdrawing member's fair share of the equity of the authority, determined as of the withdrawal date, or shall provide the withdrawing member with a bond or other independent, insured guarantee that such amount will be paid no later than 30 days after the expiration date of the authority's most recently approved contract under section 5(1). If an authority elects to provide such a bond or other guarantee, the withdrawn former member may direct the bonding company or guarantor at any time thereafter to pay from the bond or other guarantee any obligation or liability owed to the authority by the withdrawn former member, including, but not limited to, an obligation described in subsection (4)(a) or (b).

(6) Unless it would cause an impairment of an authority contract under section 6, a qualified authority shall dissolve if both of the following requirements are met:

(a) The legislative bodies of 60% of the members, weighted by the percentage of recent waste delivery, each adopt a resolution stating that the authority is no longer effectively serving the public good for which it was created and directing that the authority be dissolved pursuant to this subsection and subsections (7) to (9).

(b) The clerk of each member whose legislative body adopts a resolution under subdivision (a) promptly files a certified copy of the resolution with the authority and the secretary of state.

(7) Within 6 months after the requirements of subsection (6) are met, the qualified authority shall establish a mechanism to manage and pay for environmental activities required under existing law and cease the activities described in section 1 for which it was incorporated. Within 6 months after ceasing activities described in section 1, the authority shall settle its accounts, including, but not limited to, all vested or accrued employee benefits, employment contracts, collective bargaining agreements, and unemployment compensation, and, subject to subsection (2), shall sell all of its property. In addition, the authority shall establish a mechanism for handling future environmental liabilities. A qualified authority with respect to which the requirements of subsection (6) have been met and a new authority incorporated under subsection (10) may agree to the assignment of contracts from the qualified authority to the new authority.

(8) After the requirements of subsection (7) are met, the qualified authority shall distribute to each member that member's fair share of the authority's remaining assets.

(9) Upon distribution of the qualified authority's assets under subsection (8), both of the following apply:

(a) The authority is dissolved.

(b) All liabilities of each member and former member of the authority are terminated, except for both of the following:

(*i*) Any environmental liabilities attributed to the authority to the extent that the environmental liabilities result from the authority's disposal of the member's or former member's fair share of municipal solid waste, recyclable materials, or yard waste.

(*ii*) The member's fair share of any obligation to reimburse the authority following the dissolution for liability incurred by the authority as a result of litigation or arbitration proceedings that were initiated before the date of dissolution, or litigation or arbitration involving a cause of action arising before the date of dissolution, if the total amount of the member's fair share of the obligation cannot be exactly determined by the time the requirements of subsection (7) are met.

(10) Subsections (6) to (9) do not prevent the incorporation of a new authority by some or all of the members or former members of an authority with respect to which the requirements of subsection (6) have been met.

(11) If, after the effective date of the amendatory act that added this section, a qualified authority is incorporated or amends its articles of incorporation, the qualified authority shall include in its articles the provisions of subsections (3) to (9).

(12) As used in this act:

(a) "Appraiser" means an individual licensed under article 26 of the occupational code, 1980 PA 299, MCL 339.2601 to 339.2637.

(b) "Authority" means an authority incorporated under this act.

(c) "Corrective action" means that term as defined in section 11502 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11502.

(d) "Environmental liabilities" means the costs of landfill closure and postclosure obligations, the costs of corrective action, response activity costs, and fines, penalties, or damages required or assessed by the state under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(e) "Equity of the authority" means the total fund equity of the authority excluding contributions of capital attributed to the clean Michigan initiative bond fund as set forth in an audit conducted for this purpose except that liabilities shall be reduced by any estimated liabilities that were included in determining total fund equity.

(f) "Former member" means a member that has withdrawn from a qualified authority under this section or a prior member of a qualified authority that has been dissolved under this section.

(g) "Impairment", in reference to an authority contract, means a material default in the contract that cannot be cured by the payment of monetary damages.

(h) "Member" means a municipality that incorporated a qualified authority under section 1 or that became part of a qualified authority under section 7 and that has not withdrawn from the authority under this section.

(i) "Member's fair share" means the percentage determined by taking the tonnage of municipal solid waste, recyclable materials, and yard waste contributed by the member and disposed of by the authority since its incorporation and dividing that amount by the tonnage of municipal solid waste, recyclable materials, and yard waste contributed by all members and disposed of by the authority since its incorporation, as determined, in the event of a dispute, by statutory and binding arbitration.

(j) "Percentage of recent waste delivery" means the amount of municipal solid waste, recyclable materials, and yard waste generated within a particular member's territory and disposed of by the authority during the latest full calendar year for which the authority disposed of such materials or waste generated within the territory of that member, divided by the sum of such amounts for all members, as determined, in the event of a dispute, by independent arbitration.

(k) "Qualified authority" means an authority that as of the effective date of this section or thereafter is composed of 10 or more members and has a population residing within its territory of 250,000 or more.

(*l*) "Response activity costs" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

This act is ordered to take immediate effect.
Approved December 13, 2002.
Filed with Secretary of State December 16, 2002.

[No. 599]

(HB 5552)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 17401, 17431, and 17432 (MCL 333.17401, 333.17431, and 333.17432), sections 17401 and 17432 as amended by 1997 PA 151 and section 17431 as amended by 1994 PA 234.

The People of the State of Michigan enact:

333.17401 Definitions; principles of construction.

Sec. 17401. (1) As used in this part:

(a) "Optometrist" means an individual licensed under this article to engage in the practice of optometry.

(b) "Practice of optometry" means 1 or more of the following, but does not include the performance of invasive procedures:

(*i*) The examination of the human eye to ascertain the presence of defects or abnormal conditions that may be corrected, remedied, or relieved, or the effects of which may be corrected, remedied, or relieved by the use of lenses, prisms, or other mechanical devices.

(*ii*) The employment of objective or subjective physical means to determine the accommodative or refractive conditions or the range of powers of vision or muscular equilibrium of the human eye.

(*iii*) The adaptation or the adjustment of the lenses or prisms or the use of therapeutic pharmaceutical agents to correct, remedy, or relieve a defect or abnormal condition or to correct, remedy, or relieve the effect of a defect or abnormal condition of the human eye.

(*iv*) The examination of the human eye for contact lenses and the fitting or insertion of contact lenses to the human eye.

(*v*) The employment of objective or subjective means, including diagnostic pharmaceutical agents by an optometrist who meets the requirements of section 17412, for the examination of the human eye for the purpose of ascertaining a departure from the normal, measuring of powers of vision, and adapting lenses for the aid of those powers.

(c) "Diagnostic pharmaceutical agent" means a topically administered prescription drug or other topically administered drug used for the purpose of investigating, analyzing, and diagnosing a defect or abnormal condition of the human eye or ocular adnexa.

(d) "Therapeutic pharmaceutical agent" means 1 or more of the following:

(*i*) A topically administered prescription drug or other topically administered drug used for the purpose of investigating, analyzing, diagnosing, correcting, remedying, or relieving a defect or abnormal condition of the anterior segment of the human eye or for the purpose of correcting, remedying, or relieving the effects of a defect or abnormal condition of the anterior segment of the human eye.

(*ii*) A topically or orally administered antiglaucoma drug.

(*iii*) An orally administered prescription drug or other orally administered drug used for the purpose of investigating, analyzing, diagnosing, correcting, remedying, or relieving a defect or abnormal condition of the anterior segment of the human eye and adnexa or for the purpose of investigating, analyzing, diagnosing, correcting, remedying, or relieving the effects of a defect or abnormal condition of the anterior segment of the human eye and adnexa that is administered by an optometrist who has completed 50% of the continuing education hours required for renewal of a license in the category of pharmacological management of ocular conditions.

(e) "Drug" means that term as defined in section 17703, but does not include a controlled substance as defined in section 7104 and included in schedule 2 under section 7214, an oral cortical steroid, or a prescription drug. However, drug does include a controlled substance included in schedules 3, 4, and 5 under sections 7216, 7218, and 7220, respectively, and dihydrocodeinone combination drugs.

(f) "Prescription drug" means that term as defined in section 17708, but does not include a controlled substance as defined in section 7104 and included in schedule 2 under section 7214 or an oral cortical steroid. However, prescription drug does include a controlled substance included in schedules 3, 4, and 5 under sections 7216, 7218, and 7220, respectively, and dihydrocodeinone combination drugs.

(g) "Physician" means that term as defined in section 17001 or 17501.

(h) "Invasive procedures" means all of the following:

(*i*) The use of lasers other than for observation.

(*ii*) The use of ionizing radiation.

(*iii*) The use of therapeutic ultrasound.

(*iv*) The administration of medication by injection.

(*v*) Procedures that include an incision.

(2) In addition to the definitions in this part, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 161 contains definitions applicable to this part.

333.17431 Renewal of license; evidence required; completion of hours or courses in pain and symptom management as continuing education; rules.

Sec. 17431. (1) Notwithstanding the requirements of part 161, the board may require a licensee seeking renewal of a license to furnish the board with satisfactory evidence that during the 2 years immediately preceding the application for renewal the licensee has attended an education program approved by the board and totaling not less than 40 hours in subjects related to the practice of optometry and designed to further educate licensees.

(2) As required under section 16204, the board shall promulgate rules requiring each applicant for license renewal to complete as part of the education program required under subsection (1) an appropriate number of hours or courses in pain and symptom management.

333.17432 Duties of optometrist upon determining symptoms evidencing disease; conditions requiring consultation with physician for further diagnosis and treatment; diagnosis and treatment of glaucoma.

Sec. 17432. (1) Whether or not diagnostic pharmaceutical agents or therapeutic pharmaceutical agents have been used, if an optometrist determines from interviewing or examining a patient, using judgment and that degree of skill, care, knowledge, and attention ordinarily possessed and exercised by optometrists in good standing under like circumstances, that there are present in that patient signs or symptoms that may be evidence of disease that the optometrist is not authorized to treat under this part, then the optometrist shall do both of the following:

(a) Promptly advise that patient to seek evaluation by an appropriate physician for diagnosis and possible treatment.

(b) Not attempt to treat the condition by the use of diagnostic pharmaceutical agents, therapeutic pharmaceutical agents, or any other means.

(2) Subject to subsections (3) and (4), if an optometrist treats a patient for a condition or disease that the optometrist is authorized to treat under this part, and if that condition or disease may be related to a nonlocalized or systemic condition or disease or does not demonstrate adequate clinical progress as a result of the treatment, the optometrist shall consult an appropriate physician for further diagnosis and possible treatment and to determine if the condition or disease is related to a nonlocalized or systemic condition or disease.

(3) When a diagnosis of glaucoma is made and treatment has begun, the treating optometrist shall consult an appropriate physician for further diagnosis and possible treatment if the condition does not demonstrate adequate clinical progress as a result of the treatment.

(4) If an optometrist diagnoses that a patient has acute glaucoma, the optometrist shall, as soon as possible, consult a physician for further diagnosis and possible treatment.

This act is ordered to take immediate effect.
Approved December 13, 2002.
Filed with Secretary of State December 16, 2002.

[No. 600]

(SB 686)

AN ACT to amend 1967 PA 270, entitled "An act to provide for the release of certain information or data relating to health care research or education, health care entities, practitioners, or professions, or certain governmentally funded programs; to limit the liability with respect to the release of certain information or data; and to safeguard the confidential character of certain information or data," by amending section 1 (MCL 331.531), as amended by 1998 PA 59.

The People of the State of Michigan enact:

331.531 Providing information or data to review entity regarding physical condition, psychological condition, health care of person, or qualifications of provider; "review entity" defined; liability; disciplinary actions to be reported to department of consumer and industry services.

Sec. 1. (1) A person, organization, or entity may provide to a review entity information or data relating to the physical or psychological condition of a person, the necessity, appropriateness, or quality of health care rendered to a person, or the qualifications, competence, or performance of a health care provider.

(2) As used in this section, "review entity" means 1 of the following:

(a) A duly appointed peer review committee of 1 of the following:

(*i*) The state.

(*ii*) A state or county association of health care professionals.

(*iii*) A health facility or agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(*iv*) A health care association.

(*v*) A health care network, a health care organization, or a health care delivery system composed of health professionals licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, or composed of health facilities licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or both.

(*vi*) A health plan qualified under the program for medical assistance administered by the department of community health under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(b) A professional standards review organization qualified under federal or state law.

(c) A foundation or organization acting pursuant to the approval of a state or county association of health care professionals.

(d) A state department or agency whose jurisdiction encompasses the information described in subsection (1).

(e) An organization established by a state association of hospitals or physicians, or both, that collects and verifies the authenticity of documents and other data concerning the qualifications, competence, or performance of licensed health care professionals and that acts as a health facility's agent pursuant to the health care quality improvement act of 1986, title IV of Public Law 99-660, 100 Stat. 3784.

(f) A professional corporation, limited liability partnership, or partnership consisting of 10 or more allopathic physicians, osteopathic physicians, or podiatric physicians and surgeons licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, who regularly practice peer review consistent with the requirements of article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(3) A person, organization, or entity is not civilly or criminally liable:

(a) For providing information or data pursuant to subsection (1).

(b) For an act or communication within its scope as a review entity.

(c) For releasing or publishing a record of the proceedings, or of the reports, findings, or conclusions of a review entity, subject to sections 2 and 3.

(4) The immunity from liability provided under subsection (3) does not apply to a person, organization, or entity that acts with malice.

(5) An entity described in subsection (2)(a)(*v*) or (*vi*) that employs, contracts with, or grants privileges to a health professional licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, shall report each of the following to the department of consumer and industry services not more than 30 days after it occurs:

(a) Disciplinary action taken by the entity against a health professional licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, based on the health professional's professional competence, disciplinary action that results in a change of the health professional's employment status, or disciplinary action based on conduct that adversely affects the health professional's clinical privileges for a period of more than 15 days. As used in this subdivision, "adversely affects" means the reduction, restriction, suspension, revocation, denial, or failure to renew the clinical privileges of a health professional by an entity described in subsection (2)(a)(*v*) or (*vi*).

(b) Restriction or acceptance of the surrender of the clinical privileges of a health professional under either of the following circumstances:

(*i*) The health professional is under investigation by the entity.

(*ii*) There is an agreement in which the entity agrees not to conduct an investigation into the health professional's alleged professional incompetence or improper professional conduct.

(c) A case in which a health professional resigns or terminates a contract or whose contract is not renewed instead of the entity taking disciplinary action against the health professional.

(6) Upon request by another entity described in subsection (2) seeking a reference for purposes of changing or granting staff privileges, credentials, or employment, an entity described in subsection (2) that employs, contracts with, or grants privileges to health professionals licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, shall notify the requesting entity of any disciplinary or other action reportable under subsection (5) that it has taken against a health professional employed by, under contract to, or granted privileges by the entity.

(7) For the purpose of reporting disciplinary actions under subsection (5), an entity described in subsection (2)(a)(*v*) or (*vi*) shall include only the following in the information provided:

(a) The name of the health professional against whom disciplinary action has been taken.

(b) A description of the disciplinary action taken.

(c) The specific grounds for the disciplinary action taken.

(d) The date of the incident that is the basis for the disciplinary action.

(8) For the purpose of reporting disciplinary actions under subsection (6), an entity described in subsection (2) shall include in the report only the information described in subsection (7)(a) to (d).

This act is ordered to take immediate effect.
Approved December 13, 2002.
Filed with Secretary of State December 16, 2002.

[No. 601]

(HB 6256)

AN ACT to amend 1965 PA 232, entitled "An act relating to the marketing of agricultural commodities; to provide for marketing programs, agreements, referendums by producers, assessments on producers, and commodity committees; and to prescribe the functions of the department of agriculture relative thereto including powers of enforcement of this act; and to prescribe penalties," by amending the title and sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 17, 19, 21, 22, 23, and 24 (MCL 290.652, 290.653, 290.654, 290.655, 290.657, 290.658, 290.659, 290.660, 290.661, 290.667, 290.669, 290.671, 290.672, 290.673, and 290.674), sections 2, 3, 5, 7, 9, 10, 21, and 22 as amended by 1996 PA 216, section 8 as amended by 1997 PA 20, and sections 19, 23, and 24 as amended by 1980 PA 196; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act relating to the marketing of agricultural commodities or agricultural commodity inputs; to provide for marketing and research programs, agreements, referendums by producers, assessments on producers, and commodity committees; and to prescribe certain functions of the department of agriculture relative thereto including powers of enforcement of this act; and to prescribe remedies and penalties.

290.652 Definitions.

Sec. 2. As used in this act:

(a) "Agricultural commodity" means all agricultural, aquacultural, silvicultural, horticultural, floricultural, or viticultural products, livestock or livestock products, Christmas trees, bees, maple syrup, honey, commercial fish or fish products, and seeds produced in this state, either in their natural state or as processed by the producer of the commodity. The kinds, types, and subtypes of products to be classed together as an agricultural commodity for the purposes of this act shall be determined on the basis of common usage and practice.

(b) "Agricultural commodity input" means an item used in the production, processing, or packaging of an agricultural commodity that is assessed by a specific marketing agreement. Agricultural commodity input does not include feed, fertilizer, and pesticides.

(c) "Committee" means the commodity committee or advisory board established under a marketing program.

(d) "Department" means the state department of agriculture.

(e) "Director" means the director of the department of agriculture.

(f) "Distributor" means a person engaged in selling, offering for sale, marketing, or distributing an agricultural commodity or agricultural commodity input that he or she has purchased or acquired from a producer or that the person is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. Distributor does not include a retailer of an agricultural commodity except for either of the following:

(*i*) A retailer who purchases or acquires from or handles on behalf of a producer an agricultural commodity not previously subjected to regulations by the marketing program covering the agricultural commodity.

(*ii*) A retailer specifically identified by a marketing program that is subject to an assessment.

(g) "Financial institution" means a state or nationally chartered bank, member of the farm credit system, savings and loan association, savings bank, and credit union, whose deposits are insured by an agency of the United States government and that maintains a principal or branch office located in this state under the laws of this state or the United States.

(h) "Handler" means a person who takes title to and is engaged in the operation of packing, cleaning, drying, packaging, sizing, hauling, grading, selling, offering for sale, or marketing a marketable agricultural commodity or an agricultural commodity input in commercial quantities as defined in a marketing program, who as owner, agent, or otherwise, ships or causes an agricultural commodity or agricultural commodity input to be shipped.

(i) "Livestock" means that term as defined in section 5 of the animal industry act, 1988 PA 466, MCL 287.705.

(j) "Marketing agreement" means an agreement entered into, with the director, by producers, distributors, processors, or handlers pursuant to this act and binding only on those signing the agreement.

(k) "Marketing program" means a program established by order of the director pursuant to this act prescribing rules and regulations governing the marketing for processing, distributing, selling, or handling an agricultural commodity produced in this state or agricultural commodity input during a specified period and which the director determines would be in the public interest.

(*l*) "Processor" means a person engaged in canning, freezing, dehydrating, drying, fermenting, distilling, extracting, preserving, grinding, crushing, milling, or otherwise preserving or changing the form of an agricultural commodity for the purpose of marketing it.

(m) "Producer" means a person engaged in the business of producing, or causing to be produced for any market, an agricultural commodity or agricultural commodity input in quantity beyond that person's own family use, and having a value at first point of sale of more than $800.00 or of an amount as otherwise expressly provided for in a marketing program for the agricultural commodity or agricultural commodity input in any 1 growing and marketing season within the last 3 years.

290.653 Marketing agreements; provisions allowed; provisions required; substantial compliance.

Sec. 3. (1) Any marketing agreement or marketing program authorized under this act may contain 1 or more of the following:

(a) Provisions for establishing advertising and promotional programs.

(b) Provisions for establishing market development programs.

(c) Provisions for establishing and supporting research designed to improve or develop new agricultural commodities or agricultural commodity inputs and contribute to the effectiveness of the program.

(d) Provisions for development and dissemination of market information.

(e) Provision for accepting grants, royalties, license fees, interest, gifts, income, or other items of value that enhance the purpose of the marketing program or marketing agreement.

(f) Provision for contracting with organizations, agencies, or individuals to carry out the activities described in this act.

(g) Provisions for either or both of the following:

(*i*) Establishing standards for quality, purity, condition, size, or other accepted standards for that industry for agricultural commodities or agricultural commodity inputs sold as fresh, seed, or processed and standards for pack or container, or both, for agricultural commodities or agricultural commodity inputs sold for use as fresh, seed, or processed products.

(*ii*) Inspection and grading of the fresh, seed, or processed agricultural commodity or agricultural commodity input in accordance with the grading standards so established.

(h) Provision for determining the existence and extent of any surplus in any marketing period for any agricultural commodity or agricultural commodity input, or of any grade, size, or quality of any agricultural commodity or agricultural commodity input, and providing for handling and equitably sharing the cost of such surplus handling among the producers of the agricultural commodity or agricultural commodity input. Before provisions under this subdivision are included in any marketing program, particular attention shall be given to determining that Michigan producers affected by the provisions produce a sufficient proportion of the product covered by the provisions for the program to be effective in the particular market toward which the provisions would be applicable.

(i) Provision for payment of assessments for all usable products purchased from producers according to established grades.

(j) Provision for payment of assessments on agricultural commodity inputs.

(k) Provision for exemption of nonparticipating producers.

(*l*) Provision for the awarding of grants from money collected pursuant to this act. The grants may be awarded to organizations, agencies, or individuals with whom the committee has contracted for activities described in this section.

(2) A proposed marketing program shall include definition of terms, purpose, maximum rate of an assessment, method of collection of the assessment, and nominating procedures, qualifications, representation, and size of the committee as well as other provisions considered necessary by a committee. This subsection does not invalidate any marketing programs established under this act before the effective date of the amendatory act that added this sentence that are in substantial compliance with this act as determined by the director.

(3) A marketing agreement or marketing program that allows the committee to contract with organizations, agencies, governmental entities, institutions of higher education, individuals, or other legal entities in order to carry out the activities described in this act or allows the committee to award grants may provide in the marketing agreement or marketing program that the marketing program or marketing agreement be allowed to participate in the income or earnings of any royalties or license fees derived from the results of those activities. However, the marketing program or marketing agreement shall provide that the royalties or license fees be utilized only in the manner provided for in that marketing program or marketing agreement.

290.654 Inspection and grading; approved inspectors.

Sec. 4. For the purpose of this act, all inspection and grading shall be performed by or under the supervision of trained inspectors approved by the director or by inspectors supplied under cooperative agreement between the department and the United States department of agriculture.

290.655 Assessments to defray program and administrative costs; collection; maximum assessment to be specified; collection by processors, distributors, or handlers; disposition; trust fund; complaint; notice of due date; ability to borrow money; assessment for loans and interest.

Sec. 5. (a) Assessments shall be collected from each producer of a marketable agricultural commodity produced in this state and directly affected by a marketing program issued for the agricultural commodity to defray all program and administrative costs

except for nonparticipating producers as provided for under section 3(1)(k). Assessments shall be collected on agricultural commodity inputs in this state directly affected by a marketing program established for the agricultural commodity input in order to defray all marketing program and administrative costs. Subject to approval by the director, assessments may also be collected from either producers or distributors, or both, and manufacturers, of a marketable agricultural commodity produced in this state or an agricultural commodity input used in this state if the director determines that the unique nature of the agricultural commodity or agricultural commodity input or the industry structure warrants the assessment of both the producer and the distributors of the agricultural commodity or agricultural commodity input.

(b) Each marketing program shall specify the maximum assessment on an agricultural commodity or an agricultural commodity input and may provide for any other assessment mechanism as approved by the director to be collected to cover program and administrative costs.

(c) Pursuant to the marketing program and for convenience, the processors, distributors, or handlers of the agricultural commodity or agricultural commodity input may be required to collect and remit producer assessments to the committee at no cost to the marketing program unless the marketing program expressly provides for the payment of a reasonable fee for making the deduction and remittance.

In the case of a marketing program that provides for the imposition of an assessment, the processors, distributors, or handlers dealing with the producer shall collect the assessment from the producer by deducting the assessment from the gross amount owing to the producer and shall remit the assessment and data to the committee within a reasonable time period as established by the committee. A processor, distributor, or handler who fails to deduct or remit the assessment is liable to the committee for any assessments not deducted or remitted. If a processor, distributor, or handler is not involved at the first point of sale of an agricultural commodity or agricultural commodity input, or is not within this state and the assessment is not deducted and remitted, the producer shall remit the assessments to the committee on all sales of the agricultural commodity or agricultural commodity input, subject to a marketing program and within a time period specified by the committee.

(d) All assessments deducted or collected and held by a processor, distributor, or handler for over 92 days shall be deposited in a separate interest bearing escrow account held jointly with the marketing program committee and not commingled with other funds. Interest accrued in the escrow account shall be forwarded to the committee.

(e) All assessments collected or deducted shall be considered trust funds and be remitted quarterly or more frequently if required by the marketing program to the appropriate committee.

(f) A committee may file a written complaint with the director documenting that a processor, distributor, handler, or producer has failed to deduct or remit any assessment due to the committee pursuant to a marketing program. Upon receipt of such a complaint, the director shall conduct an investigation of the allegations. If, after investigation, the director finds that the processor, distributor, handler, or producer has failed to deduct or remit an assessment to the committee, the director shall request by certified mail the processor, distributor, handler, or producer to remit the assessment within 10 days after the director determines that a deduction or remittance was not made. In the case of the failure to deduct an assessment, the director shall compute the amount that reasonably should have been deducted and impose an assessment in that amount. If the assessment is not remitted within 30 days after the request or is not in compliance with a written

agreement for full payment, the director may file an action in a court of competent jurisdiction to collect the assessment. Venue in such an action is the place where the processor, distributor, handler, or producer has its primary place of business. In any action to recover an assessment under this subsection, if the director prevails, the court shall award to the director all costs and expenses in bringing the action, including, but not limited to, reasonable and actual attorney fees, court costs, and audit expenses. If the director does not prevail, he or she shall charge the committee for reasonable and actual attorney fees, court costs, and expenses incurred in bringing about the action.

(g) Each committee shall specify the date the assessment is due in the account of the marketing program on that production. Producers, processors, distributors, or handlers of the affected agricultural commodity or agricultural commodity input shall be given reasonable notice of the due date.

(h) A committee established pursuant to this act has the ability to borrow money in anticipation of the receipt of assessments if the following conditions are met:

(*i*) The loan will not be requested or authorized, or will not mature, within 90 days before a resubmittal or termination referendum for the marketing program.

(*ii*) The amount of the loan does not exceed 50% of the annual average assessment revenue during the previous 3 years. In the case of a marketing program that has been in existence for less than 3 years, the loan does not exceed 25% of the projected annual assessment revenue.

(*iii*) The loan repayment period does not exceed the life of the marketing program.

(*iv*) The loan has the prior written consent of the director. The director may request an audit of the committee by the auditor general before approving the loan.

(i) The director shall assess against the agricultural commodity input or the producers of the agricultural commodity all outstanding loans, including interest, approved under subsection (h) if the marketing program is inactive or is terminated.

290.657 Committee; establishment; appointment, qualifications, and terms of members; reapportionment of districts; expenses and per diem; duties and responsibilities; conducting business at public meeting; notice of meeting; availability of writings to public; exemption of certain information from freedom of information act.

Sec. 7. (1) A marketing program shall provide for the establishment of a committee to consist of an odd number of members which shall be not less than 5 and not more than 13.

(2) The members of the committee shall be appointed by the governor with the advice and consent of the senate from nominations received from the producers and handlers or processors of the agricultural commodity or agricultural commodity input for which the marketing program is established. Nominating procedures, qualifications, representation, term of office, and size of the committee shall be prescribed in the marketing program for which the committee is appointed. Each committee shall be composed of producers and handlers or processors who are directly affected by the marketing program in the proportion of representation as prescribed by the program. The term of office of a committee member is 3 years or until such time as his or her successor is appointed and qualified.

(3) The director or his or her representative shall serve as a nonvoting ex officio member. Additional nonvoting ex officio members may serve if approved for in a specific marketing program.

(4) A committee, with the advice and consent of the director and the commission of agriculture, may reapportion either the number of committee members or member

districts, or both. Reapportionment of the districts shall be on the basis of production or industry representation. The reapportionment may be commenced 30 days after the effective date of the amendatory act that added this subsection. Reapportionment of either members or districts shall not occur more often than twice in any 5-year period and shall not occur within 6 months before a referendum.

(5) After the reapportionment described in subsection (4), if the residence of a member of the committee falls outside of the district for which he or she serves on the committee and falls within the district for which another member serves on the committee, then both members shall continue to serve on the committee for a term equal to the remaining term of the member who served for the longest period of time. After the reapportionment described in subsection (4), if a district is created in which no member serving on the committee resides, then a member shall be selected in the manner as prescribed in each program. After a reapportionment or redistricting, a committee may temporarily have more members than prescribed in the marketing program until the expiration of the term of the longest serving member from that district.

(6) A member of a committee is entitled to reimbursement for actual expenses and a per diem payment to be set by the committee not to exceed the commission of agriculture rate while attending meetings of the committee or while engaged in the performance of official responsibilities delegated by the committee.

(7) The duties and responsibilities of a committee shall be prescribed in the order establishing the marketing program and to the extent applicable shall include the following duties and responsibilities:

(a) Developing procedures relating to the marketing program.

(b) Recommending amendments to the marketing program as are considered advisable.

(c) Preparing the estimated budget required for the proper operation of the marketing program.

(d) Developing methods for collecting and auditing the assessments.

(e) Collecting and assembling information and data necessary for proper administration of the marketing program.

(f) Performing other duties necessary for the operation of the marketing program as agreed upon with the director.

(8) The business which a committee may perform shall be conducted at a public meeting of the committee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(9) Subject to section 10(b) and except as otherwise provided in this subsection, a writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Except for information regarding penalties levied under this act, information relating to specific assessments to a specific person under a marketing program as well as names and addresses of producers shall be exempt from disclosure to any other person or committee. This subsection does not prevent the director or the department from obtaining information necessary to confirm compliance with this act and does not prevent the director or the department from disclosing statistical information so long as that disclosure does not reveal specific assessments or production levels of any producer, handler, or processor.

290.658 Disposition of moneys or assets collected; expenditures.

Sec. 8. (1) Money, assets, or other items of value collected or received under this act, whether collected from assessments, received as grants or gifts, or earned from royalties