

HOUSE BILL No. 5757

February 27, 2002, Introduced by Rep. Ruth Johnson and referred to the Committee on Regulatory Reform.

A bill to amend 1972 PA 230, entitled "Stille-DeRossett-Hale single state construction code act," by amending the title and sections 2a, 3a, 5, 14, 15, 24, and 30 (MCL 125.1502a, 125.1503a, 125.1505, 125.1514, 125.1515, 125.1524, and 125.1530), the title as amended and sections 2a and 3a as added by 1999 PA 245 and section 24 as amended by 1980 PA 371.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

1
2 An act to create a construction code commission and pre-
3 scribe its functions; to authorize the director to promulgate
4 rules with recommendations from each affected board relating to
5 the construction, alteration, demolition, occupancy, MAINTENANCE,
6 and use of buildings and structures; to prescribe energy
7 conservation standards for the construction of certain buildings;

1 to provide for statewide approval of premanufactured units; to
2 provide for the testing of new devices, materials, and techniques
3 for the construction of buildings and structures; to define the
4 classes of buildings and structures affected by the act; to pro-
5 vide for administration and enforcement of the act; to create a
6 state construction code fund; to prohibit certain conduct; to
7 establish penalties, remedies, and sanctions for violations of
8 the act; to repeal acts and parts of acts; and to provide an
9 appropriation.

10 Sec. 2a. (1) As used in this act:

11 (a) "Agricultural or agricultural purposes" means of, or
12 pertaining to, or connected with, or engaged in agriculture or
13 tillage ~~which~~ THAT is characterized by the act or business of
14 cultivating or using land and soil for the production of crops
15 for the use of animals or humans, and includes, but is not
16 limited to, purposes related to agriculture, farming, dairying,
17 pasturage, horticulture, floriculture, viticulture, and animal
18 and poultry husbandry.

19 (b) "Application for a building permit" means an application
20 for a building permit submitted to an enforcing agency pursuant
21 to this act and plans, specifications, surveys, statements, and
22 other material submitted to the enforcing agency together or in
23 connection with the application.

24 (c) "Barrier free design" means design complying with legal
25 requirements for architectural designs ~~which~~ THAT eliminate the
26 type of barriers and hindrances that deter persons with

1 disabilities from having access to and free mobility in and
2 around a building or structure.

3 (d) "Board of appeals" means the construction board of
4 appeals of a governmental subdivision provided for in section
5 14.

6 (e) "Boards" means the state plumbing, board of mechanical
7 rules, and electrical administrative boards and the barrier free
8 design board created in section 5 of 1966 PA 1, MCL 125.1355.

9 (f) "Building" means a combination of materials, whether
10 portable or fixed, forming a structure affording a facility or
11 shelter for use or occupancy by persons, animals, or property.
12 Building does not include a building, whether temporary or per-
13 manent, incidental to the use for agricultural purposes of the
14 land on which the building is located if it is not used in the
15 business of retail trade. Building includes the meaning "or part
16 or parts of the building and all equipment in the building"
17 unless the context clearly requires a different meaning.

18 (g) "Building envelope" means the elements of a building
19 ~~which~~ THAT enclose conditioned spaces through which thermal
20 energy may be transferred to or from the exterior.

21 (h) "Business day" means a day of the year, exclusive of a
22 Saturday, Sunday, or legal holiday.

23 (i) "Chief elected official" means the chairperson of the
24 county board of commissioners, the city mayor, the village presi-
25 dent, or the township supervisor.

1 (j) "Code" means the state construction code provided for in
2 section 4 or a part of that code of limited application and
3 includes a modification of or amendment to the code.

4 (k) "Commission" means the state construction code commis-
5 sion created by section 3.

6 (l) "Construction" means the construction, erection, recon-
7 struction, alteration, conversion, demolition, repair, moving, or
8 equipping of buildings or structures.

9 (m) "Construction regulation" means a law, act, rule, regu-
10 lation, or code, general or special, or compilation thereof,
11 enacted or adopted before or after January 1, 1973, by this state
12 including a department, board, bureau, commission, or other
13 agency, ~~thereof,~~ relating to the design, construction, or use
14 of buildings and structures and the installation of equipment in
15 the building or structure. Construction regulation does not
16 include a zoning ordinance or rule issued pursuant to a zoning
17 ordinance and related to zoning.

18 (n) "Cost-effective", in reference to section 4(3)(f) and
19 (g), means, using the existing energy efficiency standards and
20 requirements as the base of comparison, the economic benefits of
21 the proposed energy efficiency standards and requirements will
22 exceed the economic costs of the requirements of the proposed
23 rules based upon an incremental multiyear analysis. All of the
24 following provisions apply:

25 (i) The analysis shall take into consideration the perspec-
26 tive of a typical first-time home buyer.

1 (ii) The analysis shall consider benefits and costs over a
2 7-year time period.

3 (iii) The analysis shall not assume fuel price increases in
4 excess of the assumed general rate of inflation.

5 (iv) The analysis shall assure that the buyer of a home who
6 qualifies to purchase the home before the addition of the energy
7 efficient standards would still qualify to purchase the same home
8 after the additional cost of the energy-saving construction
9 features.

10 (v) The analysis shall assure that the costs of principal,
11 interest, taxes, insurance, and utilities will not be greater
12 after the inclusion of the proposed cost of the additional
13 energy-saving construction features required by the proposed
14 energy efficiency rules as opposed to the provisions of the
15 existing energy efficiency rules.

16 (o) "Department" means the department of consumer and indus-
17 try services.

18 (p) "Director" means the director of the department or an
19 authorized representative of the director.

20 (q) "Energy conservation" means the efficient use of energy
21 by providing building envelopes with high thermal resistance and
22 low air leakage, and the selection of energy efficient mechani-
23 cal, electrical service, and illumination systems, equipment,
24 devices, or apparatus.

25 (r) "Enforcing agency" means the enforcing agency, in
26 accordance with section 8a or 8b, ~~which~~ THAT is responsible for
27 administration and enforcement of the code within a governmental

1 subdivision, except for the purposes of section 19 enforcing
2 agency means the agency in a governmental unit principally
3 responsible for the administration and enforcement of applicable
4 construction regulations.

5 (s) "Equipment" means plumbing, heating, electrical, venti-
6 lating, air conditioning, and refrigerating equipment.

7 (t) "Governmental subdivision" means a county, city, vil-
8 lage, or township ~~which~~ THAT in accordance with section 8 has
9 assumed responsibility for administration and enforcement of this
10 act and the code within its jurisdiction.

11 (u) "Mobile home" means a vehicular, portable structure
12 built on a chassis pursuant to the national manufactured housing
13 construction and safety standards act of 1974, title VI of the
14 housing and community development act of 1974, Public Law 93-383,
15 42 U.S.C. 5401 to 5426, and designed to be used without a per-
16 manent foundation as a dwelling when connected to required utili-
17 ties and ~~which~~ THAT is, or is intended to be, attached to the
18 ground, to another structure, or to a utility system on the same
19 premises for more than 30 consecutive days.

20 (v) "Other laws and ordinances" means other laws and ordi-
21 nances whether enacted by this state or by a county, city, vil-
22 lage, or township and the rules issued under those laws and
23 ordinances.

24 (w) "Owner" means the owner of the freehold of the premises
25 or lesser estate in the premises, a mortgagee or vendee in pos-
26 session, an assignee of rents, receiver, executor, trustee,
27 lessee, or any other person, sole proprietorship, partnership,

1 association, or corporation directly or indirectly in control of
2 a building, structure, or real property or ~~his or her~~ THE
3 PERSON'S duly authorized agent.

4 (x) "Person with disabilities" means an individual whose
5 physical characteristics have a particular relationship to that
6 individual's ability to be self-reliant in the individual's move-
7 ment throughout and use of the building environment.

8 (y) "Premanufactured unit" means an assembly of materials or
9 products intended to comprise all or part of a building or struc-
10 ture ~~, and which~~ THAT is assembled at other than the final
11 location of the unit of the building or structures by a repeti-
12 tive process under circumstances intended to insure uniformity of
13 quality and material content. Premanufactured unit includes a
14 mobile home.

15 (Z) "PROPERTY MAINTENANCE CODE" MEANS THE PROPERTY MAINTENANCE
16 CODE ADOPTED UNDER SECTION 5.

17 (AA) ~~(z)~~ "Structure" means that which is built or con-
18 structed, an edifice or building of any kind, or a piece of work
19 artificially built up or composed of parts joined together in
20 some definite manner. Structure does not include a structure
21 incident to the use for agricultural purposes of the land on
22 which the structure is located and does not include works of
23 heavy civil construction including, but not limited to, a high-
24 way, bridge, dam, reservoir, lock, mine, harbor, dockside port
25 facility, ~~an~~ airport landing facility, and ~~facilities~~
26 FACILITY for the generation, ~~or~~ transmission, or distribution
27 of electricity. Structure includes the meaning "or part or parts

1 of the structure and all equipment in the structure" unless the
2 context clearly requires a different meaning.

3 (2) Unless the context clearly indicates otherwise, a refer-
4 ence to this act, or to this act and the code, means this act and
5 rules promulgated pursuant to this act including the code.

6 Sec. 3a. (1) The state construction code commission is cre-
7 ated and consists of a designee of the office of fire safety and
8 the chairpersons of the barrier free design board, the electrical
9 administrative board, the state plumbing board, and the board of
10 mechanical rules, who shall be permanent members, and 12 resi-
11 dents of the state to be appointed by the governor with the
12 advice and consent of the senate. Appointed members of the com-
13 mission shall include 1 person from each of the fields of indus-
14 trial management, architecture, professional engineering, build-
15 ing contracting, organized labor, premanufactured building, and 3
16 members representing municipal building inspection; 2 persons
17 from the general public; and a licensed residential builder.

18 (2) IN MATTERS INVOLVING THE PROPERTY MAINTENANCE CODE, THE
19 DIRECTOR SHALL APPOINT AN ADVISORY COMMITTEE THAT SHALL ADVISE
20 THE COMMISSION. THE ADVISORY COMMITTEE SHALL CONSIST OF A SANI-
21 TARIAN, A RENTAL PROPERTY OWNER WITH 4 OR FEWER UNITS, A RENTAL
22 PROPERTY OWNER WITH 5 OR MORE UNITS, 2 INDIVIDUALS REPRESENTING
23 TENANTS, 1 HOUSING INSPECTOR FROM A TOWNSHIP, AND 1 HOUSING
24 INSPECTOR FROM A CITY. A MEMBER OF THE ADVISORY COMMITTEE SHALL
25 BE APPOINTED FOR A TERM OF 2 YEARS, EXCEPT THAT A VACANCY SHALL
26 BE FILLED FOR THE UNEXPIRED PORTION OF THE TERM.

1 (3) A member of the commission shall be appointed for a term
2 of 2 years, except that a vacancy shall be filled for the
3 unexpired portion of the term. A member of the commission may be
4 removed from office by the governor for inefficiency, neglect of
5 duty, or misconduct or malfeasance in office. A member of the
6 commission who has a pecuniary interest in a matter before the
7 commission shall disclose the interest before the commission
8 takes action in the matter. ~~which~~ THE disclosures shall be
9 made a matter of record in its official proceedings. Each member
10 of the commission, except the state fire marshal or the state
11 fire marshal's designee, shall receive compensation and actual
12 expenses incurred by the member in the performance of the duties
13 as a member of the commission. The per diem compensation of the
14 members and the schedule for reimbursement of expenses shall be
15 established annually by the legislature.

16 (4) ~~(2)~~ Nine members of the commission constitute a
17 quorum. Except as otherwise provided in the commission's bylaws,
18 action may be taken by the commission by vote of a majority of
19 the members present at a meeting. Meetings of the commission may
20 be called by the chairperson or by 3 members on 10 days' written
21 notice. Not less than 1 meeting shall be held each calendar
22 quarter. A meeting of the commission may be held anywhere in
23 this state.

24 (5) ~~(3)~~ The commission shall elect 1 member as chair-
25 person, another as vice-chairperson, and other officers as it
26 determines appropriate, for the terms and with the duties and
27 powers as the commission determines. The chairperson and

1 vice-chairperson of the commission shall be elected from those
2 members appointed to the commission by the governor.

3 (6) ~~-(4)-~~ The commission is within the department but shall
4 exercise its statutory functions independently of the director,
5 except that budgeting, personnel, and procurement functions of
6 the commission shall be performed under the direction and super-
7 vision of the director. The director has the sole statutory
8 authority to promulgate rules.

9 (7) ~~-(5)-~~ The business that the commission may perform shall
10 be conducted at a public meeting of the commission held in com-
11 pliance with the open meetings act, 1976 PA 267, MCL 15.261 to
12 15.275. Public notice of the time, date, and place of the meet-
13 ing shall be given in the manner required by the open meetings
14 act, 1976 PA 267, MCL 15.261 to 15.275.

15 (8) ~~-(6)-~~ A writing prepared, owned, used, in the possession
16 of, or retained by the commission in the performance of an offi-
17 cial function shall be made available to the public in compliance
18 with the freedom of information act, 1976 PA 442, MCL 15.231 to
19 15.246.

20 Sec. 5. (1) The commission has all powers necessary or con-
21 venient to carry out and effectuate the purposes and provisions
22 of this act, including, without limitation, the powers
23 ~~hereinafter~~ set forth IN THIS SECTION.

24 (2) The commission may sue and be sued; have a seal and
25 alter it; make and execute contracts and other instruments; and
26 adopt, amend, and rescind bylaws for its organization and
27 internal management.

1 (3) The commission may promulgate, amend, and rescind rules
2 necessary, desirable, or proper to carry out its powers and
3 duties under this act and relating to the administration and
4 enforcement of the code by enforcing agencies and relating to the
5 qualifications and licensing of persons making inspections pro-
6 vided for under this act.

7 (4) The commission may encourage, support, or conduct,
8 either by itself or in cooperation with enforcing agencies, asso-
9 ciations of building code officials, or ~~any~~ other persons, edu-
10 cational and training programs for employees, agents, and inspec-
11 tors of enforcing agencies.

12 (5) The commission may study the effect of the code, THE
13 PROPERTY MAINTENANCE CODE, and other related laws, to ascertain
14 their effect on the cost of building construction and mainte-
15 nance, and the effectiveness of their provisions for ~~insuring~~
16 ENSURING the health, safety, and welfare of the people of this
17 state.

18 (6) The commission may determine after testing and evalu-
19 ation whether a material, product, method of manufacture, or
20 method of construction or installation is acceptable under the
21 code; issue certificates of ~~such~~ acceptability; and establish
22 procedures for the testing of ~~such~~ devices, materials, fix-
23 tures, methods, systems, or processes, including contracting with
24 an existing testing laboratory for ~~such~~ testing.

25 (7) The commission may take testimony and hold hearings
26 relating to ~~any~~ AN aspect or matter relative to the
27 administration or enforcement of this act. In the enforcement of

1 this act, it may issue subpoenas to compel the attendance of
2 witnesses and the production of evidence. The commission may
3 designate 1 or more ~~or~~ OF its members or employees to hold
4 public hearings and report ~~thereon~~ ON THE HEARINGS to the
5 commission.

6 (8) THE COMMISSION SHALL ADOPT AS A PROPERTY MAINTENANCE
7 CODE THE PROVISIONS OF THE 1998 INTERNATIONAL PROPERTY MAINTENANCE
8 NANCE CODE, PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, AS IT
9 DETERMINES APPROPRIATE. THE COMMISSION SHALL ADOPT THE PROPERTY
10 MAINTENANCE CODE BY PROMULGATING RULES UNDER THE ADMINISTRATIVE
11 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. THE
12 COMMISSION SHALL CONSIDER UPDATING THE PROPERTY MAINTENANCE CODE
13 AS CYCLICAL CHANGES OCCUR TO THE INTERNATIONAL PROPERTY MAINTENANCE
14 NANCE CODE OR OTHER INDUSTRY PROMULGATED PROPERTY MAINTENANCE
15 CODES.

16 Sec. 14. (1) A construction board of appeals for each gov-
17 ernmental subdivision enforcing the code OR THE PROPERTY MAINTENANCE
18 NANCE CODE, OR BOTH, shall be created consisting of not less than
19 3 nor more than 7 members, as determined by the governing body of
20 the governmental subdivision. Unless otherwise provided by local
21 law or ordinance, the members of the board of appeals shall be
22 appointed for 2-year terms by the chief executive officer of a
23 city, village, or township and the chairperson of the county
24 board of commissioners of a county. A member of the board of
25 appeals shall be qualified by experience or training to perform
26 the duties of members of the board of appeals. A person may

1 serve on the board of appeals of more than 1 governmental
2 subdivision.

3 (2) If an enforcing agency refuses to grant an application
4 for a building permit, or if the enforcing agency makes any other
5 decision pursuant or related to this act, THE PROPERTY MAINTENANCE
6 CODE, or the code, an interested person, or the person's
7 authorized agent, may appeal in writing to the board of appeals.
8 The board of appeals shall hear the appeal and render and file
9 its decision with a statement of reasons for the decision with
10 the enforcing agency from whom the appeal was taken not more than
11 30 days after submission of the appeal. Failure by the board of
12 appeals to hear an appeal and file a decision within the time
13 limit is a denial of the appeal for purposes of authorizing the
14 institution of an appeal to the commission. A copy of the decision
15 and statement of the reasons for the decision shall be
16 delivered or mailed, before filing, to the party taking the
17 appeal. IN ADDITION TO THE PROHIBITED EXEMPTIONS LISTED IN
18 SECTION 8A(6) AND (7), IN ENFORCING A PROPERTY MAINTENANCE CODE,
19 A GOVERNMENTAL SUBDIVISION SHALL NOT EXEMPT ITSELF FROM THE
20 COMMISSION'S REVIEW UNDER SECTION 16 OF A DECISION RENDERED BY
21 THE GOVERNMENTAL SUBDIVISION'S BOARD OF APPEALS.

22 (3) THIS SECTION SHALL BE CONSTRUED TO BE CONSISTENT WITH
23 THE LANGUAGE IN SECTION 8(3) OF THE HOUSING LAW OF MICHIGAN, 1917
24 PA 167, MCL 125.408, IN PROVIDING STATEWIDE APPLICATION OF THE
25 PROPERTY MAINTENANCE CODE. A GOVERNMENTAL SUBDIVISION SHALL NOT
26 ELECT TO ENFORCE LESS STRINGENT STANDARDS THAN THOSE CONTAINED IN
27 THE PROPERTY MAINTENANCE CODE.

1 (4) ~~-(2)-~~ This act does not prevent a governmental
2 subdivision from granting its board of appeals additional powers
3 or duties not inconsistent with this act, or from establishing
4 procedures to be followed by its board of appeals insofar as the
5 procedures do not conflict with this act. Except as otherwise
6 provided by this act, or by other laws or ordinances, a board of
7 appeals may by rules establish its own procedures.

8 (5) ~~-(3)-~~ The business ~~which~~ THAT the board of appeals may
9 perform shall be conducted at a public meeting of the board of
10 appeals held in compliance with ~~Act No. 267 of the Public Acts~~
11 ~~of 1976~~ THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO
12 15.275. Public notice of the time, date, and place of the meet-
13 ing shall be given in the manner required by ~~Act No. 267 of the~~
14 ~~Public Acts of 1976~~ THE OPEN MEETINGS ACT, 1976 PA 267, MCL
15 15.261 TO 15.275.

16 (6) ~~-(4)-~~ A record of decisions made by the board of
17 appeals, properly indexed, and any other writing prepared, owned,
18 used, in the possession of, or retained by the board of appeals
19 in the performance of an official function shall be made avail-
20 able to the public in compliance with ~~Act No. 442 of the Public~~
21 ~~Acts of 1976~~ THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
22 15.231 TO 15.246.

23 Sec. 15. (1) After a public hearing a board of appeals may
24 grant a specific variance to a substantive requirement of the
25 code OR THE PROPERTY MAINTENANCE CODE if the literal application
26 of the substantive requirement would result in an exceptional,

1 practical difficulty to the applicant, and if both of the
2 following requirements are satisfied:

3 (a) The performance of the particular item or part of the
4 building or structure with respect to which the variance is
5 granted shall be adequate for its intended use and shall not sub-
6 stantially deviate from performance required by the code OR THE
7 PROPERTY MAINTENANCE CODE of that particular item or part for the
8 health, safety and welfare of the people of this state.

9 (b) The specific condition justifying the variance shall be
10 neither so general nor recurrent in nature as to make an amend-
11 ment of the code OR THE PROPERTY MAINTENANCE CODE with respect to
12 the condition reasonably practical or desirable.

13 (2) A board of appeals may attach in writing any condition
14 in connection with the granting of a variance that in its judg-
15 ment is necessary to protect the health, safety, and welfare of
16 the people of this state. The breach of a condition shall auto-
17 matically invalidate the variance and any permit, license and
18 certificate granted on the basis of it. In no case shall more
19 than minimum variance from the code OR THE PROPERTY MAINTENANCE
20 CODE be granted than is necessary to alleviate the exceptional,
21 practical difficulty.

22 Sec. 24. Until 6 months after promulgation of the code OR
23 THE PROPERTY MAINTENANCE CODE, construction regulations
24 ~~heretofore or hereafter~~ adopted by a governmental subdivision
25 continue in effect unless repealed by local law or ordinance.
26 Six months after the promulgation of the code ~~and thereafter,~~
27 OR THE PROPERTY MAINTENANCE CODE, construction regulations

1 adopted by a governmental subdivision shall be considered
2 repealed and invalid, except as provided in section ~~8~~ 8A. A
3 building permit validly issued under local construction regula-
4 tions within 6 months before promulgation of the code OR THE
5 PROPERTY MAINTENANCE CODE is valid, and the construction of a
6 building or structure may be completed pursuant to that building
7 permit. The construction of a building or structure started
8 before promulgation of the code OR THE PROPERTY MAINTENANCE CODE
9 in an area of the state that did not as of the date of beginning
10 of construction require a building permit may be completed with-
11 out a building permit. Except as provided in section 28, con-
12 struction regulations incorporated in ~~any~~ AN act of this state
13 in effect or validly promulgated by ~~any~~ A board, department,
14 commission, or agency continue in effect until promulgation of
15 the code OR THE PROPERTY MAINTENANCE CODE at which time ~~they~~
16 ~~shall be considered to be~~ THOSE CONSTRUCTION REGULATIONS ARE
17 superseded.

18 Sec. 30. Proceedings pending and rights and liabilities
19 existing, acquired, or incurred under existing construction regu-
20 lations as long as they remain in effect are saved. The proceed-
21 ings may be consummated according to the law in force ~~when~~ AT
22 THE TIME the proceedings were commenced. ~~Neither this act nor~~
23 THIS ACT, THE PROPERTY MAINTENANCE CODE, AND the code shall NOT
24 be construed to alter, affect, or abate a pending prosecution, or
25 prevent SUBSEQUENT prosecution ~~hereafter~~ instituted under
26 ~~such~~ repealed construction regulations for offenses committed
27 as long as the construction regulations remain in effect.

1 Prosecutions instituted after the repeal of existing construction
2 regulations for offenses committed before the effective date of
3 the repeal may be continued or instituted in accordance with con-
4 struction regulations in effect at the time of the commission of
5 the offenses.

6 Enacting section 1. This amendatory act does not take
7 effect unless Senate Bill No. _____ or House Bill No. 5756
8 (request no. 04037'01) of the 91st Legislature is enacted into
9 law.