

Act No. 58
Public Acts of 1995
Approved by the Governor
May 23, 1995
Filed with the Secretary of State
May 24, 1995

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Reps. Alley, Middaugh, Murphy and Hill

ENROLLED HOUSE BILL No. 4349

AN ACT to amend Act No. 451 of the Public Acts of 1994, 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 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," being sections 324.101 to 324.90101 of the Michigan Compiled Laws, by adding section 90106 and parts 701, 703, 711, 713, 715, 721, 723, 731, 733, 741, 742, 743, 751, 761, 765, 767, 769, 771, 773, 775, 777, 781, 783, 785, 791, 793, 801, 803, 811, and 821; to amend the headings of certain parts; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Act No. 451 of the Public Acts of 1994, being sections 324.101 to 324.90101 of the Michigan Compiled Laws, is amended by adding section 90106 and parts 701, 703, 711, 713, 715, 721, 723, 731, 733, 741, 742, 743, 751, 761, 765, 767, 769, 771, 773, 775, 777, 781, 783, 785, 791, 793, 801, 803, 811, and 821 and by amending the headings of certain parts to read as follows:

CHAPTER 4: RECREATION

SUBCHAPTER 1: RECREATION

ADMINISTRATION

PART 701 RECREATION AND CULTURAL ARTS

Sec. 70101. There is established a state recreation and cultural arts section in the department.

Sec. 70102. The head of the state recreation and cultural arts section shall be a person widely experienced in community recreation and shall be directly responsible to a deputy director.

Sec. 70103. The state recreation and cultural arts section shall provide technical advice and guidance to the political subdivisions of this state and other interested groups and agencies in the planning and development of recreation programs, areas, and facilities including but not limited to creative and cultural activities, and programs for senior citizens, the handicapped, and the culturally deprived. The section shall collect and disseminate necessary data and information relating to its duties and shall maintain a cooperative relationship with the tourist, resort, and educational extension services of the universities, the Michigan travel commission, Michigan's 4 regional tourist associations, and the various federal agencies.

Sec. 70104. The department shall provide continual representation of citizen interest, need, and participation in a wide variety of leisure-time pursuits.

Sec. 70105. The department may reassign existing employees of the department of natural resources or employ staff necessary to implement this part.

Sec. 70106. The department shall promulgate rules necessary for the establishment and implementation of this part.

PART 703 OUTDOOR RECREATION

Sec. 70301. The department is authorized to prepare, maintain, and keep up-to-date a comprehensive plan for the development of the outdoor recreation resources of the state.

Sec. 70302. The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation. The department may enter into contracts and agreements with the United States or any appropriate agency of the United States, keep financial and other records relating to those contracts and agreements, and furnish to appropriate officials and agencies of the United States reports and information as may be reasonably necessary to enable the officials and agencies to perform their duties under the programs. In connection with obtaining the benefits of any such program, the department shall coordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development, and maintenance of outdoor recreation resources and facilities.

Sec. 70303. Grants-in-aid received from the land and water conservation fund act of 1965, Public Law 88-578, 78 Stat. 897, shall be deposited in the state treasury and disbursed to agencies and subdivisions of the state upon authorization of the department. In the apportionment of funds to subdivisions of the state, the department shall give special consideration to those subdivisions where population density and land and facility needs are greatest.

Sec. 70304. The department shall not make a commitment or enter into an agreement pursuant to an exercise of authority under this part until the legislature has appropriated sufficient funds to it for meeting the state's share, if any, of project costs. It is the legislative intent that, to the extent necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under this part, those areas and facilities shall be publicly maintained for outdoor recreation purposes. The department may enter into and administer agreements with the United States or any appropriate agency of the United States for planning, acquisition, and development projects involving participating federal-aid funds on behalf of any subdivision of this state, if the subdivision gives necessary assurances to the department that it has available sufficient funds to meet its share, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the subdivision's expense for public outdoor recreation use.

Sec. 70305. The department is authorized to disburse state appropriated grants-in-aid to political subdivisions of the state to be used in conjunction with the land and water conservation fund act of 1965, Public Law 88-578, 78 Stat. 897, which provides financial assistance for outdoor recreation. The criteria for project approval established for federal cost-sharing under the various federal grants-in-aid programs shall be used as guidelines in allocating state grants-in-aid to political subdivisions of the state. The state's share of the cost of a particular project shall not exceed 25% of the total cost. Total state grants-in-aid under this part during any fiscal year shall not exceed the amount specifically appropriated for that purpose by the legislature.

PART 711 RECREATION IMPROVEMENT FUND

Sec. 71101. As used in this part:

(a) "Associated facilities" means restrooms, shelters, campgrounds, and parking lots directly related to trails or waterways projects.

(b) "Fund" means the recreation improvement fund created in section 71104.

(c) "Michigan state waterways fund" means the Michigan state waterways fund created in section 78110.

(d) "Off-road vehicle" means ORV as it is defined in part 811, which is required to be registered under part 811.

(e) "Recreational projects" means, in addition to the activities provided for in this part, the construction, maintenance, and operation of trails and associated facilities that may be used by off-road vehicles, cross-country skiers, horseback riders, and hikers, and inland lake cleanup grants as provided by part 309.

(f) "Recreational snowmobile trail improvement fund" means the recreational snowmobile trail improvement fund created in section 82110.

(g) "Vessel" means all watercraft except the following:

(i) Watercraft used for commercial fishing.

(ii) Watercraft used by the sea scout department of the boy scouts of America chiefly for training scouts in seamanship.

(iii) Watercraft owned by this state, any political subdivision of this state, or the federal government.

(iv) Watercraft when used in interstate or foreign commerce and watercraft used or owned by any railroad company or railroad car ferry company.

(v) Watercraft when used in trade, including watercraft when used in connection with an activity that constitutes a person's chief business or means of livelihood.

(h) "Watercraft" means any contrivance now known or invented in the future that is used or designed for navigation on water, including, but not limited to, any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat, but does not include watercraft used or owned by the United States.

Sec. 71102. (1) There is a privilege tax imposed on all gasoline and diesel fuel sold in this state that is used to generate power for the operation or propulsion of vessels on the waterways of this state, of off-road vehicles, and of snowmobiles.

(2) The privilege tax shall be paid to the department of treasury in the same manner, at the same time, and at the same rate per gallon as the tax levied under Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws. The privilege tax imposed by this section shall not apply to liquefied petroleum gas.

Sec. 71103. (1) The legislature finds that 2.0% of all of the gasoline sold in this state for consumption in internal combustion engines is used to generate power for the operation or propulsion of vessels on the waterways of this state, of off-road vehicles, and of snowmobiles.

(2) The department and the state transportation department shall prepare a joint report to the legislature by January 1, 1992, providing their estimate of actual gasoline and diesel fuel usage based on any data collected from March 30, 1988 to January 1, 1991 and their observation of the historical trends of gasoline and diesel fuel usage in this state for the following categories:

(a) Off-road vehicles.

(b) Watercraft.

(c) Snowmobiles.

Sec. 71104. (1) The purchaser of gasoline for the operation of vessels excepted by section 71101 is entitled to a refund of tax paid on that gasoline, upon filing a sworn claim with the department of treasury, upon forms prescribed and furnished by it, within 6 months from the date of purchase, as shown by the invoice. The retail distributor shall furnish a purchaser with an invoice showing the amount of gasoline purchased, the date of the purchase, and the total amount of tax paid on the purchase. Each dealer or distributor shall keep a copy of the invoices issued for a period of 2 years subject to examination by the department of treasury. Each claim for refund shall have attached to the claim the original invoice received by the purchaser and, when approved by the department of treasury, the claims shall be paid out of the state waterways fund upon warrant of the department of treasury.

(2) A person who makes a false statement in a claim or invoice presented to the department of treasury, or who presents to the department of treasury a claim or invoice containing a false statement, or who collects or causes to be paid to the person or any other person a refund without being entitled to the refund, shall forfeit the full amount of the claim and is guilty of a misdemeanor.

Sec. 71105. The recreation improvement fund is created in the state treasury and shall be administered by the department.

Sec. 71106. The department of treasury shall annually present to the department an accurate total of all the gasoline taxes collected and shall determine the amount of revenue derived from them. The department of treasury shall determine the portion of these revenues derived from the sale of gasoline as described in section 71102 by multiplying the total by 2.0% and shall credit this amount to the recreation improvement fund, less a deduction for collection costs and refunds.

Sec. 71107. Any money remaining in the recreation improvement fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes stated in this part.

Sec. 71108. (1) The department shall annually review and make recommendations to the legislature for distributions of the fund, including recreational projects and geographic locations.

(2) Of the total fund, not less than 80% shall be credited to the Michigan state waterways fund, not less than 14% to the recreational snowmobile trail improvement fund, and the remaining balance, if any, shall be distributed to

recreational projects. Of the remaining balance credited to recreational projects in a fiscal year, not less than 25% of any funds designated for projects intended for off-road vehicles shall be expended on projects to repair damages as a result of pollution, impairment, or destruction of air, water, or other natural resources, or the public trust in air, water, or other natural resources, as a result of the use of off-road vehicles.

PART 713 RECREATION BOND AUTHORIZATION

Sec. 71301. The state shall borrow a sum not to exceed \$140,000,000.00 and issue the general obligation bonds of this state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance state and local public recreation projects.

Sec. 71302. Bonds shall be issued in accordance with conditions, methods, and procedures established by law.

Sec. 71303. The proceeds of the sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be deposited in the state treasury and credited to the recreation bond fund created in part 715 and shall be disbursed from that fund only for the purposes for which the bonds have been authorized, including the expense of issuing the bonds. The proceeds of the sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be expended for the purposes set forth in this part in a manner as provided by law.

Sec. 71304. The question of borrowing a sum not to exceed \$140,000,000.00 and the issuance of the general obligation bonds of the state for the purposes set forth in this part shall be submitted to a vote of the electors of the state qualified to vote on the question in accordance with section 15 of article IX of the state constitution of 1963, at the next general election following September 9, 1988. The question submitted to the electors shall be substantially as follows:

“Shall the state of Michigan borrow a sum not to exceed \$140,000,000.00 and issue general obligation bonds of the state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance state and local public recreation projects, the method of repayment of the bonds to be from the general fund of this state?

Yes

No”.

Sec. 71305. The secretary of state shall perform all acts necessary to properly submit the question prescribed by section 71304 to the electors of this state qualified to vote on the question at the next general November election following September 9, 1988.

Sec. 71306. (1) After the issuance of the bonds authorized by this part, there shall be appropriated from the general fund of the state each fiscal year a sufficient amount to pay promptly, when due, the principal of and interest on all outstanding bonds authorized by this part and the costs incidental to the payment of the bonds.

(2) The governor shall include the appropriation provided in subsection (1) in his or her annual executive budget recommendations to the legislature.

Sec. 71307. Bonds shall not be issued unless the question set forth in section 71304 is approved by a majority vote of the qualified electors voting on the question.

PART 715 RECREATION BOND IMPLEMENTATION

Sec. 71501. As used in this part:

(a) “Bonds” means the bonds issued under part 713 or former Act No. 327 of the Public Acts of 1988.

(b) “Fund” means the recreation bond fund created in section 71506.

(c) “Local public recreation project” means capital improvement projects including, but not limited to, the construction, expansion, development, or rehabilitation of recreational facilities, and the restoration of the natural environment. Local public recreation project does not include the operation, maintenance, or administration of those facilities, wages, or administration of projects or purchase of facilities already dedicated to public recreational purposes.

(d) “Local unit of government” means a county, city, township, village, school district, the Huron-Clinton metropolitan authority, or any authority composed of counties, cities, townships, villages, or school districts, or any combination of those entities, which authority is legally constituted to provide public recreation.

Sec. 71502. The legislature finds and declares that the construction, expansion, development, and rehabilitation of state and local recreational facilities and the restoration of the natural environment under this part are a public purpose in the interest of the health, safety, and general welfare of the citizens of this state.

Sec. 71503. (1) The bonds issued under part 713 shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or term and serial, to bear interest at a rate or rates, to be subject or not subject to prior redemption and, if subject to prior redemption, with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board, and to be subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax-exempt status. The state administrative board shall rotate legal counsel when issuing bonds.

(2) The state administrative board by resolution may authorize the state treasurer to provide for the sale of the bonds at a discount, the investment and reinvestment of bond sales proceeds, other details for the bonds, the costs of issuance, and the security for the bonds as is necessary and advisable.

(3) The bonds shall be approved by the department of treasury before their issuance but shall not otherwise be subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws.

(4) The bonds or any series of the bonds shall be sold at a price and at a publicly advertised sale or a competitively negotiated sale as shall be determined by the state administrative board. If bonds are issued at a competitively negotiated sale, the state administrative board shall use its best efforts to include firms based in this state in the sale of the bonds.

(5) Except as provided in subsection (6), the bonds shall be sold at the discretion of the state administrative board.

(6) The state administrative board may alter the schedule for issuance of the bonds provided in subsection (5) if amendments to the internal revenue code of 1986 would impair the tax-exempt status of the bonds.

Sec. 71504. Bonds issued under part 713 shall be fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

Sec. 71505. Bonds issued under part 713 are made securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

Sec. 71506. (1) The recreation bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of general obligation bonds issued pursuant to part 713 and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayments of principal and interest made under a loan program authorized for in this part.

(d) Any federal funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

Sec. 71507. (1) The proceeds of the bonds issued under part 713 shall be deposited into the fund.

(2) The state treasurer shall direct the investment of the fund. Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

(3) Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, all repayments of principal and interest earned under a loan program provided in this part shall be credited to the appropriate restricted subaccounts of the fund and used for the purposes authorized for the use of bond proceeds deposited in that subaccount or to pay debt service on any obligation issued which pledges the loan repayments and the proceeds of which are deposited in that subaccount.

(4) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(5) The department shall annually submit to the governor, the committees of the house of representatives and the senate with jurisdiction pertaining primarily to natural resources and the environment, and the appropriations committees of the house of representatives and the senate a list of all projects that are recommended to be funded under this part. This list shall be submitted to the legislature not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. The list shall include the name, address, and telephone number of the eligible recipient or participant; the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the department. The estimated cost of eligible local public recreation projects on the list for each year in which there is a limitation on borrowing under section 71503(5) shall not exceed 1/3 of the amount authorized for local public recreation projects under section 71508(1)(b) and (c).

(6) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed.

(7) Not later than December 31 of each year, the department shall report to the governor, the committees of the house of representatives and the senate with jurisdiction pertaining primarily to natural resources and the environment, and the committees of the house of representatives and the senate on appropriations for the department a list of the projects financed under this part. The list shall include the name, address, and telephone number of the recipient or participant; the nature of the project; the amount of money received; the county in which the project is located; and other information considered pertinent by the department.

Sec. 71508. (1) Except as otherwise provided in this section, money in the fund shall be used as follows:

(a) \$70,000,000.00 of the bond revenues shall be used to construct, expand, and develop recreational facilities at state parks pursuant to the "5 year capital outlay program" published by the department and approved by the commission, and for other state recreation facilities for which matching funds are available. The department may deviate from the uses of the bond revenues provided in this subdivision only upon recommendation of the commission and approval of the legislature.

(b) \$65,000,000.00 of the bond revenues shall be used to provide grants and loans to local units of government for local public recreation projects pursuant to this part.

(c) \$5,000,000.00 of the bond revenues shall be used to provide grants and loans to local units of government for the purpose of discouraging development of open space and undeveloped lands that on December 1, 1988 are not zoned for industrial use. Grants and loans made under this subdivision shall be used to redevelop and reuse vacant manufacturing facilities or abandoned industrial sites for recreational facilities.

(2) Money in the fund that is allocated for local public recreation projects under subsection (1)(b) shall be used for any of the following:

(a) Public recreation infrastructure improvements that involve the replacement of or structural improvements relating specifically to existing public recreation facilities, including, but not limited to, recreation centers, sports fields, beaches, trails, historical structures, playgrounds, and restoration of the natural environment.

(b) The development of public recreation facilities on waterfront sites for the purpose of increasing recreation opportunities that encourage further private investments in the area. Public recreation facilities on waterfront sites shall include, but shall not be limited to, shoreline stabilization and beautification, breakwaters, bulkheads, fishing piers, amphitheaters, shoreline walkways, and pedestrian bridges.

(c) The construction of community public recreation facilities for the purpose of addressing the recreational needs of local residents, including, but not limited to, playgrounds, sports fields and courts, community and senior centers, and fishing sites.

(d) The development of public recreation improvements that will attract tourists or otherwise increase tourism, where such developments are reasonably expected to have a substantial positive impact, relative to cost, on the local, regional, or state economy, including, but not limited to, campgrounds, beaches, historical sites, fishing access sites, and recreational development of abandoned railroad rights-of-way.

(e) Intermediate school districts for environmental education capital outlay projects that are consistent with the long-term recreation and parks plan for the local unit or units of government which the intermediate school district serves.

(3) Money in the fund for other state recreation purposes shall be used for infrastructure projects for fisheries, wildlife, recreational boating, or state forest campgrounds, for which not less than 50% of the cost of the project is available from any combination of federal, private, or restricted funds.

(4) Money in the fund shall not be used for land acquisition.

(5) Money in the fund shall not be expended for sports facilities, arenas, or stadiums intended as the primary home of a professional sports team, for commercial theme parks, or for any purpose that may result in the siting of casino gambling in this state.

(6) Money in the fund may be used by the department of treasury to pay for the cost of issuing bonds under part 713 and by the department to pay department costs as provided in this subsection. Not more than 3% of the total amount specified in this section shall be available for appropriation to the department to pay department costs directly associated with the completion of a project described in subsection (1)(a), (b), or (c) for which bonds are issued as provided under this part. Bond proceeds shall not be available to pay indirect, administrative overhead costs incurred by any organizational unit of the department not directly responsible for the completion of a project. Department costs shall be deducted proportionately from the amounts stated in subsection (1). It is the intent of the legislature that general fund appropriations to the department shall not be reduced as a result of department costs funded pursuant to this subsection.

Sec. 71509. (1) Grants and loans made to local units of government under section 71508(1)(b) shall be made by the department and allocated as follows:

(a) Each region provided for in subsection (2) shall receive \$6.50 per capita based upon the 1985 census figures in the document entitled "estimated state spending by county fiscal year 1985-86" published by the senate fiscal agency, dated October, 1987.

(b) The balance of the money remaining after the distribution under subdivision (a) shall be used for local public recreation projects that are regional parks as defined by rules promulgated by the department. An application under this subdivision shall not preclude an application under subdivision (a).

(2) For purposes of the distribution of grants and loans for local public recreation projects under section 71508(1)(b), the state is divided into the following 3 regions:

(a) Region 1—all of the counties of the Upper Peninsula.

(b) Region 2—Emmet, Charlevoix, Cheboygan, Presque Isle, Leelanau, Antrim, Otsego, Montmorency, Alpena, Benzie, Grand Traverse, Kalkaska, Crawford, Oscoda, Alcona, Manistee, Wexford, Missaukee, Roscommon, Ogemaw, Iosco, Mason, Lake, Osceola, Clare, Gladwin, Arenac, Isabella, Midland, Bay, Huron, Saginaw, Tuscola, and Sanilac counties.

(c) Region 3—Oceana, Newaygo, Mecosta, Muskegon, Montcalm, Gratiot, Ottawa, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer, St. Clair, Allegan, Barry, Eaton, Ingham, Livingston, Oakland, Macomb, Van Buren, Kalamazoo, Calhoun, Jackson, Washtenaw, Wayne, Berrien, Cass, St. Joseph, Branch, Hillsdale, Lenawee, and Monroe counties.

(3) A grant made under this part to a local unit of government shall require a 25% match by the local unit of government. Not more than 50% of the local unit of government's contribution under this subsection may be in the form of goods and services directly rendered to the construction of the project, or federal funds, or both. A local unit of government shall establish to the satisfaction of the department the cost or fair market value, whichever is less as of the date of the notice of approval by the department, of any of the above items with which it seeks to meet its local unit portion.

(4) The department shall promulgate rules that establish criteria for grants and loans made under this part, an application process, the definition of regional parks, and a process for disbursement of grants and loans to local units of government.

(5) A facility funded under this section shall not be sold, disposed of, or converted to a use not specified in the application for the grant or loan without express approval of the department.

Sec. 71510. (1) The department shall assure maximum participation by local units of government by promulgating rules that provide for a grant or loan program, where appropriate. In determining whether a grant or a loan program is appropriate, the department shall consider whether the project is likely to be undertaken without state assistance; the availability of state funds from other sources; the degree of private sector participation in the type of project under consideration; the extent of the need for the project as a demonstration project; and other factors considered important by the department.

(2) Prior to making a grant or loan authorized by this part, the department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

Sec. 71511. An application for a grant or a loan authorized under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make determinations required by this part.

Sec. 71512. The department shall not make a grant or a loan under this part unless all of the following conditions are met:

- (a) The applicant demonstrates that the proposed project is in compliance with all applicable state laws and rules.
- (b) The applicant demonstrates to the department the capability to implement the proposed project.
- (c) The applicant provides the department with evidence that a licensed professional engineer has approved the plans and specifications for the project, if appropriate.
- (d) The applicant demonstrates to the department that there is an identifiable source of funds for the maintenance and operation of the proposed project.

Sec. 71513. (1) A recipient of a grant or a loan made under this part shall be subject to all of the following:

- (a) A recipient shall keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.
- (b) A recipient shall obtain authorization from the department before implementing a change that significantly alters the proposed project or facility.
- (2) The department may revoke a grant or a loan made by it under this part or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan or with the requirements of this part or the rules promulgated under this part.
- (3) The department may recover a grant if the project for which the grant was made never operates.
- (4) The department may withhold a grant or a loan until the department determines that the recipient is able to proceed with the proposed project or facility.
- (5) To assure timely completion of a project, the department may withhold 10% of the grant or loan amount until the project is complete.

Sec. 71514. The department shall promulgate rules as are necessary or required to implement this part.

TRAILWAYS

PART 721 MICHIGAN TRAILWAYS

Sec. 72101. As used in this part:

- (a) "Advisory council" means the Michigan trailways advisory council created in section 72110.
- (b) "Council" means a Michigan railway management council established pursuant to section 72106.
- (c) "Fund" means the Michigan trailways fund created in section 72109.
- (d) "Governmental agency" means the federal government, a county, city, village, or township, or a combination of any of these entities.
- (e) "Michigan railway" means a railway designated by the commission pursuant to section 72103.
- (f) "Trailway" means a land corridor that features a broad trail capable of accommodating a variety of public recreation uses.

Sec. 72102. The legislature finds and declares that a statewide system of trailways will provide for public enjoyment, health, and fitness; encourage constructive leisure-time activities; protect open space, cultural and historical resources, and habitat for wildlife and plants; enhance the local and state economies; link communities, parks, and natural resources; create opportunities for rural-urban exchange, agricultural education, and the marketing of farm products; and preserve corridors for possible future use for other public purposes. Therefore, the planning, acquisition, development, operation, and maintenance of Michigan trailways is in the best interest of the state and is declared to be a public purpose.

Sec. 72103. (1) Upon petition by any person or on its own motion, the commission may designate a trailway in this state as a "Michigan railway". The petition or motion shall propose permitted uses of the trailway. The commission shall not designate a trailway as a Michigan railway unless it meets, or will meet when completed, all of the following requirements:

- (a) The land on which the trailway is located is owned by the state or a governmental agency, or otherwise is under the long-term control of the state or a governmental agency through a lease, easement, or other arrangement. If the land is owned by a governmental agency, the commission shall obtain the consent of the governmental agency before designating the land as part of a Michigan railway.

(b) The design and maintenance of the trailway and its related facilities meet generally accepted standards of public safety.

(c) The trailway meets appropriate standards for its designated recreation uses.

(d) The trailway is available for designated recreation uses on a nondiscriminatory basis.

(e) The trailway is a multiuse trail suitable for use by pedestrians, by people with disabilities, and by other users, as appropriate.

(f) The trailway is, or has potential to be, a segment of a statewide network of trailways, or it attracts a substantial share of its users from beyond the local area.

(g) The trailway is marked with an official Michigan trailway sign and logo at major access points.

(h) The trailway is not directly attached to a roadway, except at roadway crossings.

(i) Where feasible, the trailway offers adequate support facilities for the public, including parking, sanitary facilities, and emergency telephones, that are accessible to people with disabilities and are at reasonable frequency along the trailway.

(j) Potential negative impacts of trailway development on owners or residents of adjacent property are minimized through all of the following:

(i) Adequate enforcement of trailway rules and regulations.

(ii) Continuation of access for trailway crossings for agricultural and other purposes.

(iii) Construction and maintenance of fencing, where necessary, by the owner or operator of the trailway.

(iv) Other means as considered appropriate by the commission.

(k) Other conditions required by the commission.

(2) The commission shall not designate a trailway a Michigan trailway under subsection (1) unless a public hearing has been held in the vicinity of the proposed Michigan trailway to take testimony and gather public opinion on the proposed designation including, but not limited to, the proposed uses of the trailway and whether or not motorized uses are appropriate for the trailway. The public hearing shall be held at a location and at a time calculated to attract a fair representation of opinions on the designation. A transcript or a summary of the testimony at the public hearing shall be forwarded to the commission.

(3) At the time a Michigan trailway is designated under subsection (1), the commission shall, in consultation with the governmental agencies in which the trailway is located, establish uses to be permitted on the trailway. In establishing permitted uses, the commission shall consider all of the following:

(a) The safety and enjoyment of trailway users.

(b) Impacts on residents, landowners, and businesses adjacent to the trailway.

(c) Applicable local ordinances.

(4) A change in the permitted uses of a Michigan trailway established under subsection (3) relating to whether or not a motorized use is allowed on the trailway shall not be made without approval of the commission after a public hearing held in the same manner as provided in subsection (2).

(5) The commission may revoke a Michigan trailway designation if it determines that a trailway fails to meet the requirements of this section. Before revoking a Michigan trailway designation, the commission shall provide notice to all entities involved in the management of the trailway. If the trailway is brought into compliance with this section within 90 days after providing this notice, the commission shall not revoke the designation.

Sec. 72104. (1) Upon petition by any person or on its own motion, the commission may designate a trailway, bicycle path, sidewalk, road, or other suitable route that does not meet the requirements of this part for a Michigan trailway as a "Michigan trailway connector" if the connector meets all of the following:

(a) The connector meets appropriate safety standards and appropriate design standards for its designated uses.

(b) The connector connects directly to a Michigan trailway.

(c) The public agency having jurisdiction over the connector has consented in writing to the designation.

(d) The connector is marked with an official Michigan trailway connector sign and logo at major access points.

(2) An aquatic corridor capable of accommodating watercraft that connects to a Michigan trailway may be designated as a Michigan trailway connector if it meets the requirements of subsection (1)(a) to (d).

Sec. 72105. The department may operate and maintain a Michigan trailway that is located on state owned land or may enter into an agreement with a council or 1 or more governmental agencies to provide for the operation and maintenance of the Michigan trailway. An agreement entered into under this subsection may include provisions for any of the following:

- (a) Construction, maintenance, and operation of the railway.
- (b) Enforcement of railway rules and regulations including permitted uses of the railway.
- (c) Other provisions consistent with this part.

Sec. 72106. (1) Two or more governmental agencies may establish a Michigan railway management council for the development and management of a Michigan railway pursuant to the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being section 124.501 to 124.512 of the Michigan Compiled Laws.

(2) Upon formation, a council shall adopt operating procedures and shall elect officers as the council considers appropriate.

(3) A council may do 1 or more of the following as authorized in an interlocal agreement entered into pursuant to Act No. 7 of the Public Acts of the Extra Session of 1967:

(a) Operate and maintain that portion of 1 or more Michigan railways that is owned or under the control of the governmental agencies establishing the council.

(b) Pursuant to an agreement under section 72105, operate and maintain that portion of 1 or more Michigan railways that is located on state owned land.

(c) Coordinate the enforcement of railway rules and regulations and other applicable laws and ordinances, including permitted uses of the railway on railways owned or under the control of the governmental agencies establishing the council or, pursuant to an agreement under section 72105, railways that are located on state owned land.

(d) Receive any grant made from the fund or other funding related to that portion of a Michigan railway within its jurisdiction.

(e) Acquire or hold real property for the purpose of operating a Michigan railway.

(f) Perform other functions consistent with this part.

(4) A council may be dissolved by the governmental agencies that participated in creating the council. However, if a council has entered into an agreement with the department under section 72105, the agreement shall specify how the council may be dissolved.

Sec. 72107. In agricultural areas, a Michigan railway may be temporarily closed by the entity operating the railway to allow pesticide application on lands adjoining the railway. The entity operating the Michigan railway shall post the closure of the railway or arrange with a landowner or other person for the posting of signs and the closure of the railway during pesticide application and appropriate reentry periods.

Sec. 72108. (1) The commission may do any of the following:

(a) Grant easements or use permits or lease land owned by the state that is being used for a Michigan railway for a use that is compatible with the use of the Michigan railway.

(b) Enter into contracts for concessions along a state owned Michigan railway.

(c) Lease land adjacent to a state owned Michigan railway for the operation of concessions.

(2) If the commission approves of the acquisition of land by the department, the commission may state that the specified land is acquired for use as a Michigan railway. Following acquisition of land that the commission states is acquired for use as a Michigan railway, any revenue derived from that land pursuant to subsection (1), except as otherwise provided by law, shall be deposited into the fund.

Sec. 72109. (1) The Michigan railways fund is created within the state treasury.

(2) Except as otherwise provided by law, the state treasurer may receive money or other assets from any of the following for deposit into the fund:

(a) Fees collected from users of railways on state forest lands.

(b) Payments to the state for easements, use permits, leases, or other use of state owned Michigan railway property.

(c) Payments to the state for concessions operated by private vendors on state owned property located on or adjacent to a Michigan railway.

(d) Federal funds.

(e) Gifts or bequests.

(f) State appropriations.

(g) Money or assets from other sources as provided by law.

(3) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(4) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(5) Money in the fund may be expended for any of the following purposes:

(a) The expenses of the department in operating and maintaining the Michigan railway system and enforcing Michigan railway rules and regulations.

(b) Grants to or contracts with councils or governmental agencies to operate and maintain segments of Michigan railways and to enforce Michigan railway rules and regulations.

(c) Funding Michigan railway construction and improvements.

(d) Acquisition of land or rights in land.

(e) Publications and promotions of the Michigan railways system.

(6) In determining the expenditure of money in the fund, the department shall consider all of the following:

(a) The need for funding for each of the purposes listed in subsection (5).

(b) The estimated cost of Michigan railway management for each governmental agency that manages a Michigan railway, based on previous costs, railway mileage, level of use, and other relevant factors.

(c) The need of each governmental agency that manages a Michigan railway for financial assistance in managing that railway, and the amount of money from the fund received by that agency in the past.

(d) The amount of revenue accruing to the fund that is generated from each Michigan railway.

(e) Other factors considered appropriate by the department.

(7) The department shall submit a report to the legislature on or before December 1 of each year describing the use of money appropriated from the fund in the previous fiscal year.

Sec. 72110. (1) The Michigan railways advisory council is created within the department of natural resources.

(2) The advisory council shall consist of the following members appointed by the commission:

(a) One individual who is involved with the establishment or operation of a multiple use railway.

(b) Two individuals who represent Michigan railway user groups.

(c) One local government official from a governmental agency in which a multiple use railway is located.

(d) One member of the general public.

(3) The members first appointed to the commission shall be appointed within 90 days after April 21, 1993.

(4) Members of the advisory council shall serve for terms of 4 years, or until a successor is appointed, whichever is later, except that of the members first appointed, 2 shall serve for 1 year, 1 shall serve for 2 years, and 1 shall serve for 3 years.

(5) If a vacancy occurs on the advisory council, the commission shall make an appointment for the unexpired term in the same manner as the original appointment.

(6) The commission may remove a member of the advisory council for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(7) The first meeting of the advisory council shall be called by the commission. At the first meeting the advisory council shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the advisory council shall meet at least annually or more frequently at the call of the chairperson or if requested by 3 or more members.

(8) A majority of the members of the advisory council constitutes a quorum for the transaction of business at a meeting of the advisory council. A majority of the members present and serving is required for official action of the advisory council.

(9) The business the advisory council may perform shall be conducted at a public meeting of the advisory council held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(10) A writing prepared, owned, used, in possession of, or retained by the advisory council in the performance of an official function is subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(11) Members of the advisory council shall serve without compensation. However, members of the advisory council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the advisory council.

(12) The advisory council shall do both of the following:

(a) Make recommendations to the commission and the department on the expenditure of money in the fund.

(b) Advise the commission and the department on the implementation of this act and the establishment and operation of Michigan trailways.

Sec. 72111. All state agencies shall cooperate with the commission and the department in the implementation of this part.

Sec. 72112. The commission may promulgate rules as it considers necessary to implement this part.

PART 723 TRAILS

Sec. 72301. As used in this part, "trail" means a right-of-way adapted to foot or horseback travel.

Sec. 72302. Within legislative appropriations, the department shall make a survey and prepare a master plan for a state system of trails with campsites and necessary facilities that takes into account points of historical interest and scenic beauty. Revisions of the plan may be made from time to time. On those parts of the trail that are not public roads, the department may prohibit motor equipment. The department may provide, develop, and maintain a system of trails with campsites and necessary facilities for the use of the public, within the appropriations made for those purposes by the legislature.

Sec. 72303. The department may accept gifts or grants of land, rights-of-way and other property. The department may use state timber, timber materials, equipment, and prison labor on lands that are under lease or use permit to it.

RECREATIONAL TRESPASS

PART 731 RECREATIONAL TRESPASS

Sec. 73101. As used in this part:

(a) "Farm product" means that term as defined in section 2 of the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being section 286.472 of the Michigan Compiled Laws.

(b) "Farm property" means land used in the production of a farm product and all lands contained within the farm.

Sec. 73102. (1) Except as provided in subsection (4), a person shall not enter or remain upon the property of another person, other than farm property or a wooded area connected to farm property, to engage in any recreational activity or trapping on that property without the consent of the owner or his or her lessee or agent, if either of the following circumstances exists:

(a) The property is fenced or enclosed and is maintained in such a manner as to exclude intruders.

(b) The property is posted in a conspicuous manner against entry. The minimum letter height on the posting signs shall be 1 inch. Each posting sign shall be not less than 50 square inches, and the signs shall be spaced to enable a person to observe not less than 1 sign at any point of entry upon the property.

(2) Except as provided in subsection (4), a person shall not enter or remain upon farm property or a wooded area connected to farm property for any recreational activity or trapping without the consent of the owner or his or her lessee or agent, whether or not the farm property or wooded area connected to farm property is fenced, enclosed, or posted.

(3) On fenced or posted property or farm property, a fisherman wading or floating a navigable public stream may, without written or oral consent, enter upon property within the clearly defined banks of the stream or walk a route as closely proximate to the clearly defined bank as possible when necessary to avoid a natural or artificial hazard or obstruction, including, but not limited to, a dam, deep hole, fence, or other exercise of ownership by the riparian owner.

(4) A person other than a person possessing a firearm may, unless previously prohibited in writing or orally by the property owner or his or her lessee or agent, enter on foot upon the property of another person for the sole purpose of retrieving a hunting dog. The person shall not remain on the property beyond the reasonable time necessary to retrieve the dog.

(5) Consent to enter or remain upon the property of another person pursuant to this section may be given orally or in writing. The consent may establish conditions for entering or remaining upon that property. Unless prohibited in the written consent, a written consent may be amended or revoked orally. If the owner or his or her lessee or agent requires all persons entering or remaining upon the property to have written consent, the presence of the person on the property without written consent is prima facie evidence of unlawful entry.

(6) As used in this section, "hunting dog" means a dog allowed to range freely to engage in or aid in hunting on the day the dog enters the property of another person.

Sec. 73103. (1) A person shall not discharge a firearm within the right-of-way of a public highway adjoining or abutting any platted property, fenced, enclosed, or posted property, farm property, or a wooded area connected to farm property without the consent of the owner of the abutting property or his or her lessee or agent.

(2) As used in this section, "public highway" means a road or highway under the jurisdiction of the state transportation department, the road commission of a county, or of a local unit of government.

Sec. 73104. A person shall not remove, deface, or destroy a sign or poster that has been posted pursuant to this part.

Sec. 73105. A person shall not post a sign on property owned by another person or enclose the property of another person to prohibit hunting, fishing, trapping, or other recreational activities on that property without the written permission of the owner of that property or his or her lessee or agent.

Sec. 73106. (1) A prosecution under this part shall be in the name of the people of the state, shall be brought before a district court of competent jurisdiction in the county in which the offense was committed, and shall be brought within 1 year from the time the offense charged was committed.

(2) A peace officer may seize property and otherwise enforce this part upon complaint of the landowner or his or her lessee or agent.

Sec. 73107. (1) Except as provided in subsection (2), a cause of action shall not arise against the owner, tenant, or lessee of property for an injury to a person who is on that property with oral or written consent but who has not paid the owner, tenant, or lessee of that property valuable consideration for the recreational or trapping use of the property, unless the injury was caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(2) A cause of action shall not arise against the owner, tenant, or lessee of property for an injury to a person who is on that property with oral or written consent and has paid the owner, tenant, or lessee valuable consideration for fishing, trapping, or hunting on that property, unless that person's injuries were caused by a condition that involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

Sec. 73108. The prosecuting attorney for a county shall enforce this part and prosecute all persons charged with violating this part in that county. The attorney representing a municipality may enforce this part in that municipality and prosecute all persons charged with violating this part in that municipality.

Sec. 73109. A person shall not resist or obstruct a peace officer enforcing this part.

Sec. 73110. (1) Except as provided in subsection (2), a person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(2) A person convicted of a second or subsequent violation of this part occurring within 3 years of a previous violation of this part shall be punished by imprisonment for not more than 90 days or a fine of not less than \$100.00 or more than \$1,000.00, or both.

(3) Except as provided in subsection (4), if a person is sentenced under subsection (2) and the person is licensed to hunt or fish in this state, the court may order the person's hunting or fishing license revoked for the remainder of the calendar year and order the person not to seek or possess a hunting or fishing license of any kind for not more than 3 succeeding calendar years.

(4) If a person is sentenced under subsection (2), if the second or subsequent violation occurred on a private shooting preserve licensed pursuant to part 417, if the person possessed a firearm or bow including, but not limited to, a crossbow, at the time the violation occurred, and if the person is licensed to hunt or fish in this state, then the court shall order the person's license revoked for the remainder of the calendar year and shall order the person not to seek or possess a hunting or fishing license of any kind for not more than 3 succeeding calendar years.

(5) The court may order a person convicted of violating this part to pay the costs of prosecution.

(6) Property brought onto the property of another person while committing a second or subsequent violation of this part may be seized and forfeited as provided in chapter 47 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.4701 to 600.4709 of the Michigan Compiled Laws.

(7) The court shall order a person convicted of violating this part to make restitution for any damage arising out of the violation.

Sec. 73111. (1) A local unit of government may adopt this part as an ordinance, except that a penalty imposed for a violation of that ordinance shall not exceed the penalty authorized by law for the violation of an ordinance enacted by that local unit of government.

(2) A local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

PART 733 LIABILITY OF LANDOWNERS

Sec. 73301. (1) Except as otherwise provided in this section, a cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(2) A cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of entering or exiting from or using a Michigan trailway as designated under part 721 or other public trail, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. For purposes of this subsection, a Michigan trailway or public trail may be located on land of any size including, but not limited to, urban, suburban, subdivided, and rural land.

(3) A cause of action shall not arise against the owner, tenant, or lessee of land or premises for injuries to a person who is on that land or premises for the purpose of gleaning agricultural or farm products, unless that person's injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(4) A cause of action shall not arise against the owner, tenant, or lessee of a farm used in the production of agricultural goods as defined by section 35(1)(h) of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.35 of the Michigan Compiled Laws, for injuries to a person who is on that farm and has paid the owner, tenant, or lessee valuable consideration for the purpose of fishing or hunting, unless that person's injuries were caused by a condition which involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

(5) A cause of action shall not arise against the owner, tenant, or lessee of land or premises for injuries to a person, other than an employee or contractor of the owner, tenant, or lessee, who is on the land or premises for the purpose of picking and purchasing agricultural or farm products at a farm or "u-pick" operation, unless the person's injuries were caused by a condition that involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

(6) As used in this section, "agricultural or farm products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary, including, but not limited to, trees and firewood.

SUBCHAPTER 2: PARKS

PARKS

PART 741 STATE PARKS SYSTEM

Sec. 74101. As used in this part:

(a) "Fund" means the state park improvement fund created in section 74108.

(b) "Improvement program" means the construction, reconstruction, development, improvement, bettering, operating, maintaining, and extending a facility at a state park, including a site improvement, impoundment, road and parking lot, toilet building, concession building, shelter building, bathhouse, utility, outdoor center, visitor service facility, ski area, ski tow, ski shelter, and administration unit.

(c) "Motor vehicle" means a vehicle that is self-propelled.

(d) "State park" means a state park or state recreation area designated by the director.

(e) "State park revenues" means all revenues collected for state parks, including but not limited to, motor vehicle permits, concession fees, nonmotorized trail permits, fees, leases, camping fees, sale of farm animals from Maybury state park, donations, and gifts.

Sec. 74102. (1) The legislature finds:

- (a) Michigan state parks preserve and protect Michigan's significant natural and historic resources.
 - (b) Michigan state parks are appropriate and uniquely suited to provide opportunities to learn about protection and management of Michigan's natural resources.
 - (c) Michigan state parks are an important component of Michigan's tourism industry and vital to local economies.
- (2) The department shall create, maintain, operate, promote, and make available for public use and enjoyment a system of state parks to preserve and protect Michigan's significant natural resources and areas of natural beauty or historic significance, to provide open space for public recreation, and to provide an opportunity to understand Michigan's natural resources and need to protect and manage those resources.

Sec. 74103. In implementing the responsibilities under this part, the department may do 1 or more of the following:

- (a) Enter into contracts or agreements that may be necessary to implement this part.
 - (b) Lease state park property to a person.
 - (c) Accept gifts, grants, or bequests from any public or private source to be used for a purpose consistent with this part.
 - (d) Acquire property for designation as a state park.
 - (e) Provide the granting of concessions to a person within the boundaries of a state park. In granting a concession, the department shall provide that each concession is awarded at least every 7 years based on extension, renegotiation, or competitive bidding.
- (2) The department may acquire land and undertake an improvement program for state parks, pursuant to the powers, rights, and privileges conferred by this part, but land acquisition or an improvement program shall not be undertaken until approved by the legislature in the annual capital outlay appropriation act.

Sec. 74104. (1) The department shall establish an "adopt-a-park" program that will allow volunteer groups to assist state park staff in maintaining and enhancing state parks.

(2) Subject to subsection (3), volunteer groups in the adopt-a-park program may adopt any available state park and may choose any 1 or more of the following volunteer activities:

- (a) Spring cleanups.
- (b) Environmental activities.
- (c) Accessibility projects.
- (d) Special events.
- (e) Park maintenance and development.
- (f) Public information and assistance.
- (g) Training.

(3) The department shall designate the activities to be performed by a volunteer group in the adopt-a-park program. The department may provide for more than 1 volunteer group to adopt a state park.

(4) A volunteer group that wishes to participate in the adopt-a-park program shall submit an application to the department on a form provided by the department. Additionally, volunteer groups shall agree to the following:

- (a) Volunteer groups shall participate in the program for at least a 2-year period.
- (b) Volunteer groups shall consist of at least 6 people who are 18 years of age or older, unless the volunteer group is a school or scout organization, in which case the volunteers may be under 18 years of age.
- (c) Volunteer groups shall give a total of 400 hours over a 2-year period.
- (d) Volunteer groups shall comply with other reasonable requirements of the department.
- (5) A state park manager may issue to volunteers who are actively working on adopt-a-park projects that last more than 1 day free camping permits if campsites are available. A state park manager may waive state park entry fees for volunteers entering state parks to work on adopt-a-park projects.

(6) The department shall design and erect near the state park headquarters of each state park in the adopt-a-park program an adopt-a-park program sign with the name of the volunteer group's sponsoring organization listed for each volunteer group that has contributed at least 100 service hours by volunteers.

Sec. 74105. The department may appoint persons to serve as volunteers for the purpose of facilitating the responsibilities of the department as provided in this part. While a volunteer is serving in such a capacity, the volunteer has the same immunity from civil liability as a department employee and shall be treated in the same manner as an employee under section 8 of Act No. 170 of the Public Acts of 1964, being section 691.1408 of the Michigan Compiled Laws. A volunteer shall not carry a firearm while functioning as a volunteer.

Sec. 74106. For the purpose of providing a park improvement program, the commission may issue revenue bonds as provided in this part. The commission may issue revenue bonds payable from state park revenues. The aggregate principal amount of the revenue bonds shall not exceed \$100,000,000.00. The department shall provide notice to the appropriations committee of the senate and the house of representatives at least 30 days before bonds are offered for sale. There may be included in the cost for which bonds are to be issued a reasonable allowance for legal, engineering, architectural and consultant services, traffic studies, cost of printing and issuing of the bonds, interest on the bonds becoming due before collection of the first available state park revenues and for a period of 1 year thereafter, and other incidental expenses. The bonds shall be authorized by a resolution adopted by a majority vote of a quorum of the commission and may be issued in 1 or more series as shall be determined by the commission.

Sec. 74107. The commission may authorize the department, but only within limitation which shall be contained in the commission's authorizing resolution, to do 1 or more of the following:

- (a) Sell and deliver and receive payment for bonds.
- (b) Approve interest rates, purchase prices, discounts, premiums, maturities, principal amounts, interest payment dates, redemption rights at the option of the commission or the holder, and the place and time of delivery and payment for the bonds.
- (c) Deliver bonds to refund prior bonds or partly to refund bonds and partly for other authorized purposes.
- (d) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.
- (e) Any other matters and procedures necessary to complete the issuance and delivery of the bonds.

Sec. 74108. A resolution adopted by the commission authorizing the issuance of bonds shall contain all of the following:

- (a) A description in reasonable detail of the improvement program as approved by the legislature, for which the bonds are to be issued.
- (b) The form of the bonds and all of the following:
 - (i) The maturity date or dates for the bonds with no maturity later than 30 years after the issuance of the bonds.
 - (ii) The principal amount of and principal payment dates for the bonds.
 - (iii) The interest rate or rates for the bonds or that bonds shall not bear any interest.
 - (iv) The redemption provisions, with or without premium, for the bonds, if any.
 - (v) The authorized denominations for the bonds.
 - (vi) Whether the bonds may be sold at a discount or for a premium.
 - (vii) The manner in which the bonds will be executed.
 - (viii) Any other provision concerning the bonds or the security for the bonds the commission considers appropriate.
- (c) A provision that the state park revenues shall be pledged for the payment of the bonds. However, the pledge of state park revenues shall be on a parity with pledges of the revenues previously or subsequently made by the commission pursuant to any other resolution authorizing the issuance of bonds under this part and the resolution shall state that the pledge complies with this subdivision.
- (d) A covenant that the park permit fees and penalties provided in section 74117 shall be revised from time to time within the limits permitted by law when necessary to ensure that the revenues to be derived from the fees shall be sufficient to pay the principal of and interest on bonds issued pursuant to this part and other obligations of the commission in connection with the issuance of bonds.
- (e) A provision requiring the fiscal agent to set aside money from the state park revenue bond receiving fund into a fund to be designated as the state park debt service fund in a sum proportionately sufficient to provide for the payment of the principal of and interest upon all bonds payable from the fund as and when the principal and interest becomes due and payable in the manner prescribed by the commission. In addition the resolution shall authorize the commission to provide that a reasonable excess amount may be set aside by the fiscal agent from time to time as directed by the commission in the state park debt service fund to produce and provide a reserve to meet a possible future deficiency in the fund. The resolution shall further provide that out of the revenues remaining each quarter, after having first met the requirements of the state park debt service fund, including the reserve for the fund, the commission may by direction to the fiscal agent next set aside additional money in the state park debt service fund for the purpose of calling

bonds for redemption, subject to approval by the state administrative board. The resolution shall also contain a provision for the investment of funds held by the fiscal agent.

(f) A provision that money on deposit in the state park revenue bond receiving fund after setting aside the amounts in the state park debt service fund is surplus money, and shall be deposited quarterly by the fiscal agent upon the order of the commission in the state treasury in a fund to be designated as the state park improvement fund. This fund shall be subject to appropriation by the legislature for the improvement, operation, and maintenance of state parks and recreation areas. Any unexpended revenue in the fund, along with excess revenue from prior fiscal years, shall be carried over into subsequent fiscal years. Interest and earnings of the fund shall remain in the fund. Not less than \$10.00 of each annual permit and not less than \$2.00 of each daily permit projected to be sold in a fiscal year may be appropriated for the maintenance and operation of state parks and recreation areas in that fiscal year.

(g) The terms and conditions under which additional bonds payable from the state park revenues of equal standing with a prior issue of bonds may be issued.

(h) A provision for deposit and expenditure of the proceeds of sale of the bonds and for investment of the proceeds of sale of the bonds and of other funds of the commission relating to bonds authorized by this part.

(i) A provision that in the event of a default in the payment of principal of or interest on the bonds, or in the performance of an agreement or covenant contained in the resolution, the holders of a specified percentage of the outstanding bonds may institute 1 or more of the following for the equal benefit of the holders of all of the bonds:

- (i) An action of mandamus or any other suit, action, or proceeding to enforce the rights of the holders of the bonds.
- (ii) An action upon the defaulted bonds or coupons.
- (iii) Any other action as may be provided by law.

Sec. 74109. The increased fee revenue as a result of Act No. 177 of the Public Acts of 1989 shall not be used to reduce the state general fund/general purpose support for state park operations. If the state general fund/general purpose support for state park operations does not equal or exceed the amount appropriated in fiscal year 1993-94 as this amount is annually adjusted pursuant to the Detroit consumer price index—all items, then Act No. 177 of the Public Acts of 1989 shall be repealed.

Sec. 74110. Any bond issued under this part shall state that it is not a general obligation of the state of Michigan, but is a revenue bond payable only from state park revenues. Nothing in this part authorizes the state to incur debt contrary to the constitution or laws of the state. The holders of the bonds shall not have the right to compel a sale of any real estate or personal property of the state parks, nor shall the holders of the bonds have any lien, mortgage, or other encumbrances upon any property of the state of Michigan, real, personal, or mixed. Bonds shall be fully negotiable within the meaning of the negotiable instruments law of this state.

Sec. 74111. The commission may issue bonds for the purpose of refunding any obligations issued under this part, or may authorize a single issue of bonds in part for the purpose of refunding such obligations and in part for the purpose of financing any additional cost of land or improvement program. Bonds issued under this section are payable only from state park revenues and may be sold in the manner provided for the sale of bonds in this part. If sold, that portion of the proceeds representing the refunding portion may be either applied to the payment of the obligations refunded or deposited in escrow for their retirement.

Sec. 74112. The maximum rate of interest on bonds issued under this part shall be that set forth for bonds in the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.2 of the Michigan Compiled Laws, but bonds issued under this part shall not in any other way be subject to Act No. 202 of the Public Acts of 1943. The sale and award of bonds shall be conducted and made by the commission at a public or private sale. If a public sale is held, the bonds shall be advertised for sale once not less than 7 days before sale in a publication with statewide circulation which carries as a part of its regular service notices of the sales of municipal bonds and that has been designated in the resolution as a publication complying with these qualifications. The notice of sale shall be in the form as designated by the commission.

Sec. 74113. All state park revenues shall be deposited with the state treasurer who shall act as the fiscal agent for the department. The state treasurer shall establish a special depository account to be designated "state park revenue bond receiving fund". The necessary expenses of the fiscal agent incurred by reason of his or her duties under this part shall be paid from the state park revenue bond receiving fund. The commission may designate banks or trust companies to act as paying agents for bonds issued pursuant to this part. The paying agent shall be paid from the state park debt service fund.

Sec. 74114. The department may establish fees and collect fees for activities in state parks except those activities for which fees are established under this part. All fees collected under this section shall be deposited into the fund.

Sec. 74115. Except as otherwise provided in this part, free entry of a motor vehicle shall not be permitted into any state park or portion of a state park posted in accordance with this part.

Sec. 74116. The department shall designate the state parks in which a park permit is required for lawful entry by motor vehicle. The department shall designate only those parks in which state facilities and services are provided for the public. The department may designate portions of state parks where a park permit is not necessary. The department shall post signs at designated parks or designated portions of parks that state that a motor vehicle park permit is required. A person shall not enter any state park or portion of a state park in which a motor vehicle park permit is required without a valid motor vehicle permit affixed to the vehicle. A valid park permit procured pursuant to section 74117 shall be permanently affixed to the lower right-hand corner of the windshield of any motor vehicle entering a state park or portion of a state park in which a motor vehicle park permit is required, except that a park permit is not required to be affixed to a motor vehicle while the motor vehicle is being driven or parked within an established federal, state, or county highway within a state park. The requirement to obtain a motor vehicle park permit does not apply to motor vehicles used in the operation or maintenance of state parks, to emergency vehicles, or to state-owned or law enforcement motor vehicles or private motor vehicles being operated on official state business.

Sec. 74117. (1) The department may require park permits and collect park permit fees for entry into a state park or portion of a state park posted in the manner prescribed by this part. The department shall prepare and distribute park permits to implement this part.

(2) Except as otherwise provided in this section, an annual park permit shall be issued and shall authorize the entry of the motor vehicle to which it is originally attached within the confines of any state park or recreation area during the calendar year in which issued. The fee for the annual park permit is \$18.00 in 1994, and \$20.00 in 1995 and thereafter, except that an owner of a resident motor vehicle who is 65 years of age or older shall be issued a special annual park permit for 1/4 the amount of the annual park permit.

(3) A daily park permit, valid for 1 day only, shall be issued for a fee to be fixed by the department, but in an amount not to exceed \$4.00 for resident motor vehicles and \$6.00 for nonresident motor vehicles. The fee for nonresident motor vehicles may be \$4.00 in all parks except where nonresident day use is extremely high. The department shall identify parks where nonresident day use is extremely high and set the nonresident fee at \$6.00. The daily permit shall authorize the entry of the motor vehicle to which it is originally attached within the confines of a state park during the day in which issued.

(4) A resident motor vehicle is a vehicle that is registered as a motor vehicle in this state.

(5) This part applies only to the entry of motor vehicles into the state parks and to the park permits authorized in this part and does not obviate the necessity of obtaining additional permits for special services or park privileges as previously or subsequently may be required by law or by rules promulgated by the department. The department shall designate each person in the state authorized to sell park permits and shall require as a condition of the designation that a surety bond be furnished in an amount and in a form and with the surety as is acceptable to the department. A person designated by the department after being designated may issue park permits in accordance with this part.

(6) Commercial motor coaches or vans are not eligible to enter a state park with an annual park permit. The department may establish a daily fee not to exceed \$15.00 to allow commercial motor coaches or vans with a capacity of over 12 passengers daily entry into a state park.

(7) The department may add to the cost of a reservation or for payment for a motor vehicle entrance or camping fee the charges that the state incurs because of the use of a credit card.

Sec. 74118. On or before the tenth day of every month, all persons authorized to sell park permits shall pay to the department all money received from the sale of park permits for the preceding month. Any person who refuses or neglects to pay the money as provided in this section, in addition to other penalties provided by law, forfeits the right to sell park permits. All persons authorized to sell park permits, except employees of the department who receive a regular salary from the state, may charge the purchaser as compensation 15 cents additional for each annual park permit and 10 cents additional for each daily park permit issued. On or before February 15 of each year a complete report of all permits sold during the previous calendar year shall be filed with the department by each person authorized to sell park permits, and all unsold park permits for the previous year shall be returned to the department.

Sec. 74119. (1) Pursuant to section 36 of article IX of the state constitution of 1963, the Michigan state parks endowment fund is created within the state treasury. The Michigan state parks endowment fund may be referred to as the Genevieve Gillette state parks endowment fund.

(2) The state treasurer may receive money or other assets from any source for deposit into the endowment fund. The state treasurer shall direct the investment of the endowment fund. The state treasurer shall credit to the endowment fund interest and earnings from endowment fund investments.

(3) Money in the endowment fund at the close of the fiscal year shall remain in the endowment fund and shall not lapse to the general fund.

(4) The accumulated principal of the endowment fund shall not exceed \$800,000,000.00, which amount shall be annually adjusted pursuant to the Detroit consumer price index—all items beginning when the endowment fund reaches \$800,000,000.00. This annually adjusted figure is the accumulated principal limit of the endowment fund.

(5) Money in the endowment fund shall be expended for operations, maintenance, and capital improvements at Michigan state parks.

(6) Money in the endowment fund shall be expended as follows:

(a) Until the endowment fund reaches an accumulated principal of \$800,000,000.00, each state fiscal year the legislature may appropriate not more than \$5,000,000.00 of the money in the endowment fund as this \$5,000,000.00 amount is annually adjusted pursuant to the Detroit consumer price index—all items.

(b) Once the accumulated principal in the endowment fund reaches \$800,000,000.00, only the interest and earnings of the endowment fund in excess of the amount necessary to maintain the endowment fund's accumulated principal limit shall be expended.

(7) Unexpended appropriations of the endowment fund from any state fiscal year as authorized by this section may be carried forward or may be appropriated as determined by the legislature for purposes of this section.

Sec. 74120. The department may promulgate rules to implement this part.

Sec. 74121. A person shall not do the following in a state park:

(a) Destroy, damage, or remove any tree, shrub, wildflower, or other vegetation or property without the permission of the department.

(b) Operate a motor vehicle except in a designated area.

(c) Violate this part or rules promulgated under this part.

Sec. 74122. (1) A person who violates this part or a rule promulgated under this part is guilty of a misdemeanor. In any proceeding for the violation of this part or a rule promulgated under this part, where a motor vehicle without the required park permit affixed is found parked in any state park, the registration plate displayed on the motor vehicle constitutes prima facie evidence that the owner of the motor vehicle was the person who parked or placed it at the location where it was found.

(2) In addition to the penalties provided for in subsection (1), a person convicted of an act of vandalism shall reimburse the department up to 3 times the amount of the damage as determined by the court. All money collected pursuant to this subsection shall be credited to the fund.

Sec. 74123. The department may establish a fine for failure to purchase a park permit which shall be twice the cost of a motor vehicle entrance permit or daily permit as established by this part or by the department.

Sec. 74124. (1) To ensure compliance with this part and the rules promulgated under this part, the director may commission park and recreation enforcement officers with limited arrest powers to enforce this part, rules promulgated under this part, and any laws of this state specified in those rules as enforceable by commissioned park and recreation enforcement officers, upon properties administered by the department under this part. In performing these duties, park and recreation enforcement officers shall be vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers by the general laws of this state.

(2) In addition to the limited arrest authority granted in subsection (1), a park and recreation enforcement officer may arrest a person without a warrant if 1 or more of the following exist:

(a) The person commits an assault or an assault and battery punishable under section 81 or 81a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.81 and 750.81a of the Michigan Compiled Laws, against the park and recreation enforcement officers or against another person while in the presence of the park and recreation enforcement officers.

(b) The park and recreation enforcement officers have reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it.

(c) The park and recreation enforcement officers have positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest.

(d) The person commits a civil infraction or misdemeanor in violation of the following sections of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949:

(i) Section 625 or 625b, being sections 257.625 and 257.625b of the Michigan Compiled Laws.

(ii) Section 611, being section 257.611 of the Michigan Compiled Laws.

- (iii) Sections 626 and 626b, being sections 257.626 and 257.626b of the Michigan Compiled Laws.
- (iv) Section 627, being section 257.627 of the Michigan Compiled Laws.
- (e) The person violates Act No. 319 of the Public Acts of 1975, being sections 257.1601 to 257.1626 of the Michigan Compiled Laws.
- (f) The person violates sections 80143(6) and 80198b(2).

Sec. 74125. All bonds issued pursuant to this part and the interest on those bonds is exempt from taxation by the state, or by any municipality, corporation, county, or other political subdivision or taxing district of the state.

PART 742 CAMP REGISTRATION CARDS

Sec. 74201. (1) A person shall not camp on any state owned lands under the jurisdiction or control of the department without having first posted a camp registration card.

(2) As used in this part, "to camp" means the erection of a tent or tent-type camper or the parking and occupancy of a travel or house trailer or truck camper.

Sec. 74202. A person may obtain without charge from a conservation officer or a person authorized to issue fishing or hunting licenses a camp registration card and shall enter on the camp registration card in the space provided, in plain and legible English, the name and address of every person occupying the camp. The card shall be prominently and conspicuously posted at the campsite before the camp is made and shall be left so posted upon the departure of the camping party.

Sec. 74203. Upon breaking camp, every member of a camping party is responsible for the disposal, by burying or burning, of all rubbish, papers, cans, containers, or any other article or thing of any nature whatsoever brought into or built upon the premises by the camping party. A person camping upon the state owned lands shall not deposit and leave any tin cans, bottles, refuse, or other rubbish unburied or otherwise disposed of on the premises.

Sec. 74204. The department shall have printed and distributed a sufficient number of camp registration cards to implement this part.

Sec. 74205. It is the duty of any peace officer, including conservation officers, to enforce this part.

Sec. 74206. A person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00 and costs of prosecution, or both, and, in addition, is liable for any costs incurred by the department in cleaning up the campsite of the person, which liability shall be recoverable in any court of competent jurisdiction in this state.

Sec. 74207. This part does not apply to any state park, campground, or recreation area administered by the department.

PART 743 STATE PARKS FOUNDATION

Sec. 74301. As used in this part:

- (a) "Foundation" means the Michigan state parks foundation created in section 74302.
- (b) "State park" means a state park or state recreation area designated by the director.

Sec. 74302. (1) The department shall create a foundation to be known as the Michigan state parks foundation. The foundation shall exercise its powers, functions, and duties independently of the department of natural resources. The foundation shall be governed by an executive board consisting of the director who shall serve as a nonvoting ex officio member, and 13 voting members who shall be appointed by the governor.

(2) The members of the foundation who are appointed by the governor pursuant to subsection (1) shall serve for a term of 4 years or until a successor is appointed, whichever is later, except that of the members first appointed, 3 shall serve for 1 year, 3 shall serve for 2 years, and 3 shall serve for 3 years.

(3) If a vacancy occurs on the foundation from the members appointed by the governor, an appointment shall be made for the unexpired term in the same manner as the original appointment. The governor may remove appointed foundation members for neglect of duty or malfeasance in relation to the member's foundation duties.

(4) The foundation shall meet immediately upon complete formation and then shall meet at least quarterly.

(5) Seven members of the foundation shall constitute a quorum for the conducting of business. The foundation shall select a chairperson, vice-chairperson, and other officials from the membership as the members of the foundation consider necessary.

(6) A member of the foundation shall not receive compensation for his or her services but may be reimbursed for expenses incurred in the performance of his or her duties as a member of the foundation.

(7) The department shall provide staff assistance to the foundation as necessary for it to carry out its functions.

(8) The business the executive board of the foundation may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meetings shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

Sec. 74303. The purpose of the foundation is to support the overall enhancement of the Michigan state parks system and to foster awareness, appreciation, understanding, and involvement in the system through focused assistance that is supplementary to appropriated parks funding.

Sec. 74304. The foundation shall do the following:

(a) Determine those projects or undertakings for which the foundation will solicit funding. In determining projects to fund, the foundation shall select projects that enhance the use, preservation, enjoyment, or understanding of the natural and historic resources of the state parks through the following focus areas of need:

(i) Education and outreach.

(ii) Visitor information services and interpretive facilities.

(iii) Support for volunteer activities.

(iv) Employee support program.

(b) Maintain a current list and description of projects for which contributions are sought.

(c) Provide for methods by which persons who contribute to the foundation projects may be commemorated for their contributions.

(d) Advise potential contributors of all tax ramifications of contributions to the foundation.

(e) Invest assets of the foundation in any instrument, obligation, security, or property considered appropriate by the executive board of the foundation.

(f) Provide for receiving contributions in lump sums or periodic sums.

(g) Administer money collected by the foundation.

(h) Segregate contributions to the foundation into various accounts.

(i) Procure insurance against any loss in connection with the assets of the foundation or foundation activities.

(j) Enter into contracts on behalf of the foundation.

(k) Define the terms and conditions under which money may be disbursed by the foundation.

(l) Contract for goods and services and engage personnel as is necessary and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional, management, and technical assistance and advice, payable out of any money of the foundation. However, not more than 10% of the money of the foundation shall be used for the purpose of this subdivision or other administrative costs of the foundation.

(m) Exercise other powers necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of this part, and the purposes of the foundation.

Sec. 74305. The foundation shall be managed solely pursuant to and for the purpose set forth in this part and money or other assets of the foundation shall not be loaned or otherwise transferred or used by the state for any purpose other than the purposes of this part.

Sec. 74306. The foundation shall annually prepare or cause to be prepared an accounting which shall be a public document and shall transmit a copy of the accounting to the governor, the senate majority and minority leaders, and the Republican and Democratic leaders of the house of representatives. The foundation may also make available the accounting of the foundation to a contributor to the foundation. The accounts of the foundation are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general.

PART 751 DARK SKY PRESERVE

Sec. 75101. As used in this part:

(a) "Dark sky preserve" means the area designated in section 75102.

(b) "Fully shielded" means outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above 15 degrees below the horizontal plane and also constructed so that the filament or light source is not visible to the naked eye when viewed from a point higher than 15 degrees below the horizontal plane.

Sec. 75102. The state owned land at lake Hudson, legally described as:

All state-owned land located in Sections 25, 26, 27, 34, 35, and 36, T 7 S, R 1 E, and Section 1, T 8 S, R 1 E - Lenawee County, Michigan.

is designated a dark sky preserve.

Sec. 75103. (1) The commission shall ensure that outdoor lighting within a dark sky preserve is not installed unless necessary for safety, security, or the reasonable use and enjoyment of property within the preserve.

(2) The commission shall ensure that outdoor lighting within a dark sky preserve does not unreasonably interfere with nighttime activities that require darkness, including, but not limited to, the enjoyment of the night sky, nighttime photography, and wildlife photography.

Sec. 75104. Within 90 days after June 9, 1993, the commission shall ensure that all outdoor lighting within a dark sky preserve conforms to the following:

(a) Lighting shall be directed downward.

(b) Whenever possible, lighting shall be provided by fully shielded fixtures.

(c) Wherever practical and appropriate, outdoor lighting fixtures shall be motion sensor fixtures, and not fixtures that remain lighted during all hours of darkness.

Sec. 75105. This part does not restrict the use and development of the state owned land at lake Hudson as prescribed by the master plan approved by the commission if the use and development are in compliance with this part.

Sec. 75106. This part is repealed on June 10, 2003.

ABORIGINAL RECORDS AND ANTIQUITIES AND ABANDONED PROPERTY

PART 761 ABORIGINAL RECORDS AND ANTIQUITIES

Sec. 76101. As used in this part:

(a) "Abandoned property" means an aircraft; a watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of an aircraft or watercraft; the personal property of the officers, crew, and passengers of an aircraft or watercraft; and the cargo of an aircraft or watercraft, which have been deserted, relinquished, cast away, or left behind and for which attempts at reclamation have been abandoned by owners and insurers. Abandoned property also means materials resulting from activities of historic and prehistoric Native Americans.

(b) "Bottomlands" means the unpatented lake bottomlands of the Great Lakes.

(c) "Committee" means the underwater salvage and preserve committee created in section 76103.

(d) "Great Lakes" means lakes Erie, Huron, Michigan, St. Clair, and Superior.

(e) "Great Lakes bottomlands preserve" means an area located on the bottomlands of the Great Lakes and extending upward to and including the surface of the water, which is delineated and set aside by rule for special protection of abandoned property of historical value, or ecological, educational, geological, or scenic features or formations having recreational, educational, or scientific value. A preserve may encompass a single object, feature, or formation, or a collection of several objects, features, or formations.

(f) "Historical value" means value relating to, or illustrative of, Michigan history, including the statehood, territorial, colonial, and historic, and prehistoric native American periods.

(g) "Mechanical or other assistance" means all humanmade devices, including pry bars, wrenches and other hand or power tools, cutting torches, explosives, winches, flotation bags, lines to surface, extra divers buoyancy devices, and other buoyance devices, used to raise or remove artifacts.

(h) "Recreational value" means value relating to an activity that the public engages in, or may engage in, for recreation or sport, including scuba diving and fishing.

Sec. 76102. (1) The state reserves to itself the exclusive right and privilege, except as provided in this part, of exploring, surveying, excavating, and regulating through its authorized officers, agents, and employees, all aboriginal records and other antiquities, including mounds, earthworks, forts, burial and village sites, mines or other relics, and

abandoned property of historical or recreational value found upon or within any of the lands owned by or under the control of the state.

(2) The state reserves to itself a possessory right or title superior to that of a finder to abandoned property of historical or recreational value found on the state owned bottomlands of the Great Lakes. This property shall belong to this state with administration and protection jointly vested in the department and the secretary of state.

Sec. 76103. (1) The underwater salvage and preserve committee is created in the department of natural resources to provide technical and other advice to the department and the secretary of state with respect to their responsibilities under this part.

(2) The underwater salvage and preserve committee shall consist of 9 members appointed as follows:

(a) Two individuals appointed by the department who have primary responsibility in the department of natural resources for administering this part.

(b) Two individuals appointed by the secretary of state who have primary responsibility in the department of state for administering this part.

(c) One individual appointed by the director of commerce.

(d) Four individuals appointed by the governor with the advice and consent of the senate from the general public. Two of these individuals shall have experience in recreational scuba diving.

(3) An individual appointed to the committee shall serve for a term of 3 years. A vacancy on the committee shall be filled in the same manner as an original appointment and the term of a member appointed to fill a vacancy shall be for 3 years. Members of the committee shall serve without compensation, except for their regular state salary where applicable.

(4) The chairperson of the committee shall alternate between the representatives from the department and the department of state. The chairperson shall be designated by the department or the secretary of state, whichever is applicable from among his or her representatives on the committee. The chairperson's term shall run for 12 months, from October 1 through September 30. The department shall appoint the first chairperson of the committee for a term ending September 30, 1989. The chairperson shall call meetings as necessary but not less than 4 times per year, set the agenda for meetings, ensure that adequate minutes are taken, and file an annual report of committee proceedings with the head of the departments of state, natural resources, and commerce.

(5) The committee is an advisory body and may perform all of the following functions:

(a) Make recommendations with regard to the creation and boundaries of Great Lakes underwater preserves.

(b) Review applications for underwater salvage permits and make recommendations regarding issuance.

(c) Consider and make recommendations regarding the charging of permit fees and the appropriate use of revenue generated by those fees.

(d) Consider the need for and the content of rules intended to implement this part and make recommendations concerning the promulgation of rules.

(e) Consider and make recommendations concerning appropriate legislation.

(f) Consider and make recommendations concerning program operation.

(6) The committee shall not replace or supersede the responsibility or authority of the secretary of state or the department to carry out their responsibilities under this part.

Sec. 76104. A deed, as provided by this part, given by this state, except state tax deeds for the conveyance of any land owned by the state, shall contain a clause reserving to this state a property right in aboriginal antiquities including mounds, earthworks, forts, burial and village sites, mines, or other relics and also reserving the right to explore and excavate for the aboriginal antiquity by and through this state's authorized agent and employee. This section applies only to the sale of tax reverted land. The department, with the approval of the secretary of state, may waive this reservation when conveying platted property and when making conveyances under subpart 3 of part 21.

Sec. 76105. A person, either personally or through an agent or employee, shall not explore or excavate an aboriginal remain covered by this part upon lands owned by the state, except under a permit issued by the department with written approval of the secretary of state. A permit shall be issued without charge. This section shall not apply to the Mackinac Island state park commission on lands owned or controlled by the Mackinac Island state park commission.

Sec. 76106. Without the consent of the land owner, a person shall not remove any relics or records of antiquity such as human or other bones; shells, stone, bone, or copper implements; pottery or shards of pottery, or similar artifacts and objects from the premises where they have been discovered.

Sec. 76107. (1) Except as provided in section 76108, a person shall not recover, alter, or destroy abandoned property which is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes bottomlands preserve, unless the person has a permit issued jointly by the secretary of state and the department pursuant to section 76109.

(2) A person who recovers abandoned property without a permit when a permit is required by this part shall transmit the property to the secretary of state and the recovered property shall be the property of the secretary of state.

(3) A person shall not remove, convey, mutilate, or deface a human body or the remains of a human body located on the bottomlands of the Great Lakes.

(4) A person who violates subsection (1) by recovering or destroying abandoned property with a fair market value of \$100.00 or more is guilty of a felony, punishable by imprisonment for not more than 2 years, or by a fine of not more than \$5,000.00, or both.

Sec. 76108. (1) A person may recover abandoned property outside a Great Lakes bottomlands preserve without a permit if the abandoned property is not attached to, nor located on, in, or located in the immediate vicinity of and associated with a sunken aircraft or watercraft and if the abandoned property is recoverable by hand without mechanical or other assistance.

(2) A person who recovers abandoned property valued at more than \$10.00 without a permit pursuant to subsection (1) shall file a written report within 30 days after removal of the property with the department or the secretary of state if the property has been abandoned for more than 30 years. The written report shall list all recovered property that has been abandoned for more than 30 years and the location of the property at the time of recovery. For a period of 90 days after the report is filed, the person shall make the recovered property available to the department and the secretary of state for inspection at a location in this state. If the secretary of state determines that the recovered property does not have historical value, the secretary of state shall release the property to the person by means of a written instrument.

Sec. 76109. (1) A permit issued under this section shall authorize a person to recover abandoned property located on, in, or located in the immediate vicinity of and associated with a sunken aircraft or watercraft.

(2) A person shall file an application for a permit with the department on a form prescribed by the department and approved by the secretary of state. The application shall contain all of the following information:

(a) The name and address of the applicant.

(b) The name, if known, of the watercraft or aircraft on or around which recovery operations are to occur and a current photograph or drawing of the watercraft or aircraft, if available.

(c) The location of the abandoned property to be recovered and the depth of water in which it may be found.

(d) A description of each item to be recovered.

(e) The method to be used in recovery operations.

(f) The proposed disposition of the abandoned property recovered, including the location at which it will be available for inspection by the department and the secretary of state.

(g) Other information which the department or the secretary of state considers necessary in evaluating the request for a permit.

(3) An application for a permit is not complete until all information requested on the application form and any other information requested by the department or the secretary of state has been received by the department. After receipt of an otherwise complete application, the department may request additional information or documents as are determined to be necessary to make a decision to grant or deny a permit. The department, or the secretary of state, shall notify the applicant in writing when the application is deficient.

(4) An applicant notified that an application for a permit may be deficient and returned due to insufficient information under subsection (3) shall, within 20 days after the date the notice is mailed, provide the information. If the applicant fails to respond within the 20-day period, the application shall be denied unless the applicant requests additional time and provides reasonable justification for an extension of time.

(5) The department and the secretary of state shall, with the advice of the committee, approve or disapprove an application for a permit within 30 days after the date a complete application is filed with the department. The department and the secretary of state may approve an application conditionally or unconditionally. A condition to the approval of an application shall be in writing on the face of the permit. The department and the secretary of state may impose such conditions as are considered reasonable and necessary to protect the public trust and general interests, including conditions that accomplish 1 or more of the following:

(a) Protect and preserve the abandoned property to be recovered, and the recreational value of the area in which recovery is being accomplished.

(b) Assure reasonable public access to the abandoned property after recovery.

(c) Are in conformity with rules applying to activities within a Great Lakes bottomlands preserve.

(d) Prohibit injury, harm, and damage to a bottomlands site or abandoned property not authorized for removal during and after salvage operations by the permit holder.

(e) Prohibit or limit the amount of discharge of possible pollutants, such as floating timbers, planking, and other debris, which may emanate from the shipwreck, plane wreck, or salvage equipment.

(f) Require the permit holder to submit a specific removal plan prior to commencing any salvaging activities. Among other matters considered appropriate by either the department or the secretary of state, or both, the removal plan may be required to ensure the safety of those removing or assisting in the removal of the abandoned property and to address how the permit holder proposes to prevent, minimize, or mitigate potential adverse effects upon the abandoned property to be removed, that portion of the abandoned property which is not to be removed, and the surrounding geographic features.

(6) The department shall approve an application for a permit unless the department determines that the abandoned property to be recovered has substantial recreational value in itself or in conjunction with other abandoned property in its vicinity underwater, or the recovery of abandoned property would not comply with rules applying to a Great Lakes bottomlands preserve.

(7) The secretary of state shall approve the application for a permit unless the secretary of state determines that the abandoned property to be recovered has substantial historical value in itself or in conjunction with other abandoned property in its vicinity. If the property has substantial historical value, the secretary of state, pursuant to subsection (5), may impose a condition to the approval of the application requiring the applicant to turn over recovered property to the secretary of state for the purpose of preserving the property or permitting public access to the property. The secretary of state may authorize the display of the property in a public or private museum or by a local unit of government. In addition to the conditions authorized by subsection (5), the secretary of state may provide for payment of salvage costs in connection with the recovery of the abandoned property.

(8) A person who discovers an abandoned watercraft that is located outside of a Great Lakes bottomlands preserve is entitled to recover cargo situated on, in, or associated with the watercraft, if the person applies for a permit pursuant to this section within 90 days after discovering the watercraft. If an application for a permit to recover cargo is not filed within 90 days after a watercraft discovery, subject to subsections (4) and (5) an exclusive cargo recovery permit shall be issued to the first person applying for such a permit. Only 1 permit to recover the same cargo shall be issued and operative at a time. When a watercraft containing cargo is simultaneously discovered by more than 1 person, a permit shall be approved with respect to the first person or persons jointly applying for a permit.

(9) A person aggrieved by a condition contained on a permit or by the denial of an application for a permit may request an administrative review of the condition or the denial by the commission or the secretary of state, whichever disapproves the application or imposes the condition. A person shall file the request for review with the commission or the secretary of state, whichever is applicable, within 90 days after the permit application is submitted to the department. An administrative hearing conducted pursuant to this subsection shall be conducted under the procedures set forth in chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. If neither the department or the secretary of state approves the application and an administrative review is requested from both the commission and the secretary of state, the appeals shall be combined upon request of the appellant or either the commission or the secretary of state and a single administrative hearing shall be conducted. The commission and the secretary of state shall issue jointly the final decision and order in the case.

(10) A permit issued under this section shall be valid until December 31 of the year in which the application for the permit was filed and is not renewable. If an item designated in a permit for recovery is not recovered, a permit holder may, upon request following the expiration of the permit, be issued a new permit to remove the same abandoned property if the permit holder demonstrates that diligence in attempting recovery was exercised under the previously issued permit.

(11) A permit issued under this section shall not be transferred or assigned unless the assignment is approved in writing by both the department and the secretary of state.

Sec. 76110. (1) Within 10 days after recovery of abandoned property, a person with a permit issued pursuant to section 76109 shall report the recovery in writing to the department. The person recovering the abandoned property shall give authorized representatives of the department and the secretary of state an opportunity to examine the abandoned property for a period of 90 days after recovery. Recovered abandoned property shall not be removed from this state without written approval of the department and the secretary of state. If the recovered abandoned property is removed from the state without written approval, the attorney general, upon request from the department or the secretary of state, shall bring an action for the recovery of the property.

(2) If the secretary of state determines that the recovered abandoned property does not have historical value, the secretary of state shall release the property to the person holding the permit by means of a written instrument.

Sec. 76111. (1) The department shall establish Great Lakes bottomlands preserves by rule. A Great Lakes bottomlands preserve shall be established by emergency rule if it is determined by the department that this action is necessary to immediately protect an object or area of historical or recreational value.

(2) A Great Lakes bottomlands preserve may be established whenever a bottomlands area includes a single watercraft of significant historical value, includes 2 or more abandoned watercraft, or contains other features of archaeological, historical, recreational, geological, or environmental significance. Bottomlands areas containing few or no watercraft or other features directly related to the character of a preserve may be excluded from preserves.

(3) In establishing a Great Lakes bottomlands preserve, the department shall consider all of the following factors:

(a) Whether creating the preserve is necessary to protect either abandoned property possessing historical or recreational value, or significant underwater geological or environmental features.

(b) The extent of local public and private support for creation of the preserve.

(c) Whether a preserve development plan has been prepared by a state or local agency.

(d) The extent to which preserve support facilities such as roads, marinas, charter services, hotels, medical hyperbaric facilities, and rescue agencies have been developed in or are planned for the area.

(4) The department and the secretary of state shall not grant a permit to recover abandoned artifacts within a Great Lakes bottomlands preserve except for historical or scientific purposes or when the recovery will not adversely affect the historical, cultural, or recreational integrity of the preserve area as a whole.

(5) An individual Great Lakes bottomlands preserve shall not exceed 400 square miles in area. Great Lakes bottomlands preserves shall be limited in total area to not more than 10% of the Great Lakes bottomlands within this state.

(6) Upon the approval of the committee, not more than 1 vessel associated with Great Lakes maritime history may be sunk intentionally within a Great Lakes bottomlands preserve. However, state money shall not be expended to purchase, transport, or sink the vessel.

Sec. 76112. (1) The department and the secretary of state, jointly or separately, may promulgate rules as are necessary to implement this part.

(2) Within each Great Lakes bottomlands preserve, the department and the secretary of state may jointly promulgate rules that govern access to and use of a Great Lakes bottomlands preserve. These rules may regulate or prohibit the alteration, destruction, or removal of abandoned property, features, or formations within a preserve.

Sec. 76113. Sections 76107 to 76110 shall not be considered to impose the following limitations:

(a) A limitation on the right of a person to engage in diving for recreational purposes in and upon the Great Lakes or the bottomlands of the Great Lakes.

(b) A limitation on the right of the department or the secretary of state to recover, or to contract for the recovery of, abandoned property in and upon the bottomlands of the Great Lakes.

(c) A limitation on the right of a person to own either abandoned property recovered before July 2, 1980 or abandoned property released to a person after inspection.

Sec. 76114. (1) If the department or the secretary of state finds that the holder of a permit issued pursuant to section 76105 or 76109 is not in compliance with this part, a rule promulgated under this part, or a provision of or condition in the permit, or has damaged abandoned property or failed to use diligence in attempting to recover property for which a permit was issued, the department or the secretary of state, individually or jointly, may summarily suspend or revoke the permit. If the permit holder requests a hearing within 15 days following the effective date of the suspension or revocation, the commission or the secretary of state shall conduct an administrative hearing pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, to consider whether the permit should be reinstated.

(2) The attorney general, on behalf of the department or the secretary of state, individually or jointly, may commence a civil action in circuit court to enforce compliance with this part, to restrain a violation of this part or any action contrary to a decision denying a permit, to enjoin the further removal of artifacts, geological material, or abandoned property, or to order the restoration of an affected area to its prior condition.

Sec. 76115. Each person who participates in the sport of scuba diving on the Great Lakes bottomlands accepts the dangers that adhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from entanglements in sunken watercraft or aircraft; the condition of sunken watercraft or aircraft; the location of sunken watercraft or aircraft; the failure of the state to fund staff or programs at bottomlands preserves; and the depth of the objects and bottomlands within preserves.

Sec. 76116. (1) A person who violates section 76105 or 76106 is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not more than \$100.00, or both.

(2) A person who violates sections 76107 or 76111 or a rule promulgated under this part is guilty of a misdemeanor. Unless another penalty is provided in this part, a person convicted of a misdemeanor under this subsection is punishable by imprisonment for not more than 6 months, or a fine of not more than \$500.00, or both.

Sec. 76117. (1) If a person who violates this part or a rule promulgated under this part uses a watercraft, mechanical or other assistance, scuba gear, sonar equipment, a motor vehicle, or any other equipment or apparatus during the course of committing the violation, the items so used may be attached, proceeded against, and confiscated as prescribed in this part.

(2) To effect confiscation, the law enforcement or conservation officer seizing the property shall file a verified complaint in the circuit court for the county in which the seizure was made or in the circuit court for Ingham county. The complaint shall set forth the kind of property seized, the time and place of the seizure, the reasons for the seizure, and a demand for the property's condemnation and confiscation. Upon the filing of the complaint, an order shall be issued requiring the owner to show cause why the property should not be confiscated. The substance of the complaint shall be stated in the order. The order to show cause shall fix the time for service of the order and for the hearing on the proposed condemnation and confiscation.

(3) The order to show cause shall be served on the owner of the property as soon as possible, but not less than 7 days before the complaint is to be heard. The court, for cause shown, may hear the complaint on shorter notice. If the owner is not known or cannot be found, notice may be served in 1 or more of the following ways:

(a) By posting a copy of the order in 3 public places for 3 consecutive weeks in the county in which the seizure was made and by sending a copy of the order by certified mail to the last known business or residential address of the owner. If the last addresses of the owner are not known, mailing a copy of the order is not required.

(b) By publishing a copy of the order in a newspaper once each week for 3 consecutive weeks in the county where the seizure was made and by sending a copy of the order by registered mail to the last known residential address of the owner. If the last residential address of the owner is not known, mailing a copy of the order is not required.

(c) In such a manner as the court directs.

(4) Upon hearing of the complaint, if the court determines that the property mentioned in the petition was possessed, shipped, or used contrary to law, either by the owner or by a person lawfully in possession of the property under an agreement with the owner, an order shall be made condemning and confiscating the property and directing its sale or other disposal by the department. If the owner signs a property release, a court proceeding is not necessary. At the hearing, if the court determines that the property was not possessed, shipped, or used contrary to law, the court shall order the department to immediately return the property to its owner.

(5) The department shall deposit the proceeds it receives under this section into the state treasury to the credit of the underwater preserve fund created in section 76118.

Sec. 76118. (1) The underwater preserve fund is created as a separate fund in the state treasury, and it may receive revenue as provided in this part, or revenue from any other source.

(2) Money in the underwater preserve fund shall be appropriated for only the following purposes:

(a) To the secretary of state for the development of maritime archaeology in this state.

(b) To the department of commerce for the promotion of Great Lakes bottomlands preserves.

(c) To the department for the enforcement of this part.

SUBCHAPTER 3: MACKINAC ISLAND STATE PARK

PART 765 MACKINAC ISLAND STATE PARK

Sec. 76501. As used in this part, "commission" means the Mackinac Island state park commission.

Sec. 76502. Pursuant to the turning over to the state of Michigan, for use as a state park, and for no other purpose, the military reservation, lands and buildings of the national park on Mackinac Island, subject to a reversion to the United States whenever the state ceases to use the lands for the purpose described in this section, by the secretary of war, under the authorization of an act of congress, the lands and buildings shall be used as a state park and shall be known as the Mackinac Island state park.

Sec. 76503. (1) The governor shall appoint 7 commissioners, who shall be citizens of, registered voters, and regularly domiciled in this state and who constitute a board of commissioners to be known as the Mackinac Island state park commission. However, the present commissioners shall hold office until their successors have been appointed. One

commissioner shall be known as the "resident commissioner," and this commissioner shall be a legal resident of the island and a property owner in the city of Mackinac Island for a period of not less than 6 months preceding his or her nomination. One commissioner shall be a resident of the village of Mackinaw City. His or her term of office shall commence on April 12, 1958.

(2) The members of the commission shall be appointed by the governor, by and with the advice and consent of the senate, for terms of 6 years each and shall hold office until their successors are appointed. However, of the members first appointed, 2 shall be appointed for a term of 2 years, 2 for a term of 4 years each, and 2 for a term of 6 years each. Not more than 4 commissioners at any 1 time shall be of the same political party. Vacancies shall be filled by the governor in the same manner as the original appointment for the unexpired term. No member of the commission shall receive any compensation for his or her services as commissioner, but each commissioner shall receive his or her actual disbursement for his or her expense incurred in connection with the duties of his or her office, which expense shall be allowed and paid by the auditor general upon proper submittal of vouchers. The commission shall annually elect a chairperson, vice-chairperson, and secretary.

(3) The Mackinac Island state park commission is created within the department of natural resources and shall have the powers and duties of an agency transferred under a type I transfer pursuant to section 3 of the executive organization act of 1965, Act No. 380 of the Public Acts of 1965, being section 16.103 of the Michigan Compiled Laws.

Sec. 76504. (1) The Mackinac Island state park shall be under the control and management of the Mackinac Island state park commission, and a majority of the members of the commission constitutes a quorum for the transaction of business. The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) The commission may lay out, manage, and maintain the park, preserve the old fort, and promulgate and enforce rules not inconsistent with the laws of this state and necessary to implement this part; may effect leases and fix prices for rentals or privileges upon the property of the park; may sell or lease as personal property buildings or structures acquired by the commission in settlement of delinquent land rentals; and may employ a superintendent and other persons as may be needed.

(3) The rules of the commission shall apply to all roads situated on Mackinac Island state park lands. The commission shall not make a rule permitting the use of motor vehicles except motor vehicles owned by the state, a political subdivision of the state, or by a public utility, and used in the exercise of its franchise. The commission may provide by rule for the issuance of temporary permits for the operation of motor vehicles over roads situated on state park lands. The commission may grant permits for the use of lands for the expansion of existing cemeteries, under terms and conditions as the commission prescribes. The commission may also grant privileges and franchises for waterworks, sewerage, transportation, and lighting, for a period of not more than 40 years. The commission shall prescribe by rule the maximum number of horse drawn vehicles for hire that may be licensed by the commission for operation within the park.

(4) The sheriff of the county of Mackinac, upon the application of the commission, shall appoint 1 or more persons who shall be designated by the commission as deputy sheriffs in and for the county, and who shall be employees of the commission but who shall not receive fees or emoluments for services as deputy sheriffs. The commission may establish the compensation of the persons employed by the commission, but a debt or obligation shall not be created by the commission exceeding the amount of money at its disposal at the time.

(5) All money received from rentals or privileges shall be paid promptly into the state treasury to be credited to the general fund and to be disbursed as appropriated by the legislature. The Mackinac Island state park commission, in consideration of the furnishing of fire protection, street service, sewerage service, and other public service agreed upon, may remit reasonable rentals as the commission determines from leases of property acquired by the state under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws and deeded to the commission, to the several tax assessing units in which the property is situated as provided in Act No. 206 of the Public Acts of 1893, in proportion to the delinquent taxes and special assessments of the units cancelled against the description of land.

(6) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The commission shall provide to the governor an annual report and statement of receipts and expenditures, and recommendations and suggestions as the commission considers proper.

Sec. 76505. The superintendent of the Mackinac Island state park shall see to it that the United States flag is kept floating from the flagstaff at Fort Mackinac, and rules relative thereto are the same as those that have governed in that matter when the fort was in possession and occupancy by the United States troops.

Sec. 76506. The Mackinac Island state park commission may acquire by purchase, lease, grant, or transfer the use of certain state land in the county of Mackinac for the purpose of developing and restoring as an historical site the area in or near the location where Fort deBuade once stood. After the acquisition and restoration, the site shall be under the jurisdiction, management, and control of the Mackinac Island state park commission, and the commission shall have and exercise the same rights and powers over the site as it has and exercises over Mackinac Island state park, including the right to levy and collect fees for the use of the facilities at the site. All rules promulgated by the commission shall be effective within the whole territory covered by the park. The commission may promulgate and enforce rules relative to any part or portion of the park, notwithstanding any contrary or inconsistent ordinance, regulation, or bylaw of any political subdivision.

Sec. 76507. A person who willfully cuts, peels, or otherwise injures or destroys any tree standing in Mackinac Island state park, or who carries, draws, leaves, or deposits anywhere within the park, any filth, rubbish, or garbage, is guilty of a misdemeanor, punishable by imprisonment for not less than 10 days or more than 60 days, or a fine of not less than \$10.00 or more than \$50.00, or both, in the discretion of the court.

Sec. 76508. The superintendent of the Mackinac Island state park may appoint, by and with the consent of the commission, such number of special police as the commission may by resolution direct, which special police shall be under the supervision and direction of the superintendent, who shall be charged with the execution of the rules promulgated by the commission for the care and preservation of the park, and the property in and about the fort. The special police shall be vested with the authority of sheriffs of the island, and may apprehend and arrest, without warrant, any person whom they may find violating the rules which shall have been published relative to good order, the preservation of property, the mutilation of landmarks, or the destruction or injury to growing trees and shrubs. The special police are authorized to make complaint against offenders against the rules of the government of Mackinac Island state park, before the district court of the judicial district that includes Mackinac Island and the judges may take cognizance, hear, try, and determine such complaints and pass sentence upon offenders, in accordance with the procedures applicable in misdemeanor cases.

Sec. 76509. The Mackinac Island state park commission, for and on behalf of the state of Michigan, is authorized to receive, accept, and hold, by gift, grant, devise, or bequest, any property, real or personal, but only for the purposes incidental to or connected with the state parks under its management and control.

PART 767 MACKINAC ISLAND STATE PARK COMMISSION

Sec. 76701. As used in this part, "commission" means the Mackinac Island state park commission.

Sec. 76702. The Mackinac Island state park commission is authorized and empowered, in addition to the powers already conferred on it by law, to exercise the following powers, rights, and privileges:

(a) To acquire, construct, develop, improve, better, extend, repair, maintain, use, and operate all property, real or personal, necessary to the exercise of the powers, rights, privileges, and functions conferred upon it by law and this part including, but not limited to, the power to acquire, construct, develop, improve, better, extend, restore, reconstruct, renovate, refurbish, repair, equip, furnish, maintain, use, and operate, and to provide landscaping, driveways, streets, and walkways for, buildings, structures, areas (any and all), and facilities of all kinds that in the judgment of the commission will increase the beauty and utility of the state park facilities and provide recreational, historical, or other facilities for the benefit and enjoyment of the public, or that are necessary or convenient to the exercise of the powers of the commission.

(b) To employ consulting architects, engineers, museum technicians, landscape architects, supervisors, managers, lawyers, fiscal agents, and other agents and employees as it considers necessary, and to establish their compensation.

(c) To enlist the guidance, assistance, and cooperation of the Michigan historical commission.

(d) To establish charges for admission to the facilities under its jurisdiction, to establish other charges for the use of any facilities, including fees or charges to be imposed on concessionaires, and to charge rentals for the lease or use of any of its facilities as the commission determines proper and as will assure the prompt and full carrying out of all covenants contained in the proceedings authorizing any bonds pursuant to this part.

(e) To acquire, construct, develop, improve, repair, maintain, and operate, but not to extend the runway beyond 3,600 feet, an airport or landing field on property under its jurisdiction, and to lease to any governmental unit any real or personal property under its jurisdiction for use as an airport or landing field on the terms and conditions approved by the commission and the department of management and budget. The exercise of any power granted by this subsection is subject to determination by the proper federal authority that such exercise will not affect the title of the state to the land involved. All rules and regulations established by any lessee shall reflect written approval by the commission before the rules or regulations are in effect.

Sec. 76703. (1) The commission may issue its gross revenue bonds in anticipation of the collection of all or any part of its revenues, for the purpose of acquiring, constructing, reconstructing, improving, bettering, extending, restoring, refurbishing, renovating, repairing, equipping, furnishing, any or all, the properties and facilities that it is authorized to acquire, construct, reconstruct, maintain, or operate under this part, including properties and facilities owned by it, and shall pledge to the payment of the interest on and principal of such bonds, all or any part of the revenues derived from the operation of the properties and facilities so controlled and operated by the commission. There may be included in the cost for which bonds are to be issued, reasonable allowances for legal, engineering, or fiscal services, interest during construction or reconstruction and for 6 months after the estimated date of completion of the construction or reconstruction or until full revenues are being received from the operation of the facility, and other incidental expenses. The bonds shall be authorized by resolution of the commission and may be issued in 1 or more series, may bear such date or dates, may mature at such time or times not exceeding 30 years from their respective dates, may bear interest at such rate or rates, may be in such form, either coupon or registered, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption, with or without premium, and may contain such terms, covenants, and conditions as such resolution or subsequent resolution may provide. Pending preparation of the definitive bonds, interim receipts, or certificates in such form and with such provisions as the commission may determine may be issued to the purchaser or purchasers of the bonds sold pursuant to this part. The bonds and interim receipts and certificates shall be fully negotiable within the meaning of and for all purposes of the negotiable instruments law of this state. The maximum rate of interest on such bonds shall be that set forth for bonds issued pursuant to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, but bonds issued under this part shall not in any other way be subject to Act No. 202 of the Public Acts of 1943. The sale and award of notes shall be conducted and made by the commission at a public or private sale. If a public sale is held, the notes shall be advertised for sale once not less than 7 days before sale in a publication printed in the English language and circulated in this state, which carries as a part of its regular service notices of the sales of municipal bonds and which has been designated in the resolution as a publication complying with these qualifications. The notice of sale shall be in the form as designated by the commission. Bonds may be sold at a discount as provided in the bond resolution.

(2) Any resolution authorizing the issuance of bonds under this part or any instrument of trust entered into as authorized by this part may contain covenants, including, but not limited to, any of the following:

(a) The purpose or purposes to which the proceeds of the sale of the bonds may be applied, and the deposit, use, and disposition of the proceeds.

(b) The use, deposit, securing of deposits, and disposition of the revenues of the commission, including the creation and maintenance of reserves.

(c) The issuance of additional bonds payable from the revenues of the commission.

(d) The operation and maintenance of properties of the commission.

(e) The insurance to be carried thereon, and the use, deposit, and disposition of insurance money.

(f) Books of account and the inspection and audit of the books of account and the accounting methods of the commission.

(g) The nonrendering of any free service by the commission.

(h) The preservation of the properties of the commission, so long as any of the bonds remain outstanding, from any mortgage, sale, lease, or other encumbrance not specifically permitted by the terms of the resolution.

(i) The employment of sufficient personnel for the collection of fees and charges incident to the operation of the facility and for the payment of compensation to such personnel out of the fees and charges.

(3) In the discretion of the commission, any bonds issued under this part may be secured by a trust indenture by and between the commission and a corporate trustee, which may be any bank having the right to exercise the powers of a trust company within this state. Any such trust indenture may pledge or assign the revenues from the operation of properties of the commission, but shall not convey or mortgage any properties, except such revenues. Any trust indenture or any resolution providing for the issuance of bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the improvements in connection with which the bonds have been authorized, and the custody, safeguarding, and application of all money, and provisions for the employment of consulting engineers, architects, and landscape architects in connection with the planning, construction, or operation of the improvements. Any trust indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any trust indenture or resolution may contain other provisions as the commission considers reasonable and proper for the security of the bondholders. The holder of any bond issued under this part or a trustee in his or her behalf may bring suit against the commission and its members, officers, and agents to enforce the provisions and covenants contained in any trust indenture or resolution.

All expenses incurred in carrying out the provisions of any trust indenture may be treated as a part of the cost of operation of the improvements for which the bonds are authorized.

(4) Money received pursuant to this part, whether as proceeds from the sale of bonds or as revenues from the operations of properties, or otherwise received by the commission, shall be considered to be trust funds, to be held and applied solely as provided in this part and in the resolution authorizing, or trust indenture securing, its bonds. All money received may be deposited in as received and paid out by any bank or banks selected for such purpose and eligible to hold public money under the laws of this state, such deposits and paying out to be in the manner provided in such resolution or trust indenture. None of the money need be paid into the state treasury.

(5) If the commission has issued any bonds under this part, the commission may thereafter issue and negotiate new bonds under this part for the purpose of providing for the retirement of those outstanding bonds, in whole or in part. The new bonds shall be designated "gross revenue refunding bonds", and except as otherwise provided in the refunding resolution, shall be secured to the same extent and shall have the same source of payment as the bonds which have been refunded, or may be payable from earnings on investments held in trust to pay refunded bonds for the period of time specified in the ordinance authorizing the bonds. The refunding bonds may be issued to include the amount of any premium to be paid upon the calling of the callable bonds to be refunded or any premium necessary to be paid in order to secure the surrender of the noncallable bonds to be refunded, interest to the maturity or redemption date of the bonds to be refunded, and the cost of issuing the refunding bonds. This section shall not be construed as providing for the redemption of noncallable unmatured bonds without the consent of the holder or holders of the bonds. The refunding bonds may be sold at public sale, may be privately negotiated, or may be exchanged for the obligations to be refunded by the obligations, and if sold, the proceeds shall be deposited in a bank and credited to a special trust account to be used only for the redemption or purchase of the outstanding bonds. If refunding bonds are to be issued and sold for the purpose of refunding noncallable unmatured bonds, those bonds shall be surrendered and canceled at the time of delivery to the purchaser of the refunding bonds, or sufficient funds shall be deposited in trust to pay principal and interest to maturity on noncallable bonds. If refunding bonds are to be issued for the purpose of refunding callable bonds, those bonds shall be surrendered and canceled at the time of delivery to the purchaser of the refunding bonds, or sufficient funds shall be deposited in trust to pay principal, interest, and redemption premium to the earliest redemption date on callable bonds. When the resolution authorizing the bonds to be refunded permits, the borrower may deposit in trust direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States and which do not permit redemption at the option of the issuer, the principal and interest on which when due, without reinvestment, will provide funds sufficient to pay principal, interest, and call premium, when due, on the bonds being refunded.

(6) Notwithstanding the other provisions of this section:

(a) Interest on the bonds may be payable at any time provided in the resolution, and may be set, reset or calculated, or both, as provided in the resolution.

(b) If so authorized in the resolution bonds may be:

(i) Made the subject of a put or agreement to repurchase by the commission.

(ii) Secured by a letter of credit issued by a bank pursuant to an agreement entered into by the commission or secured by any other collateral.

(iii) Callable.

(iv) Reissued by the commission once reacquired by the commission pursuant to any put or repurchase agreement.

(c) The commission may by resolution do any of the following:

(i) Authorize the issuance of renewal bonds.

(ii) Refund, or refund in advance, bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured.

(iii) Issue bonds partly to refund bonds and partly for any other purposes authorized by this part.

(iv) Buy and sell any bonds issued under this part.

(d) Renewal, refunding, or advance refunding bonds are subject to all of the following:

(i) Shall be sold and the proceeds applied to the purchase redemption or payment of the bonds to be renewed or refunded.

(ii) May be sold or resold at a public or private sale upon such terms and conditions as the commission may establish in the order.

(iii) May pledge the revenues pledged in the issue to be refunded in advance effective when a defeasance has occurred with respect to the original issue.

(e) If the commission so authorizes in the resolution authorizing the bonds, any bonds issued may be secured in whole or in part pursuant to a trust or escrow agreement which agreement may also govern the issuance of renewal

bonds, refunding bonds, and advance refunding bonds. The agreement may authorize the trustee or escrow agent to make investments of any type authorized in the agreement.

(f) Powers specified in this subsection shall be in addition to those set forth in all other subsections and sections of this part.

(7) The commission shall hire an independent certified public accountant approved by the legislative auditor general to perform an annual audit of all of its operations which are required by, or in any way relate to, any covenants made in connection with any bonds issued pursuant to this part.

(8) The bonds shall be signed by the chairperson or vice-chairperson of the commission and attested to by any other officer of the commission authorized to do so by resolution of the commission. The signature of either officer, but not both, may be affixed by facsimile.

Sec. 76704. The commission shall prescribe and collect charges and fees as above authorized for admission to and for the use of the services, facilities and commodities supplied by or through all its properties, including museums, the revenues of which have been pledged to the payment of bonds issued under this part, and shall revise such charges and fees from time to time whenever necessary to ensure that the revenues to be derived from the charges and fees shall be fully sufficient to pay principal of and interest on such bonds, and to carry out all requirements and covenants contained in the proceedings pursuant to which any such bonds are issued. All or any part of the gross revenues derived by the commission from the operation, leasing, or other use of any properties of the commission utilized as a part of any state park project financed under this part may be pledged to the payment of such principal and interest. Each bond shall recite in substance that the bond and the interest on the bond are payable solely from the revenues pledged to the payment thereof, and that the bond does not constitute a debt of the commission or of the state of Michigan within the meaning of any constitutional or statutory limitation.

Sec. 76705. The commission is a public body corporate constituting an instrumentality of the state of Michigan and carrying out duties and functions imposed upon and in the state under its constitution and laws, and shall have the power to sue and be sued. It is accordingly found, determined, and declared that the carrying out of powers of the commission and the purposes of this part are for the benefit of the people of the state and constitute a public purpose. Accordingly, all property owned by the commission or owned by the state and controlled by the commission shall be exempt from all taxes levied by the state and all of its political subdivisions and taxing districts, and the bonds and interim receipts or certificates issued by the commission and the income therefrom shall be free from taxation within the state, and the commission shall be required to pay no taxes or assessments upon its activities or upon any of its revenues.

Sec. 76706. This part shall not be construed or interpreted as authorizing or permitting the incurring of the indebtedness of the state of Michigan contrary to the provisions of the constitution or laws of the state.

Sec. 76707. The commission may in its discretion cause any resolution authorizing the issuance of bonds under this part to be published 1 time in a newspaper published in the county where the facilities are located having a general circulation in that county. Any action or proceeding questioning the validity of the resolution or any provision of the resolution or the validity of the bonds authorized by the resolution or the provisions of any trust indenture in the resolution authorized to be executed for the security of the bonds, must be commenced within 20 days from the publication of the resolution. After the expiration of the 20 days, no right of action or defense founded upon the invalidity of the resolution or any of its provisions or of the trust indenture, if any, or of the bonds, shall be asserted nor shall any court in this state have authority to inquire into such matters.

Sec. 76708. Except to the extent that the state constitution of 1963 may be construed to require the approval of any act of the commission under this part, by the state administrative board, the commission may carry out all powers and functions granted and imposed in it under this part without first obtaining the approval of any other state department, board, bureau, agency, or official.

Sec. 76709. If 1 or more provisions of this part are inconsistent with any other act, general or special, this part is controlling.

PART 769 MACKINAC ISLAND STATE PARK RULES

Sec. 76901. The Mackinac Island state park commission may promulgate and enforce reasonable rules for the care and preservation of the Mackinac Island state park, for the maintenance of good order, for the protection of property, and for the welfare of the park, as from time to time the commission considers necessary or expedient.

Sec. 76902. Whenever the Mackinac Island state park commission promulgates any rules pertaining to the management or welfare of the park, it shall have authority to enforce those rules and to cause offenders and persons violating the rules prescribed to be punished in the manner set forth and indicated in Act No. 80 of the Public Acts of 1905, being sections 19.141 to 19.145 of the Michigan Compiled Laws.

Sec. 76903. All rules promulgated by the Mackinac Island state park commission under this part, this act, or any other act shall be effective within the whole territory covered by the park, and the Mackinac Island state park commission may promulgate and enforce rules relative to any part or portion of the park, notwithstanding any contrary or inconsistent ordinance, regulation, or bylaw of the city of Mackinac Island.

PART 771 MACKINAC ISLAND FIRE PROTECTION

Sec. 77101. The Mackinac Island state park commission and the city of Mackinac Island by its governing body are authorized to enter into a continuing contract for fire protection to be furnished by the city of Mackinac Island for property under the control and management of the Mackinac Island state park commission. The fire protection service and apparatus to be furnished shall meet with the approval of the state fire marshal. The contract shall be signed by the chief executive and clerk of the city of Mackinac Island and by the chairperson and secretary of the Mackinac Island state park commission.

PART 773 OLD MISSION CHURCH AT MACKINAC ISLAND

Sec. 77301. The Mackinac Island state park commission is authorized to acquire, in consideration of the payment of the sum of \$1.00 and other considerations to be in hand paid, the so-called "Old Mission Church", being all that certain piece or parcel of land situate and being in the city of Mackinac Island, county of Mackinac and state of Michigan, and more particularly described as follows:

Lot 6 of Block 4 of C. R. Miller's Proposed Subdivision of the Mission House Lots in the Village of Mackinac and bounded and more particularly described as follows: Beginning at a point in the North line of East Water Street as prolonged in said subdivision 30 feet North 89° East from the Southeast corner of the North half of Lot 12 (known as the Wendell Homestead) for a place of beginning; thence North 6° East along the East line of Mission Street as platted in said subdivision to the South line of an alley 120 feet; thence along the South line of said alley North 89° 15' East 51 feet; thence Southerly about 118 feet to a point in the prolongation of the North line of said East Water Street in said proposed plat of said subdivision; thence Westerly on said North line of said East Water Street 52 feet to the place of beginning, said lot being intended to be the same land on which the Old Mission Church now stands, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Sec. 77302. The property acquired by the Mackinac Island state park commission under this part shall be maintained as a historic shrine by the Mackinac Island state park commission and shall be open to the public subject to such reasonable rules promulgated by the Mackinac Island state park commission.

PART 775 MACKINAC ISLAND; CLERK'S QUARTERS—AMERICAN FUR COMPANY

Sec. 77501. The Mackinac Island state park commission is authorized to acquire, in consideration of the payment of the sum of \$1.00 and other considerations to be in hand paid, the so-called "Clerk's Quarters—American Fur Company", being all that certain piece or parcel of land situate and being in the city of Mackinac Island, county of Mackinac and state of Michigan, description of said property being the east 1/2 of Lot 99, Assessors Plat No. 3, city of Mackinac Island.

Sec. 77502. The property acquired by the Mackinac Island state park commission under this part shall be maintained as a historic shrine by the Mackinac Island state park commission and shall be open to the public subject to such reasonable rules promulgated by the Mackinac Island state park commission.

PART 777 MICHILIMACKINAC STATE PARK

Sec. 77701. The Mackinac Island state park commission shall have the control and management of the site formerly occupied as a military post under the name of Fort Michilimackinac, in the village of Mackinaw City, county of Cheboygan and state of Michigan, previously conveyed by the village of Mackinaw City to the state of Michigan, under and by virtue of Act No. 520 of the local acts of 1903, conveyed as Wawatam park, by deed dated January 27, 1904, which deed is recorded in the office of the register of deeds of Cheboygan county in liber 26 of deeds on page 588. Though conveyed as "Wawatam Park," the park shall hereafter be known as "Michilimackinac state park".

Sec. 77702. The Mackinac Island state park commission may promulgate and enforce reasonable rules for the care and preservation of Michilimackinac state park, for the maintenance of good order, for the protection of property and

for the welfare of the park as shall from time to time be considered necessary or expedient by the Mackinac Island state park commission.

Sec. 77703. Whenever the Mackinac Island state park commission promulgates rules pertaining to the management or welfare of the park, it shall have authority to enforce the rules and to cause offenders and persons violating the rules to be punished in the manner set forth and indicated in Act No. 80 of the Public Acts of 1905, being sections 19.141 to 19.145 of the Michigan Compiled Laws.

Sec. 77704. All rules promulgated by the Mackinac Island state park commission under this part, this act, or any other act shall be effective within the whole territory covered by the park. The Mackinac Island state park commission may promulgate and enforce rules relative to any part or portion of the park, notwithstanding any contrary or inconsistent ordinance, regulation, or bylaw of the village of Mackinaw City.

SUBCHAPTER 4: THE MICHIGAN STATE WATERWAYS COMMISSION

PART 781 MICHIGAN STATE WATERWAYS COMMISSION

Sec. 78101. As used in this part:

(a) "Commission" means the Michigan state waterways commission.

(b) "Director" means the administrative director of the commission.

(c) "Diesel motor fuel" means any liquid fuel used in the operation of engines of the diesel type in motor vehicles or watercraft.

(d) "Gasoline" means gasoline, casing head or natural gasoline, benzole, benzine, and naphtha; also, any liquid prepared, advertised, offered for sale, sold for use as, or used for, the generation of power for the propulsion of motor vehicles or watercraft, including any product obtained by blending together any 1 or more products of petroleum, with or without other products, and regardless of the original character of the petroleum products blended, if the resultant product obtained is capable of use for the generation of power for the propulsion of motor vehicles or watercraft, it being the intention that the blending of the products, regardless of name or characteristics, shall conclusively be presumed to produce motor fuel, unless the resultant product is entirely incapable for use as motor fuel. Gasoline does not include diesel fuel, liquefied petroleum gas, or commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed, sold, or used exclusively for purposes other than as a fuel for motor vehicles or watercraft.

(e) "Harbor" means a portion of a lake or other body of water either naturally or artificially protected so as to be a place of safety for watercraft, including contrivances used or designed for navigation on water and used or owned by the United States.

(f) "Harbor facilities" means the structures at a harbor constructed to protect the lake or body of water and the facilities provided within the harbor and ashore for the mooring and servicing of watercraft and the servicing of crews and passengers.

(g) "Liquefied petroleum gas" means gases derived from petroleum or natural gases which are in the gaseous state at normal atmospheric temperature and pressure, but which may be maintained in the liquid state at normal atmospheric temperature by suitable pressure. Liquefied petroleum gas includes those products predominately composed of propane, propylene, butylene, butane, and similar products which are not covered in chapters 1 and 2 of Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.134 of the Michigan Compiled Laws.

(h) "Marina" means a site which contains harbor facilities.

(i) "Navigable water" means any waterway navigable by vessels, or capable of being made navigable by vessels through artificial improvements, and includes the structures and facilities created to facilitate navigation.

(j) "Person" includes any individual, partnership, corporation, association, or body politic, except the United States and this state, and includes any trustee, receiver, assignee, or other similar representative of those entities.

(k) "Retail fuel dealer" includes any person or persons, both private and municipal, who engage in the business of selling or distributing fuel within the state.

(l) "Secretary of state" means the secretary of state of this state, acting directly or through a duly authorized deputy, investigators, agents, and employees.

(m) "Vessel" means all watercraft except the following:

(i) Watercraft used for commercial fishing.

(ii) Watercraft used by the sea scout department of the boy scouts of America chiefly for training scouts in seamanship.

(iii) Watercraft owned by this state, any political subdivision of this state, or the federal government.

(iv) Watercraft when used in interstate or foreign commerce and watercraft used or owned by any railroad company or railroad car ferry company.

(v) Watercraft when used in trade, including watercraft when used in connection with an activity that constitutes a person's chief business or means of livelihood.

(n) "Watercraft" means any contrivance used or designed for navigation on water, including but not limited to any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat, but does not include contrivances used or owned by the United States.

(o) "Waterway" means any body of water.

Sec. 78102. There is created a state commission to be known and designated as the Michigan state waterways commission. The commission shall consist of 7 members, who shall be appointed by the governor, with the advice and consent of the senate. The term of office of each member shall be 3 years, except that of members first appointed, 2 shall be appointed for 1 year, 2 shall be appointed for 2 years, and 1 shall be appointed for 3 years. Not less than 2 members shall reside north of townline 16, 1 of whom shall reside in the upper peninsula and 1 of whom shall reside in the lower peninsula. One of the members shall be an individual who owns or operates a harbor or marina in this state at the time of his or her appointment and during his or her membership on the commission. One member shall be a representative of the marine-trades industry who does not own or operate a harbor or marina. The first term of the individual who owns or operates a harbor or marina shall expire on September 18, 1989. The first term of the marine-trade representative who does not own or operate a harbor or marina shall expire on September 18, 1988. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the unexpired term. Members shall qualify by taking and filing the constitutional oath of office. A member of the commission shall not receive a salary for his or her services as a commissioner, but may be reimbursed for actual and necessary expenses incurred in performance of official duties. The members of the commission may be removed by the governor for inefficiency, neglect of duty, misuse of office, or malfeasance in office, in the manner provided by law for the removal of other public officers for similar causes. Vacancies shall be filled for the unexpired term in the same manner as original appointments. The commission shall, immediately upon its appointment, organize, adopt a seal, and make, amend, and revise the rules necessary for the administration of the commission's duties under this part. The commission at the organization meeting shall elect from its members a chairperson and vice-chairperson to serve for 1 year and annually thereafter shall elect such officers, each to serve until his or her successor is appointed and qualified. Action shall not be taken by the commission with less than a majority assent of its members. The department of management and budget shall provide suitable offices and equipment for the use of the commission.

Sec. 78103. (1) The business which the Michigan state waterways commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 78104. There is established the office of administrative director of the commission. The director qualified by a record of experience in connection with boating shall be appointed by the commission to serve for an indefinite term, during his or her efficient, honest, and businesslike execution of his or her duties. He or she shall receive such compensation as the commission may determine, not in excess of \$8,400.00, and shall be reimbursed for all traveling and other expenses incurred by him or her in the discharge of his or her official duties. The director shall be charged with the administration of this part in accordance with the policies established by the commission. The department, upon recommendation of the director, subject to the approval of the commission, may employ such assistants, and make such expenditures as may be necessary in implementing this part related to the powers and duties of the commission. The salaries of all employees, and the necessary expenses while traveling in performing any of their duties, shall be paid in the same manner as the salaries and expenses of other state employees are paid.

Sec. 78105. The department shall have the following powers and duties:

(a) To acquire, construct, and maintain harbors, channels, and facilities for vessels in the navigable waters lying within the boundaries of the state of Michigan.

(b) To acquire, by purchase, lease, gift, or condemnation the lands, rights of way, and easements necessary for harbors and channels. The department shall be considered a state agency under the provisions of Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, relative to condemnation by state agencies.

(c) To acquire, by purchase, lease, gift, or condemnation suitable areas on shore for disposal of the material from dredging.

(d) To enter into any contracts or agreements that may be necessary in carrying out this part, including agreements to hold and save the United States free from damages due to the construction and maintenance by the United States of those works that the United States undertakes.

(e) To provide for the granting of concessions within the boundaries of harbors, so as to furnish the public gas, oil, food, and other facilities.

(f) To represent the state of Michigan and the governor of Michigan in dealings with the chief of engineers of the United States army and his or her authorized agents for the purposes set forth in this part.

(g) To charge fees for both seasonal and daily moorage at state-operated small craft mooring facilities. All revenues derived from this source shall be deposited in the Michigan state waterways fund.

(h) To charge fees for both daily and seasonal use of state-operated public access sites, if the cost of collecting the fees will not exceed the revenue derived from the fees for daily and seasonal passes. All revenues derived from this source shall be deposited in the Michigan state waterways fund. A seasonal pass shall grant the permittee the right to enter any state-operated public access site without payment of an additional fee.

(i) To collect the proceeds from the sale of marine fuel at harbors operated by the department. The proceeds from the sales shall be credited to the Michigan state waterways fund and used for the purchase of marine fuel supplies as may be needed. Any remaining revenue from this source not needed for the purchase of marine fuel supplies may be expended in the same manner as other funds within the Michigan state waterways fund.

Sec. 78106. The local units of government of this state, within the jurisdiction of which are situated inland waterways connected with or connecting the waters of the Great Lakes, or within which channels to nearby inland lakes and streams may be constructed or opened for navigation and shelter of light draft vessels, are authorized by majority vote of their respective legislative bodies, to enter into contracts and agreements with the department in the accomplishment of the purposes set forth in this part.

Sec. 78107. Facilities in harbors and connecting waterways established under this part shall be open to all on equal and reasonable terms.

Sec. 78108. (1) The department is authorized to take such action as may be necessary to provide the finances required of local agencies as condition for United States' participation in any project in which the department is empowered to act and to use any part or all of the appropriation and funds otherwise available to meet such part of the requirement of local participation as the department considers proper, and to enter into agreements with any political subdivision of the state in connection with participation with the United States in any project in which the department is empowered to act, and to provide such adjustments which in the judgment of the department are considered to be in the best interest of the state.

(2) The department may enter into any contract or agreement with the army corps of engineers of the United States, or any other agency or instrumentality of the United States for the dredging of harbors, the erection of breakwaters, piers or any other device for the protection of vessels, and may do any act or enter into any contract or agreement desirable in implementing this part. The department is further authorized to take such steps as may be necessary to take advantage of any act of congress enacted which may be of assistance in carrying out the purposes of this part.

Sec. 78109. The commission shall advise the department on the administration of this part.

Sec. 78110. (1) The Michigan state waterways fund is created in the state treasury. The fund shall be administered by the state treasurer and shall be used by the department solely for the construction, operation, and maintenance of recreational boating facilities, the acquisition of property for the purposes of this part, and for the administration of this part. The fund shall receive such revenues as the legislature may provide.

(2) The Michigan harbor development fund is created in the state treasury. The fund shall be administered by the state treasurer and shall be used by the department solely for the purposes provided in part 791 and for the administration of that part. The fund shall receive revenues as provided in part 791 and such other revenues as the legislature may provide.

Sec. 78111. It is the purpose of this part, in providing for harbors and channels, that the appropriation made by the state be considered an advancement, and that the fees, taxes, and other revenues received under this part, to be credited to the Michigan state waterways fund, shall be applied against the advancement, until all advancements have been fully paid. Thereafter all such fees, taxes, and revenues shall be available for continued expansion and development of harbors and connecting waterways. However, subject to the approval of the state administrative board, the necessary expense of administration of this part, and any expense necessary to the protection of the harbors, and

connecting waterways, constructed or established under the provisions of this part, or any improvement to the harbors and connecting waterways necessary for the proper and adequate protecting of vessels, shall be paid from the fees, taxes, and revenues before being credited to the advancements. The state administrative board shall from time to time provide for the transfer of credits to advancements from the Michigan state waterways fund to the general fund, until the advancements have been fully paid.

Sec. 78112. In addition to the other matters contained in this part, this part shall constitute prima facie evidence of the acceptance by the state of Michigan of the provisions for state participation in the federal program for construction of certain harbors of refuge within the boundaries of the state of Michigan as provided for in chapter 19, 59 Stat. 10, Public Law 14 of the 79th Congress authorized March 2, 1945, pursuant to House Document No. 446 of the 78th Congress.

PART 783 FERRY DOCKS AT THE STRAITS OF MACKINAC

Sec. 78301. The jurisdiction and control of the following described lands is transferred from the state transportation department to the department:

Mackinaw City Dock

Lots 1 to 6, both inclusive, of block 9 and Railroad avenue lying east of the east line of Huron avenue in Wendell's addition to Mackinaw City, Cheboygan county, Michigan.

Oil Storage Area

All that part of the unplatted portion of government lot 1 of section 18, town 39 north, range 3 west, village of Mackinaw City, Cheboygan county, Michigan, and water lots 55 and 56, block B of the plat of "Mackinaw City" as recorded in the office of the register of deeds, Cheboygan county, Michigan, described as:

Beginning at a point on the southerly line of government lot 1 of said section 18 which is 93.7 feet easterly, measured along said southerly lot line from its intersection with the former westerly line of Huron avenue according to the recorded plat of the village of Mackinaw City, said point of beginning being the center line of the existing pavement on Huron avenue; thence northeasterly along said center line at an angle of 103° 03' 15" with the southerly line of said government lot 1, a distance of 418.54 feet to the northerly line of water lot 55 extended westerly; thence easterly at an angle to the right of 77° 02' 25", along said extension and the northerly line of said water lot 55, a distance of 410 feet more or less to the water's edge of the Straits of Mackinac; thence southerly along said water's edge, 408 feet more or less to the southerly line of government lot 1 of said section 18; thence westerly along said southerly line of said government lot 1, a distance of 520 feet more or less, to the point of beginning; reserving an easement for highway purposes in, over and upon that part of the above described property which lies westerly of a line 100 feet easterly of, measured at right angles to, and parallel with the center line of the existing pavement on Huron avenue. Subject to the reservation in favor of the Michigan Central railroad company and the New York Central railroad company as recorded in liber 122, on pages 467-469, office of the register of deeds, Cheboygan county, Michigan.

St. Ignace Dock 1

Lots 6 to 12, both inclusive, of block 2, of assessor's plat No. 5, city of St. Ignace, Mackinac county, Michigan, according to the plat thereof recorded in liber 2 of plats, on page 49, register's office, Mackinac county, Michigan.

St. Ignace Dock 2

Lots 1 and 2, block 2, assessor's plat No. 5, city of St. Ignace, Mackinac county, Michigan, according to the plat thereof recorded in liber 2 of plats, on page 49, register's office, Mackinac county, Michigan.

Also, that part of private claim 15 located south of assessor's plat No. 5, city of St. Ignace, lying between State street on the west and lake Huron on the east, city of St. Ignace, Mackinac county, Michigan.

Also, that part of the north 2/3 of private claim 14 lying between State street on the west and lake Huron on the east, city of St. Ignace, Mackinac county, Michigan.

St. Ignace Dock 3

Lots 16 to 28, both inclusive, of block 1 and entire blocks 5, 6, 7, 8, 9 and 10 of Straits subdivision, city of St. Ignace, Mackinac county, Michigan, according to the plat thereof recorded in liber 2 of plats, on page 39, register's office, Mackinac county, Michigan.

Also, that part of private claim 2 located south of the south line of Straits subdivision and east of the east line of State street, city of St. Ignace, Mackinac county, Michigan.

Also, that part of private claim 1 located north of the north line of block 1 of the partition plat of private claim 1 and east of a line 363 feet east of, measured at right angles, and parallel with the centerline of State street, city of St. Ignace, Mackinac county, Michigan.

Also, lots 6 to 15, both inclusive, block 1; lots 6 to 19, both inclusive, block 2 and lots 1 to 4, both inclusive, block 5, including the streets and alley adjacent thereto, of the partition plat of private claim 1, city of St. Ignace, Mackinac county, Michigan.

Sec. 78302. The department shall operate and maintain the docks, and approaches to the docks, as the department determines is necessary to serve tourism and boating in the area. The department shall relinquish control of the docks and approaches for use by the state or any of its agencies if for any reason the Mackinac Straits bridge becomes unusable, or in the event of an emergency declared by the governor.

Sec. 78303. Subject to the provisions of this part, the department may grant leases and concessions for the use of the properties transferred by this part. The department shall promulgate rules for the use of these properties by all persons without discrimination. The department shall not grant exclusive use of the docking facilities to any person, but may lease designated areas to particular persons for the operation of commercial enterprises. The department may make arrangements with other state agencies for use of portions of the properties transferred by this part.

Sec. 78304. The department may enter into a lease for a period not to exceed 25 years with the village of Mackinaw City, whereby the village agrees to operate and maintain the parking facilities located on the property described in section 78301 as the Mackinaw City dock, to construct, operate, and maintain buildings on the Mackinaw City dock, or to perform other functions in relation to the Mackinaw City dock, under such terms and conditions as may be agreed upon by the department and the village of Mackinaw City.

Sec. 78305. The department may enter into a lease for a period not to exceed 25 years with the city of St. Ignace, whereby the city agrees to operate and maintain the parking facilities located on the property described in section 78301 as the St. Ignace docks numbers 1 and 2, to construct, operate, and maintain buildings on the St. Ignace docks numbers 1 and 2, or to perform other functions in relation to the St. Ignace docks numbers 1 and 2, under such terms and conditions as may be agreed upon by the department and the city of St. Ignace.

Sec. 78306. (1) The jurisdiction and control of the following described land is transferred from the Mackinac Island state park commission to the department:

A parcel of land beginning at the northwest corner of lot No. 88 of assessors plat No. 2, city of Mackinac Island, county of Mackinac, extending along the south side of Huron street in a westerly direction 530 feet thence to the shoreline of lake Huron in a southerly direction, the distance from Huron street to the shore of lake Huron being approximately 80 feet; thence easterly along the shore of lake Huron to the southwest corner of Lot No. 88 of assessors plat No. 2, city of Mackinac Island, county of Mackinac, and thence northerly approximately 80 feet along the west line of lot No. 88, assessors plat No. 2, city of Mackinac Island, county of Mackinac, to the point of beginning; also the docks, piers, buildings and appurtenances situated thereon or attached thereto, which are now under the jurisdiction of the Mackinac Island state park commission.

(2) The department shall operate the properties transferred by this section as a harbor facility for small craft and shall not permit the operation of any commercial enterprise thereon except the sale of marine fuel and other supplies for small craft by the department.

Sec. 78307. All revenues received by the department under this part shall be deposited in the state treasury to the credit of the state waterways fund and shall be expended as appropriated by the legislature.

Sec. 78308. The Michigan state waterways commission created in part 781 shall advise the department on the administration of this part.

PART 785 CHEBOYGAN LOCK AND DAM

Sec. 78501. The department may purchase and receive from its owners on behalf of the state for a nominal consideration of not to exceed \$1.00 and subject to an agreement that the department maintain the property and such terms, conditions, and stipulations as the department may approve, the locks, dams, races, structures, and related properties, facilities, flowage easements, and real estate connected with or a part of the facility now known as the Cheboygan lock and dam, at Cheboygan, Michigan.

Sec. 78502. The department may operate, control, maintain, and lease such property and may establish and revise fees and hours of operation for the facility. The department may enter into agreements with any person with respect to water rights, water levels, controls, lockage fees, and related matters.

Sec. 78503. Revenues received by the department under this part shall be deposited in the state treasury to the credit of the Michigan state waterways fund and shall be spent only pursuant to appropriations by the legislature.

Sec. 78504. The Michigan state waterways commission created in part 781 shall advise the department on the administration of this part.

PART 791 HARBOR DEVELOPMENT

Sec. 79101. As used in this part:

(a) "Commission" means the Michigan state waterways commission created in part 781.

(b) "Harbor" means a portion of a lake or other body of water either naturally or artificially protected in order to be a place of safety for watercraft.

(c) "Harbor facilities" means the structures of a harbor constructed to protect the lake or body of water and the facilities provided within the harbor and on shore for the mooring and servicing of watercraft and the servicing of crews and passengers.

(d) "Marina" means a site which contains harbor facilities.

(e) "Nonrevenue-producing harbor facilities" means any portion of harbor facilities that would not normally produce revenue and includes, but is not limited to, jetties, breakwaters, dredging, and shore protection.

(f) "Revenue-producing harbor facilities" means any portion of harbor facilities that normally produce revenue and includes, but is not limited to, watercraft slips, watercraft launching facilities, watercraft storage, lodging, access roads, watercraft repair facilities, parking lots, mechanical haul-out devices, and facilities for fuel, food, and other services.

(g) "Watercraft" means any contrivance used or designed for navigation on water, including, but not limited to, any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat.

Sec. 79102. The department may provide assistance to a person seeking to secure construction, operation, and maintenance of recreational boat slips on the waters of this state as provided in this part.

Sec. 79103. The department may purchase real property accessible to, or capable of being made accessible to, the waters of this state for the development of marinas, as provided in this part, only when it can be demonstrated that the demand for recreational boat slips within a specific harbor or within a local unit of government exceeds the available supply.

Sec. 79104. The department shall not purchase property located within a local unit of government, under this part, if the local unit of government where the property is located imposes property taxes on property containing a shoreline recreational facility that is owned by an adjacent local unit of government.

Sec. 79105. The department may sell or remove buildings or other structures on real property acquired by the department under this part, and may sell real property or rights or interest in real property not considered essential for the purposes of this part.

Sec. 79106. If, in the judgment of the department, real property acquired under this part requires modification or improvement to make it financially attractive to potential investors in a marina, the department may construct nonrevenue-producing harbor facilities at those sites.

Sec. 79107. After real property is acquired under this part, the department may enter into leases of the real property or portions of the real property; the department determines will aid in the construction of a marina, the provision of summer or winter storage of watercraft, or the provision of services normally found at commercial marinas.

Sec. 79108. (1) If the department determines that real property acquired by it under this part is suitable for use as a marina, the department shall publicly solicit proposals for the development of the marina and the lease of the real property. The solicitation of proposals shall include published notices in at least 1 local news publication of general circulation in the area in which the marina will be located and in at least 2 journals related to the marina, watercraft, or harbor industries, which journals have statewide circulation. A reasonable time shall be allowed for bidders to respond, and all proposals shall be publicly opened and read. A proposal received by the department in response to the solicitation may be rejected by the department for any reason or without cause if the department believes such action to be appropriate. The department may waive any defects in any proposals received, at its discretion, but is not required to do so.

(2) In evaluating proposals for the construction of revenue-producing harbor facilities and the operation of a marina, the department shall take into consideration, among other things, the technical qualifications of the applicants; the financial responsibility of the applicants; the ability of the applicants to perform efficiently the services necessary to maintain a sound facility, including the prior experience, if any, of the applicants in operating a marina; the proposed

lease payments; the nature and scope of each applicant's plans for the marina; and the timetables for development of the proposed marina.

Sec. 79109. (1) A lease entered into by the department under this part shall be for an initial term of not more than 25 years. A lease may be extended for a period not to exceed 5 years, at the discretion of the department, if the lessee has complied with the provisions of the lease and has made appropriate efforts to upgrade and maintain the real property.

(2) The department shall establish, by rule, a penalty schedule for nonpayment of lease payments. The department shall provide in a lease entered into under this part that, if a lessee is in default on a payment for more than 60 days, or if a lessee defaults on a payment or delays making a payment for more than 30 days on more than 2 occasions in a single year, the department may declare the lease agreement breached and seek its remedies at law or in accordance with the lease agreement.

(3) The department shall provide notice in any lease entered into under this part that the lessee may be subject to taxation under Act No. 189 of the Public Acts of 1953, being sections 211.181 to 211.182 of the Michigan Compiled Laws.

Sec. 79110. A lease entered into by the department under this part or an interest in a lease entered into by the department under this part shall not be sold, transferred, or assigned unless the sale, transfer, or assignment is first approved by the department, after receipt of a written application containing the same information as to the purchaser, transferee, or assignee as is required of an original applicant. This section does not restrict the transfer by bequest or descent of the lessee.

Sec. 79111. A lease entered into by the department under this part shall not be issued without consideration. However, the department may establish annual lease payments, which reduce the initial financial burden on the lessee as much as is reasonably possible, with subsequent payments to be appropriately increased to assure payment of the total lease obligation prior to the termination of the lease.

Sec. 79112. The department may enter into lease agreements for purposes of this part with 1 or more local units of government acting jointly with the department as a lessor. Revenue from each lease shall be apportioned according to the proportional share of the investments made by the department and the local unit or units of government in the construction of nonrevenue-producing harbor facilities and in consideration of the relative land investments of the entities.

Sec. 79113. The department may establish minimum standards applicable to the construction and operation of harbor facilities by a lessee including, but not limited to, restrooms and showers, the number of slips available to transient and seasonal watercraft rentals, construction material, parking lots, engineering and architectural plans and designs, watercraft launching facilities, and watercraft storage and repair facilities.

Sec. 79114. All revenue from lease contracts entered into under this part shall be deposited in the state treasury and credited to the harbor development fund created in section 78110.

Sec. 79115. The department shall not be liable for loss of life or injury or damage to persons or property as a result of the conditions on real property, waterways, or facilities on real property leased to persons by the department under this part. However, this section shall not relieve lessees of any obligations they may otherwise have to persons or to damages if they are found to have failed to meet their obligations properly.

Sec. 79116. The department shall promulgate rules as are necessary to implement this part.

Sec. 79117. The Michigan state waterways commission created in part 781 shall advise the department on the administration of this part.

Sec. 79118. A person shall not deny another individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations created under this part because of religion, race, color, national origin, age, sex, or marital status.

PART 793 HARBORS, CHANNELS, AND OTHER NAVIGATIONAL FACILITIES

Sec. 79301. As used in this part, "political subdivision" means any local unit of government or port district of this state and any other governmental agency or subdivision, public corporation, authority, or district in this state, which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate harbors, channels, and other navigational facilities. Whenever used in this part, the term political subdivision includes any combination of political subdivisions acting jointly.

Sec. 79302. A political subdivision may do 1 or more of the following:

(a) Adopt and amend all necessary rules, regulations, and ordinances for the management, government, and use of any waterways, harbors, channels, or other navigational facilities under its control, either within or outside of its territorial limits; employ harbor guards, police, or a harbormaster with full police powers; establish penalties for the violation of the rules, regulations, and ordinances; and enforce those penalties.

(b) Adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of harbors, channels, connecting waterways, or other navigational facilities within the political subdivision or its political jurisdiction, which rules shall be consistent with and conform to, as nearly as possible, the laws of this state.

(c) Vest authority for the maintenance, operation, and regulation thereof in an officer, board, or body of the political subdivision by ordinances or resolution which shall prescribe the duties and powers of the officers, boards, or body.

(d) Employ a regular harbormaster for the harbors, channels, connecting waterways, or navigational facilities under its control; or, in cases where a harbor board or body is established, the harbormaster may be employed by the board or body.

Sec. 79303. All powers, rights, and authority granted to any political subdivision in this part may be exercised and enjoyed by 2 or more political subdivisions, or by this state through its appropriate agencies and 1 or more such political subdivisions acting jointly, either within or outside of the territorial limits of either of them, and contracts may be entered with each political subdivision for the purposes of implementing this part and authorizing joint action.

SUBCHAPTER 5: WATERCRAFT AND MARINE SAFETY

PART 801 MARINE SAFETY

Sec. 80101. As used in this part:

(a) "Anchored rafts" means all types of nonpowered rafts used for recreational purposes that are anchored seasonally on waters of this state.

(b) "Associated equipment" means any of the following that are not radio equipment:

(i) An original system, part, or component of a boat at the time that boat was manufactured, or a similar part or component manufactured or sold for replacement.

(ii) Repair or improvement of an original or replacement system, part, or component.

(iii) An accessory or equipment for, or appurtenance to, a boat.

(iv) A marine safety article, accessory, or equipment intended for use by a person on board a boat.

(c) "Boat" means a vessel.

(d) "Boat livery" means a business that holds a vessel for renting, leasing, or chartering.

(e) "Controlled substance" means that term as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws.

(f) "Conviction" means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt, or a probate court disposition on a violation of this part, regardless of whether the penalty is rebated or suspended.

Sec. 80102. As used in this part:

(a) "Dealer" means a person and an authorized representative of that person who annually purchases from a manufacturer, or who is engaged in selling or manufacturing, 6 or more vessels that require certificates of number under this part.

(b) "Identification document" means any of the following:

(i) A valid Michigan operator's or chauffeur's license.

(ii) A valid driver's or chauffeur's license issued by an agency, department, or bureau of the United States or another state.

(iii) An official identification card issued by an agency, department, or bureau of the United States, this state, or another state.

(iv) An official identification card issued by a political subdivision of this state or another state.

(c) "Issuing authority" means the United States coast guard or a state that has a numbering system approved by the United States coast guard.

(d) "Law of another state" means a law or ordinance enacted by another state or by a local unit of government in another state.

(e) "Lifeboat" means a small boat designated and used solely for lifesaving purposes, and does not include a dinghy, tender, speedboat, or other type of craft that is not carried aboard a vessel for lifesaving purposes.

(f) "Long-term incapacitating injury" means an injury that causes serious impairment of a body function.

Sec. 80103. As used in this part:

(a) "Manufacturer" means a person engaged in any of the following:

(i) The manufacture, construction, or assembly of boats or associated equipment.

(ii) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(iii) The importation of a boat or associated equipment into the state for sale.

(b) "Marine law" means this part, a local ordinance adopted in conformity with this part, or a rule promulgated under this part.

(c) "Marine safety act" means former Act No. 303 of the Public Acts of 1967.

(d) "Marine safety program" means marine law enforcement, search and rescue operations, water safety education, recovery of drowned bodies, and boat livery inspections.

(e) "Michigan vehicle code" means Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(f) "Motorboat" means a vessel propelled wholly or in part by machinery.

(g) "Operate" means to be in control of a vessel while the vessel is under way and is not secured in some manner such as being docked or at anchor.

(h) "Operator" means the person who is in control or in charge of a vessel while that vessel is underway.

(i) "Owner" means a person who claims or is entitled to lawful possession of a vessel by virtue of that person's legal title or equitable interest in a vessel.

Sec. 80104. As used in this part:

(a) "Passenger" means a person carried on board a vessel other than any of the following:

(i) The owner or his or her representative.

(ii) The operator.

(b) "Peace officer" means any of the following:

(i) A sheriff.

(ii) A sheriff's deputy.

(iii) A deputy who is authorized by a sheriff to enforce this part and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to this part.

(iv) A village or township marshal.

(v) An officer of the police department of any municipality.

(vi) An officer of the Michigan state police.

(vii) The director and conservation officers employed by the department.

(c) "Personal watercraft" means a vessel that meets all of the following requirements:

(i) Uses a motor-driven propeller or an internal combustion engine powering a water jet pump as its primary source of propulsion.

(ii) Is designed without an open load carrying area that would retain water.

(iii) Is designed to be operated by 1 or more persons positioned on, rather than within, the confines of the hull.

(d) "Political subdivision" means any county, metropolitan authority, municipality, or combination of those entities in this state. Whenever a body of water is located in more than 1 political subdivision, all of the subdivisions shall act individually in order to comply with this part, except that if the problem is confined to a specific area of the body of water, only the political subdivision in which the problem waters lie shall act.

(e) "Port" means left, and reference is to the port side of a vessel or to the left side of the vessel.

(f) "Probate court disposition" means the entry of a probate court order of disposition for a child found to be within the provisions of chapter XIIA of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.31 of the Michigan Compiled Laws.

(g) "Prosecuting attorney", except as the context requires otherwise, means the attorney general, the prosecuting attorney of a county, or the attorney representing a political subdivision of government.

(h) "Regatta", "boat race", "marine parade", "tournament", or "exhibition" means an organized water event of limited duration that is conducted according to a prearranged schedule.

(i) "Slow—no wake speed" means a very slow speed whereby the wake or wash created by the vessel would be minimal.

(j) "Starboard" means right, and reference is to the starboard side of a vessel or to the right side of the vessel.

(k) "State aid" means payment made by the state to a county for the conduct of a marine safety program.

(l) "Undocumented vessel" means a vessel that does not have, and is not required to have, a valid marine document issued by the United States coast guard or federal agency successor to the United States coast guard.

(m) "Uniform inspection decal" means an adhesive-backed sticker created by the department pursuant to section 80166 that is color-coded to indicate the year that it expires and is attached to a vessel in the manner prescribed for decals in section 80122 when a peace officer inspects and determines that the vessel complies with this part.

(n) "Use" means operate, navigate, or employ.

(o) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

(p) "Waters of this state" means any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state.

Sec. 80105. (1) This part applies to vessels and associated equipment used, to be used, or carried in vessels used on waters subject to the jurisdiction of this state.

(2) This part, except where expressly indicated otherwise, does not apply to any of the following:

(a) Foreign vessels temporarily using waters subject to state jurisdiction.

(b) Military or public vessels of the United States, except recreational-type public vessels.

(c) A vessel whose owner is a state or political subdivision of a state, other than this state and its political subdivisions, that is used principally for governmental purposes and that is clearly identifiable as such.

(d) A ship's lifeboat.

Sec. 80106. The department shall be responsible for administration of this part except as otherwise provided in this part. The Michigan sheriffs' association shall designate an advisory representative to the department who shall transmit information, advice, and recommendations relative to county marine activities and assist in the coordination of state and county marine safety programs.

Sec. 80107. The department shall review boating accidents on Michigan waters and study the development of marine safety education programs and other policies of state government relating to marine safety and shall consider changes to department policies and programs.

Sec. 80108. The department may regulate the operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on the waters of this state. Where special regulations are determined necessary, the department may establish vessel speed limits; prohibit the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances; restrict the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances by day and hour; establish and designate areas restricted solely to boating, skin or scuba diving, fishing, swimming, or water skiing; and prescribe any other regulations relating to the use or operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances that will assure compatible use of state waters and best protect the public safety. The department shall prescribe special local regulations in such a manner as to make the regulations uniform with other special local regulations established on other waters of this state insofar as is reasonably possible.

Sec. 80109. (1) Except as provided in subsection (2), the department shall promulgate rules authorized by this part. The department shall publish the approved rules in a convenient form.

(2) Subsection (1) shall not apply to special local rules adopted pursuant to sections 80110 and 80111.

Sec. 80110. The department may initiate investigations and inquiries into the need for special rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on any of the waters of this state. If controls for such activities are considered necessary, or changes or amendments to or repeal of an existing local ordinance is required, a local ordinance shall be prepared. Notice of a public hearing shall be made in a newspaper of general circulation in the area in which the local ordinance is to be imposed, amended, or repealed, not less than 10 calendar days before the hearing. Interested persons shall be afforded an opportunity to present their views on the proposed local ordinance either orally or in writing.

Sec. 80111. A local ordinance proposed pursuant to section 80110 shall be submitted to the governing body of the political subdivision in which the controlled waters lie. Within 60 calendar days, the governing body shall inform the department that it approves or disapproves of the proposed local ordinance. If the required information is not received within the time specified, the department shall consider the proposed local ordinance disapproved by the governing body. If the governing body disapproves the proposed local ordinance, or if the 60-day period has elapsed without a reply having been received from the governing body, no further action shall be taken. If the governing body approves the proposed local ordinance, the local ordinance shall be enacted identical in all respects to the local ordinance proposed by the department.

Sec. 80112. Local political subdivisions that believe that special local ordinances of the type authorized by this part are needed on waters subject to their jurisdiction shall inform the department and request assistance. All such requests shall be in the form of an official resolution approved by a majority of the governing body of the concerned political subdivision. Upon receipt of such resolutions, the department shall proceed as required by sections 80110 and 80111.

Sec. 80113. (1) State, county, and local peace officers shall enforce local ordinances enacted in accordance with this part.

(2) All rules promulgated under this section and sections 80108, 80110, 80111, and 80112 before March 17, 1986 shall remain in effect unless rescinded pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) Local political subdivisions may enact as an ordinance any or all of sections 80101 to 80104, 80122 to 80124, 80126, 80140, 80141, 80144 to 80153, 80155, 80164, 80165, and 80166 to 80173.

Sec. 80114. (1) The department may promulgate rules to establish performance or other safety standards relating to boat construction or the installation, use, or carriage of associated equipment.

(2) In order that a boat operator may pass unhindered from jurisdiction to jurisdiction, it is the intention of the legislature that rules authorized by this section shall be identical to federal regulations for enforcement purposes. However, rules requiring the carrying or using of marine safety articles to meet uniquely hazardous conditions or circumstances within this state may be promulgated, if the rules for the safety articles are approved by the United States coast guard.

Sec. 80115. (1) The revenue received under this part shall be deposited in the state treasury. The revenue division, department of treasury, shall annually present to the department an accurate total of all the revenues collected, and shall then credit the revenues collected to the following funds:

- (a) 17.5% to the Michigan state waterways fund created in section 78110.
- (b) 33.5% to the Michigan harbor development fund created in section 78110.
- (c) 49% to the marine safety fund created in subsection (2).

(2) The marine safety fund is created as a separate fund in the state treasury. The legislature shall appropriate from the marine safety fund for water safety education programs and for the administration and enforcement of this part, including state aid to counties, and for no other purpose, but not in excess of revenues credited to the marine safety fund. No portion of the fees provided for in section 80124 shall be appropriated for the inspection of vessels that carry passengers for hire and are regulated under part 445.

Sec. 80116. The department shall do all things necessary to conduct a comprehensive boating safety program as provided in chapter 131 of part I of subtitle II of title 46 of the United States Code, 46 U.S.C. 13101 to 13110; to comply with rules promulgated under that act by the secretary of the department in which the coast guard is operating; and to accept federal financial assistance as provided in that act.

Sec. 80117. (1) Each county of the state is entitled to receive state aid as provided in this part. A county board of commissioners desiring to conduct a marine safety program shall submit to the department by December 31 of each year an estimate of authorized expenditures for the following calendar year, in the form and containing the information the department requires. The department shall review the entire request and may approve the county request for state aid. The department shall annually survey the marine safety program of each county to assist in determining the amount of state aid to be allocated to a county for its marine safety program. In making its annual determination of the amount of state aid to be allocated to a county, the department shall develop and employ a formula which shall include such factors as:

- (a) The number of students to be trained in boating safety in any United States coast guard auxiliary, United States power squadron, or department-sponsored marine safety classes.
- (b) The number of boat user days.

(c) The number of livery boats.

(d) Program effectiveness measured by comparing the existing rate of compliance with current statutes to the acceptable rate of compliance determined by the department.

(e) The number and type of boat access areas requiring a county marine safety program.

(f) The water area of the county.

(2) A determination of the amount of state aid allocated to a county under this part shall not be based, wholly or in part, upon the number of vessels within that county that are stopped or inspected under section 80166.

(3) State aid allocated to a county under this part shall be used exclusively for the conduct of the county marine safety program as provided by this part and rules promulgated under this part. Within 90 days after the close of each calendar year, a county board of commissioners shall submit to the department a statement of authorized expenditures actually incurred, in the form and containing the information that the department requires. A county that provides the department with statements or supplements to statements subsequent to the 90-day period is not eligible for state aid under this part.

Sec. 80118. The amount of state aid to be allocated to a county pursuant to this part shall be determined by the department in the manner the department determines is appropriate. The department shall review the county's statement of authorized expenditures actually incurred and if satisfied shall provide state aid in an amount not to exceed $\frac{3}{4}$ of the county's estimated authorized expenditures for the past calendar year. If the county's authorized expenditures actually incurred for the past calendar year exceed the county's estimated authorized expenditures for that calendar year, the department, if it considers it to be in the best interests of the state and adequate funds have been appropriated by the legislature for state aid to counties, may provide state aid in excess of $\frac{3}{4}$ of the county's estimated authorized expenditures for that calendar year, but not in excess of $\frac{3}{4}$ of the county's authorized expenditures actually incurred. If the amount appropriated by the legislature for state aid to counties is insufficient to pay the full amount to which the counties are entitled, the department shall reduce the allocations proportionate to the shortfall of revenue among all state and local programs for which marine safety fund resources were appropriated.

Sec. 80119. Annually the department of the treasury shall audit the county records pertaining to the marine safety program to assure the proper disposition of this money in accordance with this part and rules promulgated under this part. If the audit reveals that a refund of state aid money is due to the state, the county treasurer, within 30 days of the completion of the audit, shall send to the department the amount of the refund due to the state, which the department shall return to the marine safety fund.

Sec. 80120. The department and the county sheriffs shall cooperate in the conduct of the marine safety program. The county sheriffs shall maintain records and submit reports in a form and containing information as the department may require.

Sec. 80121. The department may promulgate rules as may be necessary to implement this part.

Sec. 80122. (1) Except as otherwise provided in this part, a person shall not operate or give permission for the operation of a vessel of any length on the waters of this state unless the fees prescribed in section 80124 for the vessel are paid, the certificate of number assigned to the vessel is on board and is in full force and effect, and, except for the following, the identifying number and decal are displayed on each side of the forward half of the vessel in accordance with this part and the rules promulgated by the department under this part:

(a) A decal and identifying numbers for a wooden hull and historic vessel as that term is defined in section 80124 may be displayed in the manner described in section 80126(2).

(b) A decal for an inflatable boat may be displayed on the transom of the boat.

(2) If a vessel is actually numbered in another state of principal use in accordance with a federally approved numbering system, it is in compliance with the numbering requirements of this state while it is temporarily being used in this state. This subsection applies to a vessel for which a valid temporary certificate is issued to the vessel's owner by the issuing authority of the state in which the vessel is principally used.

(3) If a vessel is removed to this state as the new state of principal use, a number awarded by any other issuing authority is valid for not more than 60 days before numbering is required by this state.

Sec. 80123. (1) The owner of a vessel is not required to pay a fee and a vessel is not required to be numbered and to display a decal under this part if the vessel is 1 or more of the following:

(a) Used temporarily on the waters of this state and the owner and the vessel are from a country other than the United States.

(b) A vessel that is owned by the United States, used in the public service for purposes other than recreation, and clearly identifiable as such a vessel.

(c) A vessel's lifeboat.

(d) An all-terrain vehicle not used as a vessel.

(e) A raft, sailboard, surfboard, or swim float.

(f) A vessel 16 feet or less, propelled by hand either with oars or paddles, and not used for rental or other commercial purposes.

(g) A nonmotorized canoe or kayak not used for rental or other commercial purposes.

(2) The owner of a vessel documented by the United States coast guard or a federal agency that is the successor to the United States coast guard shall comply with this part, including the payment of fees as provided in this part. However, the vessel shall not be required to display numbers under this part.

(3) This part does not prohibit the numbering of an undocumented vessel pursuant to this part upon request by the owner, even though the vessel is exempt from the numbering requirements of this part.

Sec. 80124. (1) Except as otherwise provided in this section, the owner of a vessel required to be numbered and to display a decal shall file an application for a certificate of number with the secretary of state. The secretary of state shall prescribe and furnish certificate of title application forms. If a vessel requiring a certificate of title under part 803 is sold by a dealer, that dealer shall combine the application for a certificate of number that is signed by the vessel owner with the application for a certificate of title. The dealer shall obtain the certificate of number in the name of the owner. The owner of the vessel shall sign the application. A person shall not file an application for a certificate of number that contains false information. A dealer who fails to submit an application as required by this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

(2) A dealer who submits an application for a certificate of number as provided in subsection (1) may issue to the owner of the vessel a 15-day temporary permit, on forms prescribed by the secretary of state, for the use of the vessel while the certificate of number is being issued.

(3) A dealer may issue a 15-day permit, on a form prescribed by the secretary of state, for the use of a vessel purchased in this state and delivered to the purchaser for removal to a place outside of this state, if the purchaser certifies by his or her signature that the vessel will be registered and primarily used and stored outside of this state and will not be returned to this state by the purchaser for use or storage. A certificate of number shall not be issued for a vessel holding a permit under this subsection.

(4) A 15-day temporary permit issued under subsection (2) or (3) shall not be renewed or extended.

(5) A person shall operate or permit the operation of a vessel for which a 15-day temporary permit has been issued under this section only if the temporary permit is valid and displayed on the vessel as prescribed by rule promulgated by the department under this part.

(6) Except as otherwise provided in this section, an applicant shall pay the following fee at the time of application:

(a) A 15-day temporary permit issued under subsection (3).....	\$ 10.00
(b) Nonpowered vessels, other than nonmotorized canoes or kayaks, except as provided in section 80123	9.00
(c) Nonmotorized canoes or kayaks except as provided in section 80123.....	5.00
(d) Motorboats less than 12 feet in length	14.00
(e) Motorboats 12 feet or over but less than 16 feet in length	17.00
(f) Motorboats 16 feet or over but less than 21 feet in length	42.00
(g) Motorboats 21 feet or over but less than 28 feet in length.....	115.00
(h) Motorboats 28 feet or over but less than 35 feet in length.....	168.00
(i) Motorboats 35 feet or over but less than 42 feet in length	244.00
(j) Motorboats 42 feet or over but less than 50 feet in length	280.00
(k) Motorboats 50 feet in length or over.....	448.00
(l) Pontoon vessels regardless of size	23.00
(m) Motorized canoes regardless of size	14.00
(n) Vessels licensed under part 473	15.00

(o) Vessels carrying passengers for hire that are in compliance with part 445, or under federal law; and vessels carrying passengers and freight or freight only and owned within this state or hailing from a port within this state

45.00

(7) The length of a vessel is the distance from end to end over the deck, excluding the longitudinal upward or downward curve of the deck, fore and aft. A pontoon boat shall be measured by the length of its deck, fore and aft.

(8) Payment of the fee specified in this section exempts the vessel from the tax imposed by the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(9) Upon receipt of an initial application for a certificate of number in approved form and payment of the required fee, the secretary of state shall enter the information upon the official records and issue to the applicant a certificate of number containing the number awarded to the vessel, the name and address of the owner, and other information that the secretary of state determines necessary. The secretary of state shall issue a certificate of number that is pocket size and legible. Except as provided in subsection (13), a person operating a vessel shall present that vessel's certificate of number to a peace officer upon the peace officer's request.

(10) If a check or draft payable to the secretary of state under this part is not paid on its first presentation, the fee or tax is delinquent as of the date the draft or check was tendered. The person tendering the check or draft remains liable for the payment of each fee or tax and a penalty.

(11) Upon determining that a fee or tax required by this part has not been paid and remains unpaid after reasonable notice and demand, the secretary of state may suspend a certificate of number.

(12) If a person who tenders a check or draft described in subsection (10) fails to pay a fee or tax within 15 days after the secretary of state gives him or her notice that the check or draft described in subsection (10) was not paid on its first presentation, the secretary of state shall assess and collect a penalty of \$5.00 or 20% of the check or draft, whichever is larger, in addition to the fee or tax.

(13) The owner or authorized agent of the owner of a vessel less than 26 feet in length that is leased or rented to a person for noncommercial use for not more than 24 hours may retain, at the place from which the vessel departs or returns to the possession of the owner or the owner's representative, the certificate of number for that vessel if a copy of the lease or rental agreement is on the vessel. Upon the demand of a peace officer, the operator shall produce for inspection either the certificate of number or a copy of the lease or rental agreement for that vessel. The lease or rental agreement shall contain each of the following:

- (a) The vessel number that appears on the certificate of number.
- (b) The period of time for which the vessel is leased or rented.
- (c) The signature of the vessel's owner or that person's authorized agent.
- (d) The signature of the person leasing or renting the vessel.

(14) Upon receipt of a certificate of number for a vessel, the owner of that vessel shall paint on or attach in a permanent manner to each side of the forward half of the vessel the number identified in the certificate of number, in the manner prescribed by rules promulgated by the department. The secretary of state shall assign to the owner of vessels for rent or lease a block of numbers sufficient to number consecutively all of that owner's rental or lease vessels. The owner shall maintain the numbers in a legible condition. A vessel documented by the United States coast guard or a federal agency that is the successor to the United States coast guard is not required to display numbers under this part but shall display a decal indicating payment of the fee prescribed in subsection (6), and shall otherwise be in compliance with this part. This subsection does not apply to a nonpowered vessel 12 feet or less in length.

(15) Upon receipt of an application for a certificate of number in an approved form and payment of the fee required by this part, the secretary of state shall issue a decal that is color-coded and dated to identify the year of its expiration, and that indicates that the vessel is numbered in compliance with this part. The department shall promulgate a rule or rules to establish the manner in which the decal is to be displayed.

(16) A decal is valid for a 3-year period that begins on April 1 and expires on March 31 of the third year. An original certificate of number may be issued up to 90 days prior to April 1. A numbering renewal decal or other renewal device may be issued up to 90 days prior to the expiration of a certificate.

(17) Upon receipt of a request for renewal of a decal and payment of the fee prescribed in subsection (6), the secretary of state shall issue to the applicant a decal as provided in subsection (15).

(18) The numbering system adopted pursuant to this part shall be in accordance with the standard system of numbering established by the secretary of the department in which the United States coast guard operates.

(19) An agency of this state, a political subdivision of this state, or a state supported college or university of this state that owns a vessel that is required to be numbered under this part shall register that vessel and upon payment of either of the following shall receive from the secretary of state a certificate of number for that vessel:

- (a) A fee of \$3.00 for a vessel that is not used for recreational, commercial, or rental purposes.
- (b) The fee required under subsection (6) for a vessel that is used for recreational, commercial, or rental purposes.

(20) The secretary of state shall, upon receipt of payment of the fee required under subsection (19), issue a certificate of number for each vessel subject to subsection (19).

(21) A vessel that is 30 years of age or older and not used other than in club activities, exhibitions, tours, parades, and other similar activities is a historic vessel. The secretary of state shall make available to the public application forms for certificates of number for historic vessels and, upon receipt of a completed application form and fee, shall number a

historic vessel as a historic vessel. The fee for the numbering of a historic vessel is 1/3 of the otherwise applicable fee specified in subsection (6).

(22) Upon application to the secretary of state, the owner of a nonmotorized canoe or kayak who registered that vessel under former Act No. 303 of the Public Acts of 1967 between January 1, 1989 and April 17, 1990 shall receive a refund of a portion of the registration fee equal to the difference in the amount that owner paid and the fee amount provided in subsection (6)(c).

(23) The secretary of state shall refund to the owner of a vessel registered under this part or former Act No. 303 of the Public Acts of 1967 all of the registration fee paid for that vessel pursuant to this section or section 33 of former Act No. 303 of the Public Acts of 1967 if all of the following conditions are met during the period for which the registration fee was paid:

(a) The owner transfers or assigns title or interest in the registered vessel before placing the decal issued under subsection (15) on the vessel.

(b) The owner surrenders the unused decal to the secretary of state within 30 days after the date of transfer or assignment.

(24) The secretary of state shall refund to the surviving spouse of a deceased vessel owner the registration fee paid pursuant to this part, prorated on a monthly basis, upon receipt of the decal issued under subsection (15) or evidence satisfactory to the secretary of state that the decal issued under subsection (15) has been destroyed or voided.

(25) If the secretary of state computes a fee under this part that results in a figure other than a whole dollar amount, the secretary of state shall round the figure to the nearest whole dollar.

Sec. 80125. (1) The owner of a vessel shall notify the secretary of state within 15 days if the vessel is destroyed, abandoned, or sold; if an interest in the vessel is transferred, either wholly or in part, to another person; or if the owner's address no longer conforms to the address appearing on the certificate of number. The notice shall consist of a surrender of the certificate of number, on which the proper information shall be noted on a place to be provided on the certificate. When the surrender of the certificate is due to the vessel being destroyed or abandoned, the secretary of state shall cancel the certificate and enter that fact in the secretary of state's records, and the number may be reassigned.

(2) The owner of a destroyed vessel, upon proper application, may receive a new certificate of number, valid for the remainder of the numbering period, for a replacement vessel, if all of the following conditions are met:

(a) The replacement vessel is owned by the same person who owned the destroyed vessel.

(b) The owner of the replacement vessel pays additional fees, if required under section 80124, due to the change in vessel size or classification.

(c) Payment of a \$2.00 application fee.

(3) If the fees required for the replacement vessel under section 80124 are less than the fees that were required for the destroyed vessel, the owner of the vessel shall not receive a refund.

(4) If the surrender of the certificate of number is due to a change of the owner's address, the new address shall be recorded by the secretary of state and a certificate of number bearing that information shall be returned to the owner.

(5) The transferee of a vessel registered under this part, within 15 days after acquisition of the vessel, shall make application to the secretary of state for transfer to the transferee of the certificate of number issued to the vessel. The transferee shall provide his or her name, address, and the number of the vessel and pay to the secretary of state a transfer fee of \$2.00. The registration fee for the certificate of number shall be 2/3 the fee provided in section 80124 if the transferred certificate of number would have remained valid for 1 year or less. The registration fee for the certificate of number shall be 1/3 the fee provided in section 80124 if the transferred certificate of number would have remained valid for more than 1 year but less than 2 years. An additional registration fee shall not be assessed if the transferred registration would have remained valid for 2 or more years. Unless the application is made and the fee paid within 15 days after acquisition of the vessel, the vessel shall be considered to be without certificate of number and a person shall not operate the vessel until a certificate is issued. Upon receipt of the application and appropriate fees, the secretary of state shall transfer the certificate of number issued for the vessel to the new owner. The certificate of number shall be valid for a 3-year period.

(6) If a certificate of number is lost, mutilated, or illegible, the owner of the vessel shall obtain a duplicate of the certificate upon application and payment of a fee of \$2.00.

Sec. 80126. (1) A dealer shall apply for and obtain from the secretary of state dealer certificates of number and dealer decals for each vessel of the dealer that is tested, demonstrated, or otherwise operated. Upon receipt of an application in a form approved by the secretary of state and payment of \$30.00 for each set of dealer certificates of number and dealer decals, the secretary of state shall issue to the applicant the dealer certificates of number and dealer decals. A

single dealer certificate of number and dealer decal issued pursuant to this section may be used on only 1 vessel at a time.

(2) The operator of a vessel governed by this section shall do each of the following:

(a) Maintain the dealer certificate of number on board the vessel.

(b) Upon demand of a peace officer, display the dealer certificate of number.

(c) Permanently or temporarily display the identifying number and dealer decal on the vessel in accordance with rules promulgated by the department under this part.

(3) A person shall not operate a vessel numbered under this section unless the dealer is on board the vessel or the operator has the written authorization of the dealer to operate the vessel. A person shall not use a vessel numbered under this section for commercial purposes that include the rental of the vessel or the carrying of passengers for hire on the vessel.

Sec. 80127. The secretary of state may accept payment by a credit card or check in lieu of cash of a fee required under this part. The secretary of state shall determine which major credit cards may be utilized, provided, however, that the fee received shall not be less than 100% of the applicable fee.

Sec. 80128. The secretary of state may award any certificate of number directly or may authorize any person to act as his or her agent for the awarding of a certificate of number.

Sec. 80129. All records of the secretary of state made or kept pursuant to this part shall be public records except as otherwise provided in this part. Annually the secretary of state shall compile all registration numbers and names of persons to whom those numbers have been assigned. This compilation shall be furnished without cost to all police agencies requesting a copy of the compilation. Individuals desiring copies of the annual registration list may obtain the list by payment of a reasonable fee established by the secretary of state.

Sec. 80130. In order to provide an individual, historical boating record, the secretary of state shall create and maintain a central file that includes the name of each person who is convicted of an offense, who fails to comply with an order or judgment issued, or against whom an order is entered under this part. A certified copy of an order, record, or paper maintained in this record is admissible in evidence in the same manner as the original and is prima facie proof of the facts stated in the original.

Sec. 80131. (1) Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of this part or of a local ordinance corresponding to this part regulating the operation of vessels.

(2) Within 14 days after a conviction, forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating this part or a local ordinance corresponding to this part regulating the operation of vessels, except as provided in subsection (11), the municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the record of the court for the case. The abstract shall be certified to be true and correct by signature, stamp, or facsimile signature by the person required to prepare the abstract. If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance corresponding to this part, the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state.

(3) The abstract or report required under this section shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name, address, and date of birth of the person charged or cited.

(b) The date and nature of the violation.

(c) The type of vessel operated at the time of the violation.

(d) The date of the conviction, finding, forfeiture, judgment, or determination.

(e) Whether bail was forfeited.

(f) Any order issued by the court pursuant to this part.

(g) Other information considered necessary to the secretary of state.

(4) As used in subsections (5) to (7), "felony in which a vessel was used" means a felony during the commission of which the person operated a vessel and while operating the vessel presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

(a) The vessel was used as an instrument of the felony.

(b) The vessel was used to transport a victim of the felony.

(c) The vessel was used to flee the scene of the felony.

(d) The vessel was necessary for the commission of the felony.

(5) If a person is charged with a felony in which a vessel was used, the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court:

"You are charged with the commission of a felony in which a vessel was used. If you are convicted and the judge finds that the conviction is for a felony in which a vessel was used, as defined in section 80131 of the natural resources and environmental protection act, the secretary of state will order you not to operate a vessel on the waters of this state."

(6) If a child is accused of an act the nature of which constitutes a felony in which a vessel was used, the prosecuting attorney or juvenile court shall include the following statement on the petition filed in the probate court:

"You are accused of an act the nature of which constitutes a felony in which a vessel was used. If the accusation is found to be true and the judge or referee finds that the nature of the act constitutes a felony in which a vessel was used, as defined in section 80131 of the natural resources and environmental protection act, the secretary of state will order you not to operate a vessel on the waters of this state."

(7) If the judge or juvenile court referee determines as part of the sentence or disposition that the felony for which the defendant was convicted or adjudicated and with respect to which notice was given pursuant to subsection (5) or (6) is a felony in which a vessel was used, the clerk of the court shall forward an abstract of the court record of that conviction or adjudication to the secretary of state.

(8) Every person required to forward abstracts to the secretary of state under this section shall certify for the period from January 1 through June 30 and for the period from July 1 through December 31 that all abstracts required to be forwarded during the period have been forwarded. The certification shall be filed with the secretary of state not later than 28 days after the end of the period covered by the certification. The certification shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name and title of the person required to forward abstracts.

(b) The court for which the certification is filed.

(c) The time period covered by the certification.

(d) The following statement:

"I certify that all abstracts required by section 80131 of the natural resources and environmental protection act for the period _____ through _____ have been forwarded to the secretary of state."

(e) Other information the secretary of state considers necessary.

(f) The signature of the person required to forward abstracts.

(9) The failure, refusal, or neglect of a person to comply with this section constitutes misconduct in office and is grounds for removal from office.

(10) Except as provided in subsection (11), the secretary of state shall keep all abstracts received under this section at the secretary of state's main office, and the abstracts shall be open for public inspection during the office's usual business hours. The secretary of state shall enter each abstract upon the boating record of the person to whom it pertains and shall record the information in a manner that makes the information available to peace officers through the law enforcement information network.

(11) The court shall not submit, and the secretary of state shall discard and not enter on the boating record, an abstract for a conviction or civil infraction determination for a violation of this part that could not be the basis for the secretary of state's issuance of an order not to operate a vessel on the waters of this state. The secretary of state shall discard and not enter on the boating record an abstract for a bond forfeiture that occurred outside this state.

(12) The secretary of state shall inform the court of the violations of this part that are used by the secretary of state as the basis for issuance of an order not to operate a vessel on the waters of this state.

(13) If a conviction or civil infraction determination is reversed upon appeal, the court shall transmit a copy of the order of reversal to the secretary of state, and the secretary of state shall enter the order in the proper book or index in connection with the record of the conviction or civil infraction determination.

(14) The secretary of state may permit a city or village department, bureau, person, or court to modify the requirement as to the time and manner of reporting a conviction, civil infraction determination, or settlement to the secretary of state if the modification will increase the economy and efficiency of collecting and utilizing the records. If the permitted abstract of court record reporting a conviction, civil infraction determination, or settlement originates as a part of the written notice to appear, authorized in section 80168, the form of the written notice and report shall be as prescribed by the secretary of state.

Sec. 80132. (1) Sections 80134 and 80135 apply to a vessel operated on waters subject to the jurisdiction of this state when the vessel is either of the following:

(a) Operated by its operator for recreational purposes.

(b) Required to be numbered in this state.

(2) This section does not apply to a vessel required to have a certificate of inspection under chapter I of title 46 of the Code of Federal Regulations.

Sec. 80133. (1) The operator of a vessel involved in a collision, accident, or other casualty, and the operator of any other vessel, to the extent that he or she can do so without serious danger to his or her own vessel, crew, and passengers, shall render reasonable assistance to a person affected by the collision, accident, or other casualty, including the transporting of the injured person to a physician or surgeon for medical or surgical treatment, if it is apparent that treatment is necessary or when requested by the injured person.

(2) A person who complies with subsection (1), or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of the person assisted, is not liable for civil damages as a result of the rendering of assistance, or for an act or omission in providing or arranging towage, medical treatment, or other assistance, if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

Sec. 80134. In the case of collision, accident, or other casualty involving a vessel, the operator shall stop his or her vessel and give his or her name and address and identification of his or her vessel, and the name and address of the owner of the vessel if he or she is not the operator, to the operator or occupants of any other vessel involved or to the owner or his or her agents of any property damaged by the accident.

Sec. 80135. (1) In the case of collision, accident, or other casualty involving a vessel, the operator shall report the collision, accident, or other casualty to the nearest peace officer, state police post, or the sheriff of the county in which the collision, accident, or other casualty occurred.

(2) A report of a collision, accident, or other casualty involving a vessel that is made to a peace officer other than the sheriff of the county in which the collision, accident, or other casualty occurred shall be reported without delay by the peace officer to the sheriff of the county in which the collision, accident, or other casualty occurred.

Sec. 80136. A peace officer receiving a report or investigating the collision, accident, or other casualty involving a vessel shall prepare and submit within 15 days a complete report thereof to the department and the sheriff of the county where the collision, accident, or other casualty involving a vessel occurred, in a form and containing such information as the department may require.

Sec. 80137. All collision, accident, or other casualty reports involving a vessel shall be without prejudice and shall be for the information of the department. Any person upon the payment of \$2.00 to the department shall be furnished a copy of the report. The report required in section 80136 is not admissible in a court.

Sec. 80138. In accordance with a request by an authorized official or agency of the United States or by the department, information compiled or otherwise available to the secretary of state and the department under this part shall be transmitted to the official or agency of the United States or to the department for analytical and statistical purposes.

Sec. 80139. The department shall promulgate rules to establish a state vessel collision, accident, or other casualty reporting system in conformity with that established by the United States coast guard.

Sec. 80140. (1) In order to protect the public interest in the prudent and equitable use of the waters of this state and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of the state, the department shall establish and pursue comprehensive educational programs designed to advance boating and general water safety.

(2) The department shall put into effect a program to train youthful boat operators and shall issue a boating safety certificate to those who satisfactorily complete the program. For the purpose of giving the courses of instruction and awarding boating safety certificates, the department may designate as its agent any person it considers qualified to act in this capacity. A charge shall not be made for any instruction given or for the award of boating safety certificates.

Sec. 80141. (1) Except as otherwise provided in subsection (4), a person less than 12 years of age shall not operate a motorboat on the waters of this state unless all of the following conditions are met:

(a) He or she is under the direct supervision of a person on board the motorboat who is 16 years of age or older.

(b) The motorboat he or she operates is powered by a motor or motors totaling no more than 35 horsepower.

(2) Except as otherwise provided in subsection (4), a person 12 through 15 years of age may operate a motorboat on the waters of this state only if that person complies with either of the following:

(a) He or she is accompanied by at least 1 person 16 years of age or older.

(b) He or she is in possession of a boating safety certificate issued after he or she has satisfactorily completed a department approved course in boating safety.

(3) A person 12 through 15 years of age operating a motorboat pursuant to subsection (2)(b) shall present the boating safety certificate issued to him or her upon the demand of any peace officer.

(4) This section does not apply to the operation of a motorboat that is powered by a motor or motors totaling no more than 6 horsepower.

Sec. 80142. (1) Except as provided in subsection (3), a person shall not operate a vessel on the waters of this state unless each person in an open deck area on board the vessel who is less than 6 years of age is wearing a type I or type II personal flotation device as described in R 281.1234 of the Michigan administrative code.

(2) A parent or guardian of a child less than 6 years of age who accompanies that child on board a vessel that is not a charter boat described in subsection (3) shall ensure that the child is wearing a personal flotation device that complies with this section.

(3) This section does not apply to a charter boat bearing either of the following:

(a) A valid certificate of inspection issued by the United States coast guard that verifies the charter boat's compliance with subchapter H or subchapter T of the code of federal regulations, 46 C.F.R. 70.01-1 to 80.40 and 175.01-1 to 185.30-30.

(b) A valid certificate of inspection issued by the department for a class C vessel that is greater than 45 feet in length.

(4) As used in this section, "charter boat" and "class C vessel" mean those terms as defined in section 44501.

(5) A person who violates this section is subject to a civil fine of not more than \$100.00.

Sec. 80143. (1) A person shall not operate a personal watercraft on the waters of the state unless each person riding on or being towed behind the vessel is wearing a type I, type II, or type III personal flotation device as described in R 281.1234 of the Michigan administrative code.

(2) While operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch on the waters of the state, a person shall have the lanyard attached to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel.

(3) A person shall not operate a personal watercraft on the waters of the state between the hours from sunset to sunrise.

(4) A personal watercraft shall at all times be operated in a reasonable and prudent manner. Maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed, and swerving at the last possible moment to avoid a collision, constitute reckless operation of a vessel, as provided in section 80147.

(5) A person shall not operate a personal watercraft on the waters of the state carrying more persons than the vessel is designed to carry. Carrying more persons than the vessel is designed to carry is prima facie evidence of reckless operation of a watercraft under section 80147.

(6) A person operating a personal watercraft on the waters of the state shall maintain a distance of 100 feet from any dock, raft or buoyed or occupied bathing area or shall not cross within 150 feet behind another vessel, other than a personal watercraft, that is traveling at a speed greater than slow—no wake speed.

(7) A person under the age of 12 shall not operate a personal watercraft on the waters of the state. A person 12 through 15 years of age may operate a personal watercraft on the waters of the state only when accompanied by a person 16 years of age or older or without adult supervision when in possession of a boating safety certificate in compliance with section 80141.

(8) The owner of a personal watercraft or a person having charge over or control of a personal watercraft shall not authorize or knowingly permit the personal watercraft to be operated in violation of subsection (7).

(9) This section does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with this part.

Sec. 80144. (1) When vessels are being operated in such a manner as to make collision imminent or likely, the following rules apply:

(a) When 2 vessels are approaching each other head-on, or nearly so, the operator of each shall cause his or her vessel to pass on the port side of the other.

(b) When overtaking a vessel proceeding in the same direction, the operator of the overtaking vessel, unless it is not feasible to do so, shall pass on the port side of the vessel ahead.

(c) When 2 vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when 1 vessel is overtaking another, the operator of the vessel that has the other on his or her own port side shall hold his or her course and speed, and the operator of the vessel that has the other on his or her own starboard side shall give way to the other by directing his or her course to starboard so as to cross the stern of the other vessel or, if necessary to do so, shall slacken his or her speed, stop, or reverse.

(d) When a motorboat and a vessel under sail are proceeding in a manner that involves a risk of collision, the operator of the motorboat shall give way to the vessel under sail.

(e) When a motorboat and a vessel not propelled by sail or mechanical means are proceeding in a manner that involves risk of collision, the operator of the motorboat shall give way to the other vessel.

(f) When, by any of the rules provided in this section, the operator of a vessel is required to give way to the other, the operator of the other vessel shall maintain his or her direction and speed.

(2) This section does not relieve the operator of a vessel otherwise privileged by this section from the duty to operate with due regard for the safety of all persons using the waters of this state.

Sec. 80145. A person operating or propelling a vessel upon the waters of this state shall operate it in a careful and prudent manner and at such a rate of speed so as not to endanger unreasonably the life or property of any person. A person shall not operate any vessel at a rate of speed greater than will permit him or her, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. A person shall not operate a vessel in a manner so as to interfere unreasonably with the lawful use by others of any waters.

Sec. 80146. (1) The department may promulgate rules to establish maximum motorboat speed limits or to allow unlimited motorboat speed on the waters of this state.

(2) On waters of this state for which a motorboat speed limit is not established under subsection (1), on any waters for which the department has not established an unlimited motorboat speed limit, or on any waters for which stricter speed restrictions are not established pursuant to an act, a maximum speed limit of 55 miles per hour is established, except in an emergency and except for authorized peace and conservation officers when engaged in official duties. The maximum speed limit of 55 miles per hour shall not apply to the Great Lakes and Lake St. Clair, except for an area within 1 mile of the shoreline measured at a right angle from the shoreline. Upon receipt of a resolution by the governing body of a local unit of government having jurisdiction over waters of this state requesting a reduction in the maximum speed limit on those waters, the department, pursuant to sections 80108 to 80113, may establish a maximum speed limit not to exceed 40 miles per hour on those waters.

(3) A person shall not operate a motorboat on the waters of this state at a speed greater than slow—no wake speed or the minimum speed necessary for the motorboat to maintain forward movement when within 100 feet of the shoreline where the water depth is less than 3 feet, as determined by vertical measurement, except in navigable channels not otherwise posted.

(4) A person operating a motorboat in violation of this section is guilty of reckless operation of a motorboat punishable as provided in section 80171.

(5) The department may waive this section and section 80156 for marine events authorized by the department under section 80164.

Sec. 80147. (1) If a person carelessly and heedlessly operates a vessel upon the waters of this state in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless operation of a vessel and is subject to the penalties described in subsection (3).

(2) If a person, while being towed on water skis, a water sled, a surfboard, or a similar contrivance upon the waters of this state, carelessly and heedlessly navigates, steers, or controls himself or herself in disregard of the rights or safety of others or without due caution and circumspection and in a manner that endangers or is likely to endanger a person or property, then that person is guilty of reckless operation of the contrivance that he or she controls and is subject to the penalties described in subsection (3).

(3) Upon a person's conviction under this section, the court may issue an order prohibiting that person from operating a vessel on the waters of this state for a period of not more than 2 years. Upon a person's subsequent conviction under this section, the court shall order that person to participate in and complete a marine safety educational program approved by the department. An order issued pursuant to this subsection is in addition to any other penalty authorized under this part.

Sec. 80148. (1) Subject to the exceptions described in subsection (2), a person shall not operate a motorboat at more than slow—no wake speed if any of the following circumstances exist:

(a) A person is located on or in the bow of the motorboat, and that motorboat is not manufactured to provide bow seating.

(b) A person or a portion of a person's body extends beyond the exterior port or starboard walls of the hull of the motorboat.

(2) This section does not apply to either of the following:

(a) A person engaged in the operation of a sailboat that is not being powered by a motor.

(b) A person on board a vessel who is attempting to anchor, moor, dock, or otherwise secure the vessel.

Sec. 80149. Persons operating vessels on the waters of this state in areas not marked by well defined channels, canals, rivers, or stream courses shall operate the vessels in a counter-clockwise fashion to the extent that it is reasonably possible. These persons and persons being towed on water skis or on a water sled, kite, surfboard, or similar contrivance shall maintain a distance of 100 feet from any dock, raft, buoyed or occupied bathing area, or vessel moored or at anchor, except when the vessel is proceeding at a slow—no wake speed or when water skiers are being picked up or dropped off, if that operation is otherwise conducted with due regard to the safety of persons and property and in accordance with the laws of this state.

Sec. 80150. A person shall not operate a vessel on any of the waters of this state within a lawfully authorized restricted area clearly marked by buoys, beacons, or other distinguishing devices as being prohibited to vessels.

Sec. 80151. An operator of any vessel shall not have in tow or otherwise be assisting in the propulsion of a person on water skis or on a water sled, surfboard, or other similar contrivance during the period of 1 hour after sunset to 1 hour prior to sunrise. Any person permitting himself or herself to be towed on water skis or on a water sled, surfboard, or similar contrivance in violation of this part is guilty of a misdemeanor.

Sec. 80152. (1) A person shall not operate a vessel on the waters of this state if he or she is towing or otherwise assisting a person on water skis or on a water sled, aquaplane, surfboard, or other similar contrivance unless a person capable of communicating to the vessel operator the condition and needs of the person being towed or assisted is on board the vessel and positioned to observe the person being towed or assisted.

(2) Subsection (1) does not apply to vessels used by duly constituted ski schools in the giving of instructions or to vessels used in sanctioned ski tournaments, competitions, expositions, or trials. Vessels described in this subsection shall be equipped with a 170-degree wide-angle rearview mirror affixed in a manner that will permit the operator to observe the progress of the person being towed.

(3) This section does not apply to motorboats less than 16 feet in length actually operated by the person being towed and so constructed as to be incapable of carrying the operator in or on the motorboat.

Sec. 80153. Any occupant or operator of any vessel under way on the waters of this state shall not sit, stand, or walk upon any portion of the vessel not specially designed for that purpose, except when immediately necessary for the safe and reasonable navigation or operation of the vessel.

Sec. 80154. A person not in a boat shall not intentionally rock, tip, jostle, or otherwise interfere with the operation of any vessel, except under supervised training.

Sec. 80155. Any person diving or submerging in any of the waters of this state with the aid of a diving suit or other mechanical diving device shall place a buoy or boat in the water at or near the point of submergence. The buoy or boat shall bear a red flag not less than 14 inches by 16 inches with a 3-1/2 inch white stripe running from 1 upper corner to a diagonal lower corner. The flag shall be in place only while actual diving operations are in progress. A vessel shall not be operated within 200 feet of a buoyed diver's flag unless it is involved in tendering the diving operation. A person diving shall stay within a surface area of 100 feet of the diver's flag.

Sec. 80156. (1) Subject to subsection (2), a person shall not operate a motorboat on the waters of this state unless the motorboat is equipped and maintained with an effective muffler or underwater exhaust system that does not produce sound levels in excess of 90 dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005 or a sound level in excess of 75 dB(A) when subjected to a shoreline sound level measurement procedure as described by SAE J1970. The operator of a motorboat shall present the motorboat for a sound level test as prescribed by SAE J2005 upon the request of a peace officer. If a motorboat is equipped with more than 1 motor or engine, the test shall be performed with all motors or engines operating. To determine whether a person is violating this subsection, a peace officer may measure sound levels pursuant to procedures prescribed in SAE J1970, issued 1991-92.

(2) The department may by rule establish a motorboat sound level test and set a maximum decibel level or levels permitted for motorboat operation that replace the tests and maximum decibel levels permitted under subsection (1). If a test and maximum decibel level or levels are established pursuant to this subsection, all of the following apply:

(a) A person shall not operate a motorboat on the waters of this state if the motorboat produces sound levels that exceed the maximum decibel level or levels established under this subsection.

(b) The operator of a motorboat shall present the motorboat for the sound level test established pursuant to this subsection upon the request of a peace officer.

(c) A motorboat equipped with more than 1 motor or engine shall be tested with all motors or engines operating.

(3) A person shall not manufacture, sell, or offer for sale a new motorboat for use on the waters of this state if that motorboat cannot be operated in a manner that complies with the applicable sound levels permitted under subsection (1) or (2).

(4) Subsections (1) and (2) do not apply to any of the following:

(a) A motorboat tuning up or testing for or participating in official trials for speed records or a sanctioned race conducted pursuant to a permit issued by an appropriate unit of government.

(b) A motorboat being operated by a boat or marine engine manufacturer for the purpose of testing or development.

(c) A motorboat that qualifies as an historic vessel.

(5) A person shall not operate on the waters of this state a motorboat that is equipped with a cut-out, bypass, amplifier, or other similar device.

(6) As used in this section, "dB(A)" means decibels on the "A" scale on a sound meter having characteristics of a general purpose sound meter as defined by American national standards institute S1.4-1983.

(7) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days and a fine of not less than \$100.00 or more than \$500.00. Additionally, before putting the motorboat back in use, a person who violates this section shall be required to install an effective muffler or underwater exhaust system that meets the requirements of this section on the motorboat in violation at his or her expense.

Sec. 80157. The owner of a vessel is liable for any injury occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the statutes of this state, or in the failure to observe such ordinary care in the operation as the rules of the common law require. The owner is not liable unless the vessel is being used with his or her expressed or implied consent. It shall be presumed that the vessel is being operated with the knowledge and consent of the owner if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family.

Sec. 80158. The owner of any vessel operated upon the waters of this state is personally responsible for any damage to life or property resulting from a wake or swell created by the negligent operation or propulsion of the vessel, if the vessel is being operated with his or her consent.

Sec. 80159. The department may authorize, through the issuance of revocable permits, the placing of buoys or beacons in the waters of this state to mark obstruction to navigation, to designate bathing areas, to designate vessel anchorages, or for any other purpose if it will promote safety or navigation. Any person who desires to place buoys or beacons in the waters of this state, without expense to the state, shall make application to the department in a form and containing information required by the department. Buoys or beacons, except for mooring buoys, shall not be placed in the waters of this state unless authorized by the department in writing. If authorization has been granted, the buoys or beacons shall be placed only in accordance with the terms of the permit and shall be considered lawfully placed. If buoys or beacons are placed in the waters of this state without a permit having been issued, the department may order their removal. If, in the judgment of the department, buoys or beacons authorized by the department are found to be improperly placed, the reason for their placement no longer exists, or the buoys or beacons do not conform to the uniform system of marking established by state regulation, the department may revoke the permit authorizing their placement and may order their removal. Revocation of permits and orders of removal shall be by written notice to the person placing the buoys or beacons or to the person to whom the permit was issued at his or her last known address, directing the removal within a specified time. The person to whom the notice is directed shall remove the buoys or beacons in accordance with the instructions. If the person fails to remove the buoys or beacons within the specified time, the department may cause their removal, and the cost and expense of the removal shall be charged against the person authorized to place the buoys or beacons or, where authorization has not been granted, the person placing such buoys or beacons and shall be recoverable through any court of competent jurisdiction.

Sec. 80160. The department shall establish a uniform waterway marking system for the marking of all buoys and beacons authorized by this part to be placed in the waters of this state.

Sec. 80161. Sections 80159 and 80160 do not exempt any person from compliance with applicable federal law or regulation, and sections 80159 and 80160 do not require the securing of a state revocable permit if a permit therefor has been obtained from an authorized agency of the United States.

Sec. 80162. A person shall not moor or fasten a vessel to a lawfully placed buoy or beacon, except mooring buoys, or willfully move, remove, or damage such a buoy or beacon.

Sec. 80163. Whenever, in the opinion of the department, an anchored raft presents a hazard to navigation, the department may order its relocation or removal.

Sec. 80164. The department may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions, or trials for those events, on any waters of this state. The department shall promulgate and may amend rules concerning the conduct of such marine events. Whenever a regatta, motorboat or other boat race, marine parade, tournament, or exhibition, or trials for those events, is proposed to be held, the person in charge of the event, at least 30 days prior to the event, shall file an application with the department for permission to hold the regatta, motorboat or other boat race, marine parade, tournament, exhibition, or trials. The application shall set forth the date, time, and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without the written authorization of the department.

Sec. 80165. Section 80164 does not exempt a person from compliance with an applicable federal law or regulation, and it shall not be construed to require the securing of a state permit if a permit for an event, exhibition, or trial described in section 80164 has been obtained from an authorized agency of the United States. The department in its permit may waive the provisions of sections 80122, 80144, 80146, 80149, 80151, 80152, and 80156, as well as the registration provisions of the laws of this state, and any of the rules promulgated by the department under this part, to the extent that they apply to vessels participating in races, regattas, or trials sanctioned by the department.

Sec. 80166. (1) Upon the direction of a peace officer, the operator of a vessel moving on the waters of this state shall immediately bring the vessel to a stop or maneuver it in a manner that permits the peace officer to come beside the vessel. The operator of the vessel and any person on the vessel shall do the following upon the request of the peace officer:

- (a) Provide his or her correct name and address.
 - (b) Exhibit the certificate of number awarded for the vessel.
 - (c) If the vessel does not bear a decal described in subsection (3), submit to a reasonable inspection of the vessel and to a reasonable inspection and test of the equipment of the vessel.
- (2) Each police chief, the director of the law enforcement division of the department of natural resources, the director of the department of state police, and each sheriff shall issue a book containing both of the following to each peace officer in his or her department whose duties may include enforcement of marine law:
- (a) Adhesive copies of a uniform marine safety inspection decal described in subsection (3).
 - (b) Receipts for each uniform inspection decal copy.
- (3) The department shall create and each calendar year make available to persons described in subsection (2) adhesive copies of a uniform marine safety inspection decal that is all of the following:
- (a) Effective for 1 calendar year.
 - (b) Of a distinct color that is changed each calendar year.
 - (c) Attachable to a vessel and bearing language that substantially complies with the following: "This vessel has been inspected by _____ on _____ and is in compliance with the equipment and registration requirements of part 801 of the natural resources and environmental protection act."
- (4) A peace officer who conducts an inspection of a vessel authorized under this section shall include in that inspection a reasonable examination and test of the equipment on that vessel. If the peace officer does not find a violation of a marine law, he or she shall affix to the vessel an adhesive copy of the uniform marine safety inspection decal described in subsection (3) and shall complete a receipt for that decal.
- (5) A completed receipt for a decal shall include all of the following:
- (a) The name of the peace officer.
 - (b) The time, date, and place of the inspection.
 - (c) The vessel's identifying number.
- (6) A peace officer shall deliver to his or her supervisor or person designated by that supervisor a receipt for a decal within 48 hours of affixing the decal to a vessel. The supervisor or person designated by the supervisor shall maintain receipts received under this section for a period of 1 year.

(7) Except for inspection of a vessel to determine the number and adequacy of personal flotation devices on that vessel, a peace officer shall not stop and inspect a vessel bearing the decal described in this section during the period the decal remains in effect unless that peace officer has probable cause to believe the vessel or the vessel's operator is in violation of a marine law.

(8) A person who is detained for a violation of this part or of a local ordinance substantially corresponding to a provision of this part and who furnishes a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person is guilty of a misdemeanor.

(9) A peace officer who observes a marine law violation may immediately arrest the person without a warrant or issue to the person a written or verbal warning.

Sec. 80167. If a person is arrested without a warrant for any of the following, the arrested person shall, without unreasonable delay, be arraigned by a magistrate or judge who is within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense, and who is nearest or most accessible with reference to the place where the arrest is made:

(a) The person is arrested upon a charge of negligent homicide.

(b) The person is arrested under section 80176(1), (3), (4), or (5), or a local ordinance substantially corresponding to section 80176(1) or (3).

(c) The person is arrested under section 80147 or a local ordinance substantially corresponding to section 80147. If in the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by section 80168.

Sec. 80168. (1) When a person is arrested without a warrant for a violation of this part punishable as a misdemeanor, or of a provision of any local ordinance or rule established in conformity with this part, under conditions not referred to in section 80167, the arresting officer shall prepare in duplicate a written notice to appear in court containing the name and address of the person, the offense charged, and the time and place when and where the person shall appear in court. If the arrested person so demands, he or she shall be arraigned by a magistrate or a district court judge as provided in section 80167 in lieu of being given the notice.

(2) The time specified in the notice to appear shall be within a reasonable time after the arrest unless the person arrested demands an earlier hearing.

(3) The place specified in the notice to appear shall be before a magistrate or a district court judge who is within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense.

(4) Appearance may be made in person, by representation, or by mail. When appearance is made by representation or mail, the magistrate or the district court judge may accept the plea of guilty or not guilty for purposes of arraignment, with the same effect as though the person personally appeared before him or her. The magistrate or the district court judge, by giving notice 5 days prior to the date of appearance, may require appearance in person at the time and place designated in the notice.

Sec. 80169. (1) If a person not a resident of this state is arrested without a warrant for any violation of this part under conditions not referred to under section 80167, the officer making the arrest, upon demand of the arrested person, shall immediately take the person for arraignment by a magistrate or a district court judge in the vicinity to answer to the complaint made against him or her. If a magistrate or a district court judge is not available or an immediate trial cannot be had, the person arrested may recognize to the officer for his or her appearance by leaving with him or her a sum of money not to exceed \$25.00.

(2) The officer making the arrest shall give a receipt to the person arrested for the money deposited with him or her under subsection (1), together with a written summons as provided in section 80168.

(3) If the offender fails to appear as required, the deposit shall be forfeited as in other cases of default in bail, in addition to any other penalty provided in this part.

(4) Within 48 hours after taking a deposit under this section, the officer shall deposit the money with the magistrate or the district court judge named in the notice to appear, together with a report stating the facts relating to the arrest. Failure to make the report and deposit the money is embezzlement of public money.

Sec. 80170. (1) Any officer, magistrate, or district court judge violating section 80168 or 80169 is guilty of misconduct in office and is subject to removal from office.

(2) Sections 80168 and 80169 govern all peace officers in making arrests without a warrant for violations of this part and do not prevent the execution of a warrant for the arrest of the person as in other cases of misdemeanors when it may be necessary.

Sec. 80171. Unless otherwise specified under this part, a violation of this part or rules promulgated under this part is a misdemeanor. A political subdivision having adopted a local ordinance in conformity with this part may provide that any violation of the ordinance is a misdemeanor. Any person convicted of reckless operation of a vessel as defined in section 80147, or of operating a vessel while under the influence of intoxicating liquor or narcotic drugs, in addition to any other penalty, may be refused by the court having jurisdiction of the violation the right of operating any vessel on any of the waters of this state for a period of not more than 2 years.

Sec. 80172. A person who, by the operation of any vessel at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, injures so as to cripple or cause the death of another is guilty of a misdemeanor, and shall be imprisoned for not more than 2 years, or fined not more than \$2,000.00, or both.

Sec. 80173. A person who operates any vessel carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injures so as to cripple any person, but not causing death, is guilty of the offense of felonious operation, and shall be imprisoned for not more than 2 years, or fined not more than \$2,000.00, or both.

Sec. 80174. The crime of negligent homicide is included within every crime of manslaughter charged to have been committed in the operation of any vessel, and where a defendant is charged with manslaughter committed in the operation of any vessel, if the jury finds the defendant not guilty of the crime of manslaughter, the jury may render a verdict of negligent homicide.

Sec. 80175. (1) The operation by a nonresident of a vessel upon the waters of this state, or the operation on the waters of this state of a vessel owned by a nonresident if operated with his or her consent, expressed or implied, is the appointment by the nonresident of the secretary of state as his or her true and lawful attorney, upon whom may be served the summons in any action against him or her, growing out of any accident or collision in which the nonresident may be involved while operating a vessel on the waters of this state, or in which the vessel may be involved while being so operated. The operation is a signification of his or her agreement that any summons against him or her that is so served has the same legal force and validity as if served on him or her personally within this state. Service of summons shall be made by leaving a copy of the summons with the secretary of state, or his or her deputy, who shall keep a record of each process and the day and hour of service. Service shall be sufficient service upon the nonresident, if notice of the service and a copy of the summons are forthwith either served upon the defendant personally by the sheriff or constable of the county in which he or she resides or sent by certified mail by the plaintiff or his or her attorney to the defendant. If personal service of the notice and copy of summons is had upon the defendant, the officer making the service shall so certify in his or her return, which shall be filed with the court having jurisdiction of the cause. If service is made by certified mail, then the plaintiff or his or her attorney shall make an affidavit showing that he or she has made service of the notice and summons upon the defendant by certified mail, and the affiant shall attach to the affidavit a true copy of the summons and notice so served and the return receipt of the defendant and shall file the affidavit and attached papers with the court having jurisdiction of the cause. The court in which the action is pending may order such extension of time as is necessary to afford the defendant reasonable opportunity to defend the action.

(2) The death of a nonresident does not revoke the appointment by him or her of the secretary of state as his or her true and lawful attorney upon whom may be served the summons in an action against him or her growing out of any such accident or collision, and any action growing out of such accident or collision may be commenced or prosecuted against his or her executor or administrator duly appointed by the state, territory, or district of the United States or foreign country in which the nonresident was domiciled at the time of his or her death. Service of the summons shall be made upon the secretary of state, and personal service of such notice and the copy of the summons be upon his or her executor or administrator, in like manner, with the same force and effect as service upon the nonresident during his or her lifetime.

(3) Any action or proceeding pending in any court of this state, in which the court has obtained jurisdiction of the nonresident pursuant to this section, shall not abate by reason of the death of the nonresident, but his or her executor or administrator duly appointed in the state, territory, or district of the United States or foreign country in which he or she was domiciled at the time of his or her death, upon the application of the plaintiff in the action and upon such notice as the court may prescribe, shall be brought in and substituted in the place of the decedent, and the action or proceeding shall continue.

(4) The court shall include as taxable costs, in addition to other legal costs against the plaintiff in case the defendant prevails in the action, the actual traveling expenses of the defendant from his or her residence to the place of trial and return, not to exceed the sum of \$100.00.

(5) This section applies to actions commenced in all courts of this state having civil jurisdiction, including justice courts.

Sec. 80176. (1) A person shall not operate a vessel on the waters of this state if either of the following applies:

- (a) The person is under the influence of intoxicating liquor or a controlled substance, or both.
- (b) The person has a blood alcohol content of 0.10% or more by weight of alcohol.

(2) The owner of a vessel or a person in charge or in control of a vessel shall not authorize or knowingly permit the vessel to be operated on the waters of this state by a person who is under the influence of intoxicating liquor or a controlled substance, or both, or who has a blood alcohol content of 0.10% or more by weight of alcohol.

(3) A person shall not operate a vessel on the waters of this state when, due to the consumption of an intoxicating liquor or a controlled substance, or both, the person's ability to operate the vessel is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person who operates a vessel on the waters of this state under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10% or more by weight of alcohol, and by the operation of that vessel causes the death of another person is guilty of a felony, punishable by imprisonment for not more than 15 years, or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A person who operates a vessel on the waters of this state under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10% or more by weight of alcohol, and by the operation of that vessel causes a long-term incapacitating injury to another person is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

Sec. 80177. (1) If a person is convicted of violating section 80176(1), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor and shall be punished by 1 or more of the following:

- (i) Community service for not more than 45 days.
- (ii) Imprisonment for not more than 90 days.
- (iii) A fine of not less than \$100.00 or more than \$500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00 and either of the following:

- (i) Community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than 1 year.
- (ii) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to imprisonment for not less than 1 year or more than 5 years, or a fine of not less than \$500.00 or more than \$5,000.00, or both.

(2) A term of imprisonment imposed under subdivision (b)(ii) shall not be suspended. A person sentenced to perform service to the community under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(3) In addition to the sanctions prescribed under subsection (1) and section 80176(4) and (5), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws, order the person to pay the costs of the prosecution. The court shall also impose sanctions under sections 80185 and 80186.

(4) A person who is convicted of violating section 80176(2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both.

(5) As used in this section, "prior conviction" means a conviction for a violation of any of the following:

- (a) Section 80176(1), (4), or (5).
- (b) Former section 171(1), (4), or (5) of the marine safety act.
- (c) Former section 73 of the marine safety act.
- (d) A local ordinance substantially corresponding to section 80176(1) or former section 73 of the marine safety act.
- (e) A law of another state substantially corresponding to section 80176(1), (4), or (5) or former section 73 of the marine safety act.

Sec. 80178. (1) If a person is convicted of violating section 80176(3), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than 90 days.

(iii) A fine of not more than \$300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(2) In addition to the sanctions prescribed in subsection (1), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws, order the person to pay the costs of the prosecution. The court shall also impose sanctions under sections 80185 and 80186.

(3) A person sentenced to perform service to the community under this section shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(4) As used in this section, "prior conviction" means a conviction for a violation of any of the following:

(a) Section 80176(1), (3), (4), or (5).

(b) Former section 171(1) of the marine safety act.

(c) Former section 73 of the marine safety act.

(d) Former section 73b of the marine safety act.

(e) A local ordinance substantially corresponding to section 80176(1), former section 73 of the marine safety act, or former section 73b of the marine safety act.

(f) A law of another state substantially corresponding to section 80176(1), (3), (4), or (5), former section 73 of the marine safety act, or former section 73b of the marine safety act.

Sec. 80179. (1) If the prosecuting attorney intends to seek an enhanced sentence under section 80177 or 80178 based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information filed in district court, circuit court, recorder's court, municipal court, or probate court a statement listing the defendant's prior convictions.

(2) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) A copy of the defendant's boating record.

(c) An admission by the defendant.

(3) A person who is convicted of an attempted violation of section 80176(1) or (3), or a local ordinance substantially corresponding to section 80176(1) or (3), shall be punished as if the offense had been completed.

(4) When issuing an order under this part, the secretary of state and the court shall treat a conviction of an attempted violation of section 80176(1) or (3), former section 171(1) or (3) of the marine safety act, a local ordinance substantially corresponding to section 80176(1) or (3), or a law of another state substantially corresponding to section 80176(1) or (3) the same as if the offense had been completed.

Sec. 80180. (1) A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vessel involved in the accident in this state while in violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3).

(2) A peace officer who has reasonable cause to believe that a person was operating a vessel on the waters of this state, and that, by the consumption of intoxicating liquor, the person may have affected his or her ability to operate a vessel, may require the person to submit to a preliminary chemical breath analysis. The following apply with respect to a preliminary chemical breath analysis:

(a) Only a peace officer who has successfully completed a training course taught by a state-certified instructor in the administration of the preliminary chemical breath analysis may administer that test.

(b) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(c) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime described in section 80187(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(d) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 80187 to 80190 for the purposes of chemical tests described in those sections.

(e) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction and subject to a civil fine of not more than \$100.00.

(3) A peace officer making an arrest under this part shall take measures to assure that the vessel and its occupants are safely returned to shore.

(4) If, within 60 days after the issuance of a citation for a civil infraction under this section, the person to whom the citation is issued is not charged with a violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3), the citation issued for the civil infraction is void. Upon application of the person to whom the citation is issued, money paid by the person as a fine, costs, or otherwise shall be immediately returned.

Sec. 80181. (1) The following apply with respect to a chemical test and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance, or both, in an operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

(b) A person arrested for a crime described in section 80187(1) shall be advised of all of the following:

(i) That if the person takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, the person has the right to demand that someone of the person's own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this part and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that the person is responsible for obtaining a chemical analysis of a test sample obtained pursuant to the person's own request.

(ii) That if the person refuses the request of a peace officer to take a test described in subparagraph (i), the test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(iii) That the person's refusal of the request of a peace officer to take a test described in subparagraph (i) will result in issuance of an order that the person not operate a vessel on the waters of this state for at least 6 months.

(2) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician, qualified to withdraw blood and acting in a medical environment, may withdraw blood at the request of a peace officer for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in a person's blood, as provided in this subsection. A qualified person who withdraws or analyzes blood, or assists in the withdrawal or analysis, in accordance with this part is not liable for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures unless the withdrawal or analysis is performed in a negligent manner.

(3) A rule relating to a chemical test for alcohol or a controlled substance promulgated under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, applies to a chemical test administered under this part.

Sec. 80182. (1) A chemical test described in section 80181 shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 80187(1). A person who takes a chemical test administered at the request of a peace officer, as provided in section 80181, shall be given a reasonable opportunity to have someone of the person's own choosing administer 1 of the chemical tests described in section 80181 within a reasonable time after the person's detention, and the results of the test are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by someone of the person's own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.

(2) If, after an accident, the operator of a vessel involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided

in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(3) If, after an accident, the operator of a vessel involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department.

Sec. 80183. (1) The provisions of sections 80181 and 80182 relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(2) If a chemical test described in sections 80181 and 80182 is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

Sec. 80184. (1) Except in a prosecution relating solely to a violation of section 80176(1)(b), the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath gives rise to the following presumptions:

(a) If there was at the time 0.07% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a vessel was not impaired due to the consumption of intoxicating liquor and that the defendant was not under the influence of intoxicating liquor.

(b) If there was at the time in excess of 0.07% but less than 0.10% by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a vessel was impaired within the provisions of section 80176(3) due to the consumption of intoxicating liquor.

(c) If there was at the time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(2) A person's refusal to submit to a chemical test as provided in sections 80181 and 80182 is admissible in a criminal prosecution for a crime described in section 80187(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

Sec. 80185. (1) Before accepting a plea of guilty or nolo contendere under sections 80176 to 80179, or a local ordinance substantially corresponding to section 80176(1), (2), or (3), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be imposed will be based upon the boating record maintained by the secretary of state pursuant to section 80130 or other evidence of a prior conviction as provided in section 80179.

(2) Before imposing sentence, other than court-ordered operating sanctions, for a violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

Sec. 80186. (1) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3), whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions currently entered upon the boating record of the person or other evidence of prior convictions established under section 80179, except those convictions that, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following sanctions:

(a) For a conviction under section 80176(4) or (5), the court shall order with no expiration date that the person not operate a vessel on the waters of this state.

(b) For a conviction under section 80176(1) or a local ordinance substantially corresponding to section 80176(1):

(i) If the court finds that the person has no prior convictions within 7 years for a violation of section 80176(1), (3), (4), or (5), former section 171(1), (3), (4), or (5), or another boating substance abuse offense, or that the person has 1 prior

conviction within 7 years for a violation of section 80176(3); former section 171(3) of the marine safety act; former section 73b of the marine safety act; a local ordinance substantially corresponding to section 80176(3) or former section 73b of the marine safety act; or a law of another state substantially corresponding to section 80176(3) or former section 73b of the marine safety act, the court may order that the person not operate a vessel on the waters of this state for not less than 1 year or more than 2 years.

(ii) If the court finds that the person has 1 or more prior convictions within 7 years for a violation of section 80176(1), (3), (4), or (5); former section 73 of the marine safety act; a local ordinance substantially corresponding to section 80176(1) or former section 73 of the marine safety act; or a law of another state substantially corresponding to section 80176(1), (4), or (5) or former section 73 of the marine safety act, the court shall order that the person not operate a vessel on the waters of this state for not less than 2 years.

(iii) If the court finds that the person has 2 or more prior convictions within 10 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse offense, the court shall order with no expiration date that the person not operate a vessel on the waters of this state.

(c) For a conviction under section 80176(3) or a local ordinance substantially corresponding to section 80176(3):

(i) If the court finds that the convicted person has no prior conviction within 7 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse offense, the court may order that the person not operate a vessel on the waters of this state for not less than 6 months or more than 1 year.

(ii) If the court finds that the person has 1 prior conviction within 7 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse offense, the court shall order that the person not operate a vessel on the waters of this state for not less than 1 year or more than 2 years.

(iii) If the court finds that the person has 2 or more prior convictions within 10 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse offense, the court shall order with no expiration date that person not to operate a vessel on the waters of this state.

(2) As used in this section, "another boating substance abuse offense" means former section 73 or 73b of the marine safety act, a local ordinance substantially corresponding to section 80176(1) or (3) or former section 73 or 73b of the marine safety act, or a law of another state substantially corresponding to section 80176(1), (3), (4), or (5) or former section 73 or 73b of the marine safety act.

Sec. 80187. (1) A person who operates a vessel on the waters of this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

(a) The person is arrested for a violation of section 80176(1), (3), (4), or (5), or a local ordinance substantially corresponding to section 80176(1) or (3).

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a vessel, and the peace officer had reasonable grounds to believe that the person was operating the vessel while impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or while having a blood alcohol content of 0.10% or more by weight of alcohol.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) A chemical test described in subsection (1) shall be administered as provided in sections 80181 and 80182.

Sec. 80188. (1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 80181 or 80182, a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) If a person refuses a chemical test offered pursuant to section 80181 or 80182, the peace officer who requested the person to submit to the test shall immediately forward a written report to the secretary of state. The report shall state that the officer had reasonable grounds to believe the person committed a crime described in section 80187(1) and that the person refused to submit to the test upon the request of the peace officer and has been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 80189. (1) If a person refuses to submit to a chemical test pursuant to section 80181 or 80182, the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in section 80190. The form of the notice shall be prescribed and furnished by the secretary of state.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in issuance of an order that the person not operate a vessel on the waters of this state. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel is permitted to represent the person at the hearing.

Sec. 80190. (1) If a person who refuses to submit to a chemical test pursuant to section 80181 or 80182 does not request a hearing within 14 days of the date of notice pursuant to section 80189, the secretary of state shall issue an order that the person not operate a vessel on the waters of this state for 6 months or, for a second or subsequent refusal within 7 years, for 1 year.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.322 of the Michigan Compiled Laws. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 80188, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and, except for delay attributable to the unavailability of the defendant, a witness, or material evidence or to an interlocutory appeal or exceptional circumstances, but not for delay attributable to docket congestion, shall be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 80187(1).

(b) Whether the person was placed under arrest for a crime described in section 80187(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of his or her rights under section 80181.

(3) The hearing officer shall make a record of proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review pursuant to section 80194 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall order that the person not operate a vessel on the waters of this state for 6 months or, for a second or subsequent refusal within 7 years, for 1 year. The person may file a petition in the circuit court of the county in which the arrest was made to review the order as provided in section 80194. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 80188 may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 80194.

Sec. 80191. (1) Notwithstanding a court order issued under section 80176(1), (3), (4), or (5), section 80185 or 80186, former section 171(1), (3), (4), or (5), 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to section 80176(1) or (3), section 80185 or 80186, or former section 73 or 73b of the marine safety act, if a court has not ordered a person not to operate a vessel as authorized by this part, the secretary of state shall issue an order that the person not operate a vessel on the waters of this state for not less than 6 months or more than 2 years, if the person has the following convictions within a 7-year period, whether under the law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) One conviction under section 80176(1), former section 171(1) of the marine safety act, or former section 73 of the marine safety act.

(b) Any combination of 2 convictions under section 80176(3), former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(c) One conviction under section 80176(1), former section 171(1) of the marine safety act, or former section 73 of the marine safety act and 1 conviction under section 80176(3), former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(d) One conviction under section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act followed by 1 conviction under section 80176(3) or former section 171(3) of the marine safety act.

(2) If the secretary of state receives records of more than 1 conviction of a person resulting from the same incident, an order not to operate shall be issued solely for that violation for which an order could be effective for the longest period of time under this section.

Sec. 80192. (1) Upon receipt of the appropriate records of conviction, the secretary of state shall issue an order with no expiration date that the person not operate a vessel on the waters of this state to a person having any of the following convictions, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Four convictions under section 80147, former section 74 of the marine safety act, or a local ordinance substantially corresponding to section 80147 within 7 years.

(b) Two convictions of a felony involving the use of a vessel within 7 years.

(c) Any combination of 2 convictions within 7 years for 1 or more of the following:

(i) A violation of section 80176(1) or former section 171(1) of the marine safety act.

(ii) A violation of former section 73 of the marine safety act.

(iii) A violation of section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act.

(d) One conviction under section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act.

(e) Any combination of 3 convictions within 10 years for 1 or more of the following:

(i) A violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) of the marine safety act.

(ii) A violation of former section 73 or former section 73b of the marine safety act.

(2) The secretary of state shall issue an order with no expiration date that a person not operate a vessel on the waters of this state notwithstanding a court order issued under section 80176, section 80185 or 80186, former section 73, 73b, 171, 181, or 182 of the marine safety act, or a local ordinance substantially corresponding to section 80176, section 80185 or 80186, or former section 73 or 73b of the marine safety act.

(3) The secretary of state shall not terminate an order with no expiration date issued under this part until both of the following occur:

(a) The later of the following:

(i) The expiration of not less than 1 year after the order was issued.

(ii) The expiration of not less than 5 years after the date of a subsequent issuance of an order with no expiration date occurring within 7 years after the date of a prior order.

(b) The person meets the requirements of the department.

(4) Multiple convictions resulting from the same incident shall be treated as a single violation for purposes of issuance of an order under this section.

(5) Judicial review of an administrative sanction under this section is governed by the law in effect at the time the offense was committed or attempted.

Sec. 80193. (1) If a person is charged with, or convicted of, a violation of section 80176(1), (2), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1), (2), or (3), and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, within 14 days after the notice is issued, the secretary of state will issue an order with no expiration date that the person not operate a vessel on the waters of this state. If the person fails to appear within the 7-day period or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately issue the order and send a copy to the person by personal service or first-class mail sent to the person's last known address.

(2) An order imposed under subsection (1) remains in effect until both of the following occur:

(a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation are resolved.

(b) The person has paid to the court a \$25.00 administrative order processing fee.

Sec. 80194. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 80190, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 80190 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the

county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to section 80190, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) Except as provided in subsections (4) and (6), the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a vessel on the waters of this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) In reviewing a determination under section 80190, the court shall confine its consideration to a review of the record prepared pursuant to section 80190 to determine whether the hearing officer properly determined the issues enumerated in section 80190.

(5) This section does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under section 80176, section 80185 or 80186, former sections 171, 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to section 80176(1), (2), or (3), or former section 73 or 73b of the marine safety act.

(6) In reviewing a determination resulting in issuance of an order under section 80192(1)(c), (d), or (e), the court shall confine its consideration to a review of the record prepared pursuant to section 80190 or the boating record. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

- (a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.
- (b) In excess of the statutory authority or jurisdiction of the secretary of state.
- (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

Sec. 80195. (1) Within 63 days after the determination, a person who is aggrieved by a final determination of the secretary of state under this part may petition the circuit court for the county in which the conviction or determination resulting in issuance of the order that the person not operate a vessel on the waters of this state for an order staying the order. Except as provided in subsection (2), the court may enter an ex parte order staying the order subject to terms and conditions prescribed by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court, or for a lesser time that the court considers proper.

(2) The court shall not enter an ex parte order staying the order if the order is based upon a claim of undue hardship.

Sec. 80196. (1) A person who is ordered not to operate a vessel on the waters of this state and who has been notified of the order by personal service or first-class mail shall not operate a vessel on the waters of this state. A person shall not knowingly permit a vessel owned by the person to be operated on the waters of this state by a person who is subject to such an order. A person who violates this subsection is guilty of a misdemeanor punishable as follows:

- (a) By imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both.
- (b) For a second or subsequent violation punishable under this subsection, by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) Upon receiving a record of the conviction of a person upon a charge of unlawful operation of a vessel while the person is subject to an order not to operate a vessel on the waters of this state, the secretary of state shall immediately extend the length of the order for an additional like period. If the secretary of state receives records of more than 1 conviction resulting from the same incident, all of the convictions shall be treated as a single violation for purposes of extending the length of an order under this subsection.

(3) Before a person is arraigned before a judge or district court magistrate on a charge of violating this section, the arresting officer shall obtain the boating record of the person from the secretary of state and shall furnish the record to the court. The boating record of the person may be obtained from the secretary of state's computer information network.

(4) This section does not apply to a person who operates a vessel solely for the purpose of protecting human life or property, if the life or property is endangered and the summoning or giving of prompt aid is essential.

(5) If a person is convicted of violating subsection (1), the court shall order confiscation of the vessel's certificate of number and cancellation of the vessel's registration numbers, unless the vessel was stolen or permission to use the vessel was not knowingly given. The secretary of state shall not assign a registration number to or issue a certificate of number for a vessel whose number is canceled and certificate confiscated until after the expiration of 90 days after the cancellation or confiscation, whichever is later.

Sec. 80197. (1) When a person is convicted under section 80196(1), the vessel, if it is owned in whole or in part by that person, shall be ordered impounded for not less than 30 or more than 120 days from the date of judgment. An order of impoundment issued pursuant to this subsection is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vessel to the storage for insurance coverage purposes.

(2) The owner of a vessel impounded pursuant to this section is liable for expenses incurred in the removal and storage of the vessel whether or not the vessel is returned to him or her. The vessel shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vessel is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the vessel, the vessel shall be considered abandoned.

(3) Nothing in this section affects the rights of a conditional vendor, chattel mortgagee, or lessor of a vessel registered in the name of another person as owner who becomes subject to this part.

Sec. 80197a. A conviction based on a plea of nolo contendere shall be treated in the same manner as a conviction based on a plea of guilty or a finding of guilt for all purposes under this part.

Sec. 80198. Whether with or without an expiration date, an order not to operate a vessel on the waters of this state or to operate a vessel with restrictions does not expire until the person subject to the order pays an administrative order processing fee of \$125.00 to the secretary of state. The state treasurer shall deposit \$10.00 of the fee in the drunk driving prevention equipment and training fund created under section 625h of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625h of the Michigan Compiled Laws, and \$30.00 in the drunk driving caseflow assistance fund created under section 625h of Act No. 300 of the Public Acts of 1949. The state treasurer shall allocate the balance of the fee to the department of state for the administration of orders issued under this part.

Sec. 80198a. (1) When wind conditions on the Great Lakes attain a magnitude whereby 1/3 of the waves resulting from the conditions cause any public dock, pier, wharf, or retaining wall to be awash, it constitutes a state not conducive to the orderly and safe use and occupancy of those structures.

(2) When the conditions described in subsection (1) exist, any harbormaster, peace or police officer, or other authorized official may rope off or barricade entry to these structures or post in a conspicuous manner notices that entry on those structures for the purpose of fishing, swimming, or other recreational activity is prohibited.

(3) A person shall not knowingly enter or remain upon any public dock, pier, wharf, or retaining wall for the purpose of fishing, swimming, or other recreational activity when the structure is roped, cabled, or otherwise barricaded in a manner designed to exclude intruders, when notice against entry is given by posting in a conspicuous manner, or when notice to leave or stay off is personally communicated to that person by a peace or police officer or other authorized official of the local unit of government.

Sec. 80198b. (1) The owner or person in charge of a bathing beach maintained primarily for public use shall not knowingly permit a person to bathe or swim from the bathing beach unless buoys outlining a safe bathing or swimming area are established in accordance with section 80159.

(2) A person who is bathing or swimming from a bathing beach maintained primarily for public use shall not bathe or swim in waters that are within 100 feet beyond the buoyed bathing or swimming area. This subsection does not apply to persons swimming from adjacent privately owned beaches that are not open to the general public.

Sec. 80199. This part does not affect any of the rights of an owner under the laws of the United States.

PART 803 WATERCRAFT TRANSFER AND CERTIFICATE OF TITLE

Sec. 80301. As used in this part, "watercraft" means a contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry.

Sec. 80302. (1) This part does not apply to any of the following:

(a) A boat from a jurisdiction other than this state temporarily using the waters of this state.

(b) A boat whose owner is the United States, a state, or political subdivision thereof.

(c) A ship's lifeboat.

(d) Watercraft less than 20 feet in length that do not have permanently affixed engines unless the owner, lessee, or operator voluntarily wishes to become subject to this part.

(e) Watercraft documented by an agency of the United States government.

(2) The various certificates, applications, and assignments necessary to provide certificates of title for watercraft shall be made upon appropriate forms approved by the secretary of state.

Sec. 80303. (1) The secretary of state shall promulgate rules to implement this part.

(2) If it appears that a certificate of title is improperly issued, the secretary of state shall cancel the certificate. The secretary of state shall notify the person to whom the certificate of title was issued, as well as any lienholders appearing on the certificate of title, of the cancellation, and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of a lien noted on the certificate of title. The holder of the certificate of title shall return it to the secretary of state immediately.

Sec. 80304. (1) A person, except as provided in section 80306, shall not sell or otherwise dispose of a watercraft without delivering to the purchaser or transferee of the watercraft a certificate of title with such assignment on the certificate of title as is necessary to show title in the purchaser.

(2) A person shall not purchase or otherwise acquire a watercraft without obtaining a certificate of title for it in the person's name pursuant to this part.

Sec. 80305. (1) A person acquiring a watercraft from the owner of the watercraft, whether the owner is a manufacturer, importer, dealer, or otherwise, shall not acquire any right, title, claim, or interest in or to the watercraft until that person has issued to him or her a certificate of title to the watercraft, or delivered a manufacturer's or importer's certificate for the watercraft. A waiver or estoppel shall not operate in favor of that person against a person having possession of the certificate of title, or manufacturer's or importer's certificate for the watercraft, for a valuable consideration.

(2) A court shall not recognize the right, title, claim, or interest of a person in or to a watercraft sold or disposed of, or mortgaged or encumbered, unless:

(a) Evidenced by a certificate of title or a manufacturer's or importer's certificate issued pursuant to this part.

(b) Evidenced by admission in the pleadings or stipulation of the parties.

Sec. 80306. (1) A manufacturer, importer, dealer, or other person shall not sell or otherwise dispose of a new watercraft to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's or importer's certificate executed in accordance with this section and with those assignments on the certificate as are necessary to show title in the purchaser of the watercraft. A dealer shall not purchase or acquire a new watercraft without obtaining from the seller of the watercraft the manufacturer's or importer's certificate.

(2) A manufacturer's or importer's certificate of the origin of a watercraft shall contain, in the form and together with the information the secretary of state requires, the following information:

(a) A description of the watercraft, including, if applicable, make, year, length, series of model, hull type, and hull identification number.

(b) Certification of the date of transfer of the watercraft to a distributor, dealer, or other transferee, and the name and address of the transferee.

(c) Certification that this transaction is the first transfer of the new watercraft in ordinary trade and commerce.

(d) Signature and address of a representative of the transferor.

(3) An assignment of a manufacturer's or importer's certificate shall be printed on the reverse side of the manufacturer's or importer's certificate in the form to be prescribed by the secretary of state. The assignment form shall include the name and address of the transferee, a certification that the watercraft is new, and a warranty that the title at the time of delivery is subject only to the liens and encumbrances that are set forth and described in full in the assignment.

Sec. 80307. (1) Application for a certificate of title for a watercraft shall be made upon a form prescribed by the secretary of state. The application shall be filed with the secretary of state within 15 days after the date of purchase or transfer. At the request of the applicant, an application shall be processed on an expedited basis. The application shall be accompanied by the fee or fees prescribed in section 80311, and if a certificate of title was previously issued for the watercraft, it shall be accompanied by the certificate of title duly assigned, unless otherwise provided in this part. Unless otherwise provided in this part, if a certificate of title was not previously issued for the watercraft in this state,

the application shall be accompanied by a manufacturer's or importer's certificate, by a certificate of ownership, or a certificate of registration issued under part 801 or former Act No. 303 of the Public Acts of 1967, if purchased by the applicant on or before July 1, 1976, or by a certificate of title, bill of sale, or other evidence of ownership required by the law of another state from which the watercraft is brought into this state. Evidence of ownership of a watercraft for which a Michigan certificate of title was not previously issued, and which does not have permanently affixed to it a hull identification number, shall be accompanied by the certificate of hull identification number assigned by the secretary of state as provided in section 80308. The secretary of state shall retain the evidence of title presented by the applicant and upon which the certificate of title is issued, and shall use reasonable diligence in ascertaining whether the facts in the application are true by checking the application and documents accompanying the application with the records of watercraft in the secretary of state's office. If satisfied that the applicant is the owner of the watercraft and that the application is in the proper form, the secretary of state shall issue a certificate of title.

(2) When a watercraft is sold by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. In other cases, the certificate shall be obtained by the purchaser.

Sec. 80308. (1) An application for a certificate of title shall be certified by the owner or purchaser of the watercraft and shall contain, in the form and together with other information that the secretary of state requires, the following information:

(a) Name and address of the applicant.

(b) Name and address of the previous owner.

(c) A statement of liens, mortgages, or other encumbrances on the watercraft, and the name and address of the holder of the liens, mortgages, or other encumbrances.

(d) If a lien, mortgage, or other encumbrance is not outstanding, a statement of that fact.

(e) A description of the watercraft, including, if applicable, the make, year, length, series or model, hull type, and hull identification number.

(2) If the watercraft contains a permanent hull identification number placed on the watercraft by the manufacturer of the watercraft, this number shall be used as the hull identification number. If there is not a manufacturer's hull identification number, or if the manufacturer's hull identification number is removed or obliterated, the secretary of state, upon a prescribed application that includes information indicating proof of ownership, shall assign a hull identification number to the watercraft. This assigned hull identification number shall be permanently affixed to, or imprinted by the applicant, at the place and in the manner designated by the secretary of state, upon the watercraft to which the hull identification number is assigned.

Sec. 80309. The secretary of state shall issue a certificate of title containing the information required in the application for a certificate of title, as prescribed by section 80308, except for the name and address of the previous owner. The certificate of title shall also contain space for the notation and cancellation of a lien, mortgage, or encumbrance. An assignment of certificate of title shall appear on the reverse side of the certificate of title in the form to be prescribed by the secretary of state. The assignment form shall include a warranty that the signer is the owner of the watercraft and that a mortgage, lien, or encumbrance is not on the watercraft, except as noted on the face of the certificate of title.

Sec. 80310. (1) The secretary of state shall prescribe a uniform method of numbering certificates of title, and shall maintain in his or her office indexes for the certificates of title.

(2) The secretary of state may destroy a certificate of title or supporting evidence of a certificate of title covering a watercraft which was on file for 10 years after the date of its filing.

Sec. 80311. (1) The secretary of state shall charge a fee of \$5.00 for the processing of an application for a certificate of title or a duplicate certificate of title. The secretary of state shall charge an additional fee of \$5.00 for the processing of an application on an expedited basis.

(2) If a check or draft in payment of a fee payable to the secretary of state under this section is not paid on its first presentation, the fee is delinquent as of the date the check or draft was tendered. The person tendering the check or draft remains liable for the payment of each fee and any penalty.

(3) The secretary of state may suspend a certificate of title if the secretary of state determines that a fee prescribed in this section has not been paid and remains unpaid after reasonable notice or demand.

(4) If a fee is still delinquent 15 days after the secretary of state gives notice to a person who tendered the check or draft, a \$5.00 penalty shall be assessed and collected in addition to the fee.

Sec. 80312. (1) The secretary of state may issue a certificate of title for a watercraft to a person who complies with subsection (2) or (3) if the transfer of ownership of that watercraft is any of the following:

(a) By operation of law including, but not limited to, inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution of sale.

(b) By sale to satisfy a storage or repair charge.

(c) By repossession upon default in performance of the terms of a security agreement.

(d) Pursuant to subsection (3).

(2) A person applying for a certificate of title under this section shall do all of the following:

(a) Surrender to the secretary of state either a valid certificate of title or the manufacturer's or importer's certificate for the watercraft or, if surrender of a certificate for that watercraft is not possible, present proof satisfactory to the secretary of state of the applicant's ownership of and right of possession to the watercraft.

(b) Pay the fee prescribed in section 80311.

(c) Present to the secretary of state an application for certificate of title.

(3) A person may petition the secretary of state for a certificate or certificates of title for 1 or more registered watercraft that the person does not own, if each of the following circumstances exists:

(a) The record owner of the registered watercraft dies without leaving other property that requires the procurement of letters of administration or letters of authority under the revised probate code, Act No. 642 of the Public Acts of 1978, being sections 700.1 to 700.993 of the Michigan Compiled Laws.

(b) The total value of the deceased owner's interest in all watercraft subject to the petition for a certificate or certificates of title under this section is \$100,000.00 or less.

(c) The person petitioning for a certificate or certificates of title under this section is 1 of the following, in the following order of priority:

(i) The surviving spouse of the watercraft owner.

(ii) A person entitled to the certificate or certificates of title pursuant to section 106 of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.106 of the Michigan Compiled Laws.

(d) The person who petitions for a certificate of title under this section furnishes the secretary of state with proof satisfactory to the secretary of state of each of the following:

(i) The death of the owner of each watercraft for which a certificate of title is sought.

(ii) The petitioner's priority to receive the decedent's interest in each watercraft for which a certificate of title is sought.

(4) A certification by the person, or agent of the person, to whom possession of the watercraft passed, that sets forth the facts entitling that person to possession and ownership of the watercraft, together with a copy of the journal entry, court order, instrument, or other document upon which the claim of possession and ownership is founded, are satisfactory proof of ownership and right of possession. If the applicant cannot produce proof of ownership, the applicant may apply to the secretary of state for a certificate of title and submit evidence that establishes that person's ownership interest in the watercraft. If the secretary of state finds the evidence sufficient, the secretary of state may issue to that person a certificate of title for that watercraft. The office of secretary of state shall examine the records in its possession and, if it determines from that examination that a lien is on the watercraft, and if the applicant fails to provide satisfactory evidence of extinction of the lien, the secretary of state shall furnish a certificate of title that contains a statement of the lien.

Sec. 80313. (1) An owner of a watercraft and a person mentioned as owner in the last certificate of title, when the watercraft is dismantled, destroyed, or changed in such manner that it loses its character as a watercraft, or changed in such manner that it is not the watercraft described in the certificate of title, shall surrender the certificate of title to the secretary of state, and the secretary of state shall, with the consent of a holder of a lien noted on the certificate of title, enter a cancellation upon his or her records.

(2) Upon the cancellation of a certificate of title in the manner prescribed by subsection (1), the secretary of state may cancel and destroy the certificates.

Sec. 80314. (1) If certificate of title is lost, mutilated, or becomes illegible, the person to whom that certificate of title was issued shall apply to the secretary of state for a duplicate copy of the certificate of title upon a form prescribed by the secretary of state and accompanied by the fee prescribed by section 80311. The applicant shall certify the application. Upon an applicant's compliance with this section, the secretary of state shall issue to that applicant a duplicate copy of the certificate of title that contains the legend, "This is a duplicate certificate and may be subject to the rights of a person under the original certificate." A purchaser of watercraft who obtains title to the watercraft through a duplicate copy of the watercraft's certificate of title acquires only those rights in the watercraft that the

holder of the duplicate certificate of title had. At the time of purchase, a watercraft purchaser may require the seller to indemnify the purchaser and subsequent purchasers of the watercraft against a loss which the purchaser or subsequent purchasers may suffer by reason of a claim presented upon the original certificate of title. If the original certificate of title is recovered by the owner, the owner shall immediately surrender it to the secretary of state for cancellation.

(2) The secretary of state is not required to issue a duplicate of a lost watercraft certificate of title at the time ownership of the watercraft is being transferred if all of the following conditions are met:

(a) The transferor personally appears before an authorized representative of the secretary of state and does all of the following:

(i) Provides evidence of the transferor's identity and ownership interest in the watercraft that is satisfactory to the authorized representative of the secretary of state.

(ii) Pays the fee required under section 80311.

(b) The transferee or the transferee's representative accompanies the transferor in appearing before the authorized agent of the secretary of state and does all of the following:

(i) Applies for an original certificate of title for the watercraft.

(ii) Provides evidence of the transferee's identity that is satisfactory to the authorized representative of the secretary of state.

(iii) Pays the fee required under section 80311.

(3) If a duplicate certificate of title is not required for the transfer of a watercraft under subsection (2), the secretary of state shall maintain a record specifying that ownership of the watercraft was transferred without a surrender of the watercraft's certificate of title.

(4) As used in this section, "transfer" or "transferred" includes a conveyance, assignment, and gift.

Sec. 80315. (1) The secretary of state may provide a commercial look-up service of watercraft title records on a fee basis per transaction and use fee revenues received from the service for necessary expenses.

(2) The secretary of state shall furnish information on a title without charge to authorized law enforcement and conservation officers when engaged in official duties.

Sec. 80316. Manufacturers and importers shall appoint and authorize agents who shall sign manufacturer's or importer's certificates. The secretary of state may require that a certified copy of a list containing the names and the facsimile signatures of authorized agents be furnished to him or her. The secretary of state may prescribe the form of authorization to be used by manufacturers or importers and the method of certification of the names of agents.

Sec. 80317. (1) Upon receiving knowledge of a stolen watercraft, a law enforcement agency shall immediately furnish the sheriff's department of the county in which the watercraft was stolen and the department of state police with full information concerning the theft.

(2) The law enforcement agency receiving the initial report of the theft or conversion of a watercraft shall notify the department and the secretary of state, and shall furnish the secretary of state with a distinctive record of the initial report, including the make of the stolen watercraft and its manufacturer's hull identification number or assigned hull identification number. The secretary of state shall file the record in the numerical order of the manufacturer's hull identification number or assigned hull identification number with the index records of the watercraft. The secretary of state shall prepare a report listing watercraft stolen and recovered as disclosed by the reports submitted to the secretary of state, to be distributed as the secretary of state considers advisable.

(3) If a stolen or converted watercraft is recovered, the owner or recovering agency shall immediately notify the law enforcement agency which received the initial theft report, which shall immediately notify the department, the sheriff of the county from which the watercraft was stolen, the department of state police, and the secretary of state. The secretary of state shall remove the record of the theft or conversion from the file in which the report is recorded.

Sec. 80318. A person shall not do any of the following:

(a) Operate in this state a watercraft for which a certificate of title is required without having a certificate as prescribed by this part.

(b) Operate in this state a watercraft for which a certificate of title is required for which the certificate of title is canceled.

(c) Fail to surrender a certificate of title upon cancellation of the certificate by the secretary of state and notice of the cancellation as prescribed in this part.

(d) Fail to surrender the certificate of title to the secretary of state, as provided in this part, if the watercraft is destroyed, dismantled, or changed in such manner that it is not the watercraft described in the certificate of title.

Sec. 80319. (1) A person shall not do any of the following:

(a) Alter or forge a certificate of title, or a manufacturer's or importer's certificate, to a watercraft, an assignment of either, or a cancellation of a lien on a watercraft.

(b) Hold or use a certificate, assignment, or cancellation knowing it is altered or forged.

(c) Procure or attempt to procure a certificate of title to a watercraft, or pass or attempt to pass a certificate of title or an assignment of title to a watercraft, knowing or having reason to believe that the watercraft is stolen.

(d) Sell or offer for sale in this state a watercraft on which the manufacturer's or assigned hull identification number is destroyed, removed, covered, altered, or defaced, with knowledge of the destruction, removal, covering, alteration, or defacement of the manufacturer's or assigned hull identification number.

(e) Use a false or fictitious name, give a false or fictitious address, or make a false statement in an application or certificate required under this part, or in a bill of sale or sworn statement of ownership, or otherwise commit a fraud in an application.

(f) Sell or transfer a watercraft without delivering to the purchaser or transferee of the watercraft a certificate of title, or a manufacturer's or importer's certificate to the watercraft, assigned to the purchaser as provided for in this part.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$5,000.00, or both.

Sec. 80320. (1) A security agreement covering a security interest in a watercraft, if the instrument is accompanied by delivery of a manufacturer's or importer's certificate and followed by actual and continued possession of the certificate by the holder of the instrument, or, in the case of a certificate of title, if a notation of the instrument is made by the secretary of state on the face of the certificate, shall be valid as against the creditors of the debtor, whether armed with process or not, and against subsequent purchasers, secured parties, and other lienholders or claimants. Liens, mortgages, and encumbrances noted upon a certificate of title shall take priority according to the order of time in which they are noted on the certificate of title by the secretary of state. Exposure for sale of a watercraft by the owner of the watercraft, with the knowledge or with the knowledge and consent of the holder of a lien, mortgage, or encumbrance on the watercraft, shall not render the lien, mortgage, or encumbrance ineffective as against the creditors of the owner, or against holders of subsequent liens, mortgages, or encumbrances upon the watercraft.

(2) The secured party, upon presentation of a properly completed application for certificate of title to the secretary of state, together with the fee prescribed by section 80311, may have a notation of the lien made on the face of the certificate of title to be issued by the secretary of state. The secretary of state shall enter the notation and the date and shall note the lien and the date in his or her files.

(3) When the lien is discharged, the holder shall note the discharge on the certificate of title over his or her signature.

Sec. 80321. A watercraft acquired by the owner prior to January 1, 1977, is not the subject of a certificate of title until it is mortgaged, sold, transferred, or a lien placed on the watercraft.

Sec. 80322. A person who violates sections 80301 to 80319 or rules promulgated under this part is guilty of a misdemeanor, and shall be imprisoned for not more than 90 days, or fined not more than \$100.00, or both.

SUBCHAPTER 6: MOTORIZED RECREATIONAL VEHICLES

OFF-ROAD RECREATION VEHICLES

PART 811 OFF-ROAD RECREATION VEHICLES

Sec. 81101. As used in this part:

(a) "ATV" means a 3- or 4-wheeled vehicle designed for off-road use that has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 500cc gasoline engine or an engine of comparable size using other fuels.

(b) "Code" means the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(c) "Dealer" means a person engaged in the sale, lease, or rental of an ORV as a regular business or, for purposes of selling licenses under section 81116, any other person authorized by the department to sell licenses or permits, or both, under this act.

(d) "Designated" means posted open for ORV use with appropriate signs by the department.

- (e) "Forest road" means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive 4-wheel conventional vehicle designed for highway use, except an interstate, state, or county highway.
- (f) "Forest trail" means a designated path or way capable of travel only by a vehicle less than 50 inches in width.
- (g) "Handicapper" means a person who has 1 or more of the following physical characteristics:
 - (i) Blindness.
 - (ii) Inability to ambulate more than 200 feet without having to stop and rest during any time of the year.
 - (iii) Loss of use of 1 or both legs or feet.
 - (iv) Inability to ambulate without the prolonged use of a wheelchair, walker, crutches, braces, or other device required to aid mobility.
 - (v) A lung disease from which the person's expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or from which the person's arterial oxygen tension is less than 60 mm/hg of room air at rest.
 - (vi) A cardiovascular disease from which the person measures between 3 and 4 on the New York heart classification scale, or from which a marked limitation of physical activity causes fatigue, palpitation, dyspnea, or anginal pain.
 - (vii) Other diagnosed disease or disorder including, but not limited to, severe arthritis or a neurological or orthopedic impairment that creates a severe mobility limitation.
- (h) "Highway" means the entire width between the boundary lines of a way publicly maintained when any part of the way is open to the use of the public for purposes of vehicular travel.
- (i) "Late model ORV" means an ORV manufactured in the current model year or the 5 model years immediately preceding the current model year.
- (j) "Manufacturer" means a person, partnership, corporation, or association engaged in the production and manufacture of ORVs as a regular business.
- (k) "Operate" means to ride in or on, and be in actual physical control of, the operation of an ORV.
- (l) "Operator" means a person who operates or is in actual physical control of the operation of an ORV.
- (m) "ORV" or "vehicle" means a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multitrack or multiwheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.
- (n) "Owner" means any of the following:
 - (i) A vendee or lessee of an ORV which is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.
 - (ii) A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.
 - (iii) A person who holds legal ownership of an ORV.
- (o) "Public agency" means the department or a local or federal unit of government.
- (p) "Roadway" means that portion of a highway improved, designated, or ordinarily used for vehicular travel. If a highway includes 2 or more separate roadways, the term roadway refers to a roadway separately, but not to all roadways collectively.
- (q) "Route" means a forest road or other road that is designated for purposes of this part by the department.
- (r) "Safety education fund" means the safety education fund created under section 81118.
- (s) "Safety chief instructor" means a person who has been certified by a nationally recognized ATV and ORV organization to certify instructors and to do on-sight evaluations of instructors.
- (t) "Trail improvement fund" means the ORV trail improvement fund created pursuant to section 81117.
- (u) "Visual supervision" means the direct observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator.

Sec. 81102. (1) A vehicle registered under the code or a vehicle registered under part 801 is exempt from the licensure provisions of this part, unless the vehicle is operated as an ORV off highways, roadways, streets, and forest roads.

(2) An ORV operated solely on private property by the owner of the property, a family member of the owner, or an invited guest of the owner is exempt from the licensure provisions of this part.

Sec. 81103. (1) After April 1, 1991, every ORV sold by a dealer to a retail purchaser shall be subject to the certificate of title provisions of this part.

(2) After April 1, 1991, a person who purchases or otherwise acquires an ORV shall make application for a certificate of title as provided in this part.

(3) After April 1, 1991, the owner of an ORV that has not been titled pursuant to subsection (1) or (2) or the code may apply for and, if otherwise eligible, receive a certificate of title issued under this part. If the ORV was previously titled under the code, it is not eligible for titling under this part.

Sec. 81104. The owner of an ORV that has been and is titled under this part may, if the ORV is otherwise eligible, apply for a title to the ORV under the code. If the owner applies for a title under the code, the title issued under this part shall at that time be surrendered to the department of state.

Sec. 81105. After an ORV has been titled under this part, both of the following shall occur:

(a) The owner, except as provided in section 81104, shall not sell or otherwise assign ownership in the ORV without delivering to the transferee a certificate of title showing assignment of the ORV in the transferee's name.

(b) A person shall not purchase or otherwise acquire an ORV without obtaining a certificate of title to it in the person's name pursuant to either this part or the code.

Sec. 81106. An ORV is exempt from the motor vehicle accident claims act, Act No. 198 of the Public Acts of 1965, being sections 257.1101 to 257.1133 of the Michigan Compiled Laws, and from sections 3101 to 3179 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.3101 to 500.3179 of the Michigan Compiled Laws.

Sec. 81107. (1) A person shall not sell or otherwise transfer an ORV to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's certificate of origin executed in accordance with this section. A dealer shall not purchase or otherwise acquire a new ORV without obtaining a manufacturer's certificate of origin.

(2) A manufacturer's certificate of origin shall contain the following information:

(a) A description of the ORV, including year, make, model or series, and vehicle identification number.

(b) Certification of the date of the transfer of the ORV to the dealer.

(c) The dealer's name and address.

(d) Certification that this transaction is the first transfer of the new ORV in ordinary commerce.

(e) The transferor's signature and address.

(3) An assignment of a manufacturer's certificate of origin shall be printed on the reverse side of the certificate. The assignment shall include the name and address of the transferee, a certification that the ORV is new, and a warranty that the title at the time of delivery is subject only to the secured interests set forth in the assignment.

Sec. 81108. (1) An application for an ORV certificate of title shall be on a form prescribed by the department of state. The application shall be certified by the owner or purchaser and shall contain, in addition to other information required by the department of state, the following information:

(a) The applicant's name and address.

(b) A statement of any security interest or other liens on the ORV, along with the name and address of any lienholder.

(c) If a lien is not outstanding, a statement of that fact.

(d) A description of the ORV, including the year, make, model or series, and vehicle identification number.

(2) An application for an ORV certificate of title that indicates the existence of a security interest in the ORV shall, if requested by the security interest holder, be accompanied by a copy of the security agreement, which may be unsigned. The department of state shall indicate on the copy the date and place of filing and shall return the copy to the person who filed the application. The filer shall forward the copy to the security interest holder identified in the application.

Sec. 81109. (1) The purchaser or other transferee of an ORV subject to the titling provisions of this part shall, except as provided in subsection (2), make application to the department of state for issuance of a certificate of title to the ORV. The application shall be filed within 15 days after the date of purchase or transfer.

(2) A dealer selling ORVs at retail, within 15 days after delivering an ORV to a retail purchaser, shall make application for issuance of an ORV certificate of title in the purchaser's name. The purchaser of the ORV shall sign the application and other papers necessary to enable the dealer to secure the title from the department of state. If the ORV was not previously titled, the application shall be accompanied by a manufacturer's certificate of origin.

(3) At the request of the applicant, the department of state shall process an application for an ORV certificate of title on an expedited basis.

(4) An application filed with the department of state pursuant to this section shall be accompanied by the fee or fees prescribed in section 81110.

(5) Beginning January 1, 1992, a person who violates this section is responsible for a civil violation and subject to a civil fine of not more than \$100.00 plus costs.

Sec. 81110. (1) The department of state shall charge a fee of \$11.00 for processing an application for an ORV certificate of title or a duplicate ORV certificate of title. The department of state shall charge an additional fee of \$5.00 for processing an application on an expedited basis.

(2) If a check or draft in payment of a required fee is not paid on its first presentation, the fee is delinquent as of the date the check or draft was tendered. The person tendering the check or draft remains liable for the payment of each fee and any penalty.

(3) The department of state may suspend an ORV certificate of title if the department of state determines that a fee prescribed in this section has not been paid and remains unpaid after reasonable notice or demand.

(4) If a fee is still delinquent 15 days after the department of state has given notice to a person who tendered the check or draft, a \$10.00 penalty shall be assessed and collected in addition to the fee.

(5) The revenue collected from the fees imposed under this section shall be used to support the administrative costs of the secretary of state required by this section. Annual revenue collected in excess of these administrative costs shall be credited to the ORV trail improvement fund created in section 81117. Amounts appropriated for administrative costs but unexpended shall be credited to the ORV trail improvement fund.

Sec. 81111. (1) The department of state may refuse to issue an original or duplicate ORV certificate of title if any of the following occur:

(a) The applicant fails to furnish all required information or reasonable additional information requested by the department of state.

(b) The required fee has not been paid.

(c) The applicant is not entitled to an ORV certificate of title under this part.

(d) The ORV is titled under the code.

(e) The application contains a false or fraudulent statement.

(f) The department of state has reasonable grounds to believe that the ORV was stolen or embezzled.

(2) If satisfied that the applicant is the owner of the ORV and is otherwise entitled to an ORV certificate of title, the department of state shall issue an ORV certificate of title in the applicant's name. The certificate shall be mailed or otherwise delivered to the owner of the ORV or to another person specified by the owner in a separate instrument, in a form prescribed by the department of state.

(3) If the secretary of state is not satisfied as to the ownership of an ORV which is not a late model ORV and whose value does not exceed \$1,500.00, the secretary of state shall require the applicant to certify that the applicant is the owner of the ORV and therefore entitled to make application for a certificate of title for the ORV.

Sec. 81112. (1) An ORV certificate of title shall be manufactured in a manner to prohibit as nearly as possible the ability to reproduce, alter, counterfeit, forge, or duplicate the certificate without ready detection and shall contain on its face the information set forth in the application, including a notation of all secured interests in the ORV, the date on which the application was filed, and other information required by the department of state.

(2) The department of state shall prescribe a uniform method of numbering ORV certificates of title.

(3) An ORV certificate of title shall contain, upon its reverse side, a form for assignment and warranty of title by the owner with space for the notation of a security interest in the ORV. The reverse side of the ORV certificate of title may also contain other forms that the department of state considers necessary to facilitate the effective administration of this part. The certificate shall bear the coat of arms of this state.

(4) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates an ORV certificate of title or who uses a reproduced, altered, counterfeited, forged, or duplicated ORV certificate of title is subject to the following penalties:

(a) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for 1 or more years, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for a period equal to that which could be imposed for the commission of the offense the person had the intent to aid or commit. The court may also assess a fine of not more than \$5,000.00 against the person.

(b) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for not more than 1 year, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

Sec. 81113. (1) If an ORV certificate of title or duplicate certificate of title is lost or mutilated or becomes illegible, the person entitled to possession of the certificate, or the legal representative or successor in interest to the titleholder of record, may make application to the department of state for a duplicate ORV certificate of title. Upon receipt of the application, the fee prescribed in section 81110, and information satisfactory to the department of state to establish entitlement to the duplicate, the department of state may issue a duplicate ORV certificate of title to the applicant.

(2) Every duplicate ORV certificate of title shall contain the legend: "This is a duplicate certificate of title and may be subject to the rights of a person under the original certificate."

Sec. 81114. (1) The secretary of state shall maintain 1 or more indexes pertaining to ORV certificates of title. Upon receiving an application for an ORV certificate of title, the secretary of state may check the information in the application and accompanying documents against the indexes of titled, registered, stolen, and recovered ORVs and against other records maintained by the secretary of state.

(2) The secretary of state may provide a commercial look-up service of ORV title and registration records on a fee basis. The secretary of state shall not process a commercial look-up request unless it is in a form prescribed by the secretary of state.

(3) The secretary of state shall furnish information on a title without charge to authorized law enforcement and conservation officers when engaged in official duties.

(4) The secretary of state may purge a record of an ORV certificate of title and any record pertaining to it 7 years after the title was issued or the record was made or received.

Sec. 81115. (1) Beginning April 1, 1991, except as otherwise provided, an ORV shall not be operated on or over land, snow, ice, marsh, swampland, or other natural terrain unless licensed by the owner with the department or a dealer as provided in this part. Except as otherwise provided in this part, a vehicle operating on a forest trail or in a designated area shall be licensed under this part.

(2) Licensure is not required for an ORV used exclusively in a safety and training program as required in section 81129.

Sec. 81116. (1) The owner of an ORV requiring licensure under this part shall file an application for a license with the department or a dealer on forms provided by the department. If an ORV is sold by a dealer, the application for a license shall be submitted to the department by the dealer in the name of the owner. The application shall be signed by the owner of the vehicle, and shall be accompanied by a fee of \$8.00 beginning April 1, 1993, and \$10.00 beginning April 1, 1995, and \$16.25 beginning April 1, 1996 and thereafter. A person shall not file an application for registration that contains false information. Upon receipt of the application in approved form and upon payment of the appropriate fee, the department or dealer shall issue to the applicant a license which shall be valid for the 12-month period for which it is issued. A license shall be issued for the 12-month period beginning April 1 and ending March 31 each year.

(2) Dealers may purchase from the department ORV licenses for resale to owners of vehicles requiring licensure under this part. The department shall refund to dealers the purchase price of any ORV licenses returned within 90 days after the end of the 12-month period for which they were valid. The dealer shall maintain and provide to the department records of ORV license sales on forms provided by the department.

(3) The license shall be permanently attached to the vehicle in the manner prescribed and in the location designated by the department before the vehicle may legally be operated in accordance with this part.

(4) If at the time of sale the purchaser certifies on a form provided by the department that the purchased vehicle otherwise requiring a license under this part will be used and stored outside of this state and will not be returned by the purchaser to this state for use, then a license will not be required.

Sec. 81117. (1) The ORV trail improvement fund is created in the state treasury. The fund shall be administered by the department and shall be used for the signing, improvement, maintenance, and construction of ORV trails, routes, or areas; for the administration and enforcement of this part; for the leasing of land; for the acquisition of easements, permits, or other agreements for the use of land for ORV trails, routes, or areas; and for the restoration of any of the

natural resources of this state on public land that are damaged due to ORV use in conjunction with the plan required by section 81123.

(2) Beginning April 1, 1990, \$6.00 of the revenue from each fee collected under section 81116 shall be deposited in the fund. Except as provided in section 81118, beginning April 1, 1993, all of the revenue from each fee collected under section 81116 shall be deposited in the fund.

(3) The department may accept gifts, grants, or bequests from any public or private source or from the federal, state, or a local unit of government for the purposes of the fund.

(4) All funds allocated under this part shall be for projects that are open to the public.

(5) Any money remaining in the ORV trail improvement fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes stated in this section.

(6) No money in the ORV trail improvement fund may be expended until the comprehensive system for ORV use required by section 81127 is approved in the manner provided in section 81127.

Sec. 81118. (1) The safety education fund is created in the state treasury. The fund shall be administered by the department of education and shall be used for the purposes described in sections 81129 and 81130.

(2) Beginning April 1, 1991, \$1.00 of the revenue from each fee collected under section 81116 shall be deposited in the safety education fund.

(3) The department of education may accept gifts, grants, or bequests from any public or private source or the federal, state, or a local unit of government for the purposes of the fund.

(4) Any money remaining in the safety education fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes stated in this section.

Sec. 81119. (1) Not less than 40% of the revenue in the ORV trail improvement fund through March 31, 1996, and not less than 50% beginning April 1, 1996, shall be distributed each year in the form of grants for the purpose of planning, improving, constructing, signing, and maintaining ORV trails, areas, and routes and access to those trails, areas, and routes, the leasing of land, the acquisition of easements, permits, or other agreements for the use of land for ORV trails, areas, and routes, to public agencies and nonprofit incorporated clubs and organizations.

(2) An application by a public agency or a nonprofit incorporated club or organization shall include a plan for restoration of any of the natural resources of this state on public land that are damaged due to ORV use. The public agencies or nonprofit incorporated clubs or organizations shall indicate on their application that their use of grant money is consistent with, and meets the requirements of, the plan developed by the department pursuant to section 81123, and the trail, route, or area is available to the public. The department shall not approve a grant unless the application meets the requirements of the plan. The department shall make application forms available and consider grant requests on a yearly basis in consultation with the ORV trails advisory committee created in section 81125.

(3) A grant shall not be made for a trail, route, or area unless the trail, route, or area is available for ORV use and is approved by the department. A grant for the cost of leasing of land and the acquisition of easements, permits, or other agreements may equal 100% of incurred expense. Specifications shall be prescribed by the department.

(4) Not less than 30% of the revenue in the fund through March 31, 1996, and not less than 31-1/4% beginning April 1, 1996, shall be used each year for enforcement of this part or the purchase of any necessary equipment used for enforcement of this part. Of this amount available for enforcement, the department shall make available funds for distribution in the form of grants by the department to the county sheriffs' departments in the following percentage amounts: 60% of the funds available for the first year of operation of the fund; 50% of the funds available in the second year; 40% of the funds available through March 31, 1996; and 24% of the funds beginning April 1, 1996 and thereafter. The balance of the funds available shall be used by the department for the enforcement of this part or for the purchase of any necessary equipment used for the enforcement of this part. In making grants available for distribution under this subsection, the department shall consider the following factors:

(a) The number of miles of ORV trails, routes, or areas within the county.

(b) The number of sheriff's department employees available for enforcement of this part.

(c) The estimated number of ORVs within the county and that are brought into the county for ORV use.

(d) The estimated number of days that ORVs may be used within that county.

(e) Any other factors considered appropriate by the department. The department shall require a county sheriff receiving a grant under this subsection to maintain records and submit an annual report to verify expenditure of grant money received.

(5) Not less than 20% of the revenue in the ORV trail improvement fund through March 31, 1996, and not less than 12-1/2% beginning April 1, 1996, shall be distributed each year in the form of grants to public agencies and nonprofit incorporated clubs and organizations for the restoration of damage that is caused by ORV use to natural resources on

public land. A grant under this subsection may be in addition to a grant under subsection (1). An application for a grant under this subsection shall comply with subsection (2).

(6) Not more than 3-1/8% of the revenue in the fund in any year shall be used for administration of this part. The department may use revenue from the funds for personnel to operate the program under this part.

(7) The remaining 3-1/8% of the revenue in the fund may be used for the purposes described in subsections (1) and (4), except that 25 cents of each fee for a license sold by a dealer shall be retained by the dealer as a commission for services rendered. If the remainder of the fund is used for the purposes described in subsection (4), it shall be allocated as provided in subsection (4).

(8) Grants under this section shall remain available until expended once a contract or commitment has been entered into under this section. A contract shall be for a period of not more than 2 years. A grant not expended within the contract period may be renewed by the department by entering into a new contract.

Sec. 81120. Records of the department and the department of state made and kept pursuant to this part shall be public records, except as otherwise provided in this part.

Sec. 81121. (1) A dealer shall maintain in safe operating condition an ORV rented, leased, or furnished by the dealer. The dealer, dealer's agents, or employees shall explain the operation of the vehicle being rented, leased, or furnished, and if the dealer, dealer's agent, or employee believes the person to whom the vehicle is to be rented, leased, or furnished is not competent to operate the vehicle with safety to that person or others, the dealer, dealer's agent, or employee shall refuse to rent, lease, or furnish the vehicle.

(2) A dealer renting, leasing, or furnishing a vehicle shall carry a policy of liability insurance subject to limits, exclusive of interest and costs, with respect to the vehicle, as follows: \$20,000.00 because of bodily injury to, or death of, 1 person in any 1 accident, and \$40,000.00 because of bodily injury to, or death of, 2 or more persons in any 1 accident, and \$10,000.00 because of injury to, or destruction of, property of others in any 1 accident, or alternatively, the dealer shall demand and be shown proof that the person renting, leasing, or being furnished a vehicle carries a liability policy of at least the type and coverage as specified above.

Sec. 81122. (1) A person shall not operate an ORV that is not registered under the code upon a public highway, street, or right-of-way of a public highway or street, except as provided in section 81131 or under the following conditions and circumstances:

(a) The operator of a vehicle may cross a public highway, other than a limited access highway, at right angles, for the purpose of getting from 1 area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a public highway, and shall yield the right-of-way to oncoming traffic.

(b) A vehicle may be operated on a street or highway for a special event of limited duration and conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. A special event involving ORVs may be conducted on the frozen surface of public waters only under permit from the department.

(c) A farmer, employee of a farmer, or family member of a farmer who is at least 16 years of age may operate an ORV on the extreme right side of a roadway or highway right-of-way when it is not practicable to operate off that roadway or highway right-of-way. Such operation shall be limited to traveling to or from the farmer's residence or work location or field during the course of farming operations. An ORV shall not be operated pursuant to this subdivision during the period of 30 minutes before sunset to 30 minutes after sunrise, when visibility is substantially reduced due to weather conditions, or in a manner so as to interfere with traffic. The state transportation department and all of its employees are immune from tort liability for injury or damages sustained by any person arising in any way by reason of the operation or use of an ORV for the limited purposes allowed under this subdivision. An operator of an ORV under this subdivision shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the roadway and not less than 4 feet above the top of the ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches.

(2) In a court action in this state where competent evidence demonstrates that a vehicle that is permitted to operate on a highway pursuant to the code is in a collision with an ORV on a roadway, the operator of the ORV involved in the collision shall be considered prima facie negligent.

Sec. 81123. (1) The department shall, by October 1, 1991, develop a comprehensive plan for the management of ORV use of areas, routes, and trails maintained by or under the jurisdiction of the department or a local unit of government pursuant to section 81131. The plan shall, as a minimum, set forth the following methods and timetable:

(a) The inventorying, by appropriate means, of all areas, forest roads, and forest trails used by or suitable for use by ORVs.

(b) The identification and evaluation of the suitability of areas, forest roads, and forest trails to sustain ORV use.

(c) The designation of areas, forest roads, and forest trails for ORV use, including use by handicappers.

(d) The development of resource management plans to maintain areas, forest roads, or forest trails and to restore or reconstruct damaged areas, forest roads, or forest trails. The plans shall include consideration of the social, economic, and environmental impact of ORV use.

(e) Specifications for trails and areas.

(2) The plan developed under subsection (1) shall be revised every 2 years. The plan shall be submitted to the legislature for approval. The legislature shall approve the plan without amendment by concurrent resolution adopted by both standing committees of the house of representatives and senate that consider natural resources matters and both houses of the legislature by recorded vote. The department shall submit any subsequent revisions to the plan to the secretary of the senate and the clerk of the house of representatives at least 20 session days before the effective date of the revisions. If both standing committees of the house of representatives and senate that consider natural resources matters fail to reject the revisions within those 20 session days, the revisions shall be considered approved.

(3) The plan may designate where bicyclists, hikers, equestrians, and other nonconflicting recreation trail users may use ORV trails or areas.

(4) By May 7, 1992, the department shall designate an appropriate area in the northern Lower Peninsula and an appropriate area in southeast Michigan as a scramble area.

(5) Copies of maps of trails shall be prepared and made available by the department in sufficient quantities to accompany each ORV certificate of title issued by the secretary of state and to place in each county sheriff's office and each department of natural resources field office.

Sec. 81124. If the department finds that rules are necessary to implement the regulatory provisions of this part or to clarify the intent of this part, the department shall promulgate rules.

Sec. 81125. (1) The ORV trails advisory committee is created within the department of natural resources. The advisory committee shall assist the department in developing criteria for grants, nominate forest roads to be included as ORV routes, nominate forest trails, assist the department in promulgating rules, and assist the department in developing the plan required by section 81123. The advisory committee shall advise the department on recommendations made by ORV users of forest trails, roads, and areas that should be designated for ORV use. The advisory committee shall consist of 6 members appointed by the director. Three of the members shall represent ORV trail users and dealers. Two of the members shall represent natural resources, conservation, or environmental groups. One member shall represent law enforcement who shall be a county sheriff. At least 1 member shall be from the Upper Peninsula of this state. Members shall be appointed for terms of 3 years except that of the members first appointed, 1 member from each group and the member representing law enforcement shall be appointed for 3 years and the balance of the members shall be appointed for 2 years. The committee shall meet at least once each year.

(2) Not later than January 1, 1998, the trails advisory committee shall report to the standing committees of the senate and the house of representatives that consider legislation affecting this part on the adequacy of funding for operation and enforcement of this part, any recommendations for changes in these areas, and the effectiveness of the safety education and training program.

Sec. 81126. (1) Except as otherwise provided in sections 81119 and 81125, sections 81123, 81125, and 81127 do not apply to the Upper Peninsula of this state.

(2) Not later than January 1, 1998, the advisory committee created by the commission shall report its findings to the standing committees of the senate and house of representatives that consider legislation affecting this part including its recommendations on whether this act should be implemented on a statewide basis.

Sec. 81127. (1) Under the comprehensive system previously approved and implemented under former section 16d of Act No. 319 of the Public Acts of 1975, all state owned land under the jurisdiction of the department shall be closed to ORV use except designated routes, designated trails, and designated areas. The commission shall approve any subsequent revisions to the system and shall establish an effective date for the revisions. The department shall submit the revisions approved by the commission to the secretary of the senate and the clerk of the house of representatives at least 20 session days before the effective date determined by the commission. If both standing committees of the senate and the house of representatives that primarily consider issues pertaining to the protection of natural resources fail to reject the revisions within those 20 session days, the revisions shall be considered approved.

(2) In developing the system, the department shall consider the needs of hunters, senior citizens, and handicappers.

Sec. 81128. (1) Effective January 1, 1994, a citizens review board shall be established. The review board shall consist of 6 members of the general public and the director of the legislative service bureau division of science and technology who shall serve as the nonvoting chairperson. The 6 members of the general public shall be from or representative of the soil conservation service, the Michigan association of counties, natural resources, conservation, or environmental groups, the largest recognized motorized cycle group, an ORV dealer association, and an at-large ORV trail user.

(2) Two members of the review board shall be appointed by the governor, 2 members shall be appointed by the speaker of the house of representatives, and 2 members shall be appointed by the senate majority leader.

(3) The review board shall submit to the standing committees of the senate and the house of representatives that address legislation pertaining to the environment and natural resources of this state a report that contains a full review of the operation of the system developed by the department and approved by the legislature pursuant to section 81127. The report shall include a summary of the effectiveness of the system, recommendations for changes to the system, and other information that the legislative committees described in this subsection may request at the time of the establishment of the review board.

(4) The department shall provide the review board with both of the following:

(a) The department's recommendations regarding changes to the system that the department concludes would improve the system.

(b) The department's evaluation of the effectiveness of the system.

(5) Within 6 months after the establishment of the review board, the review board shall issue its report as provided in this section and the review board shall be disbanded.

Sec. 81129. (1) Subject to subsections (2), (3), and (17), a parent or legal guardian of a child less than 16 years of age shall not permit the child to operate an ORV unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

(2) A parent or legal guardian of a child less than 12 years of age shall not permit the child to operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(3) A parent or legal guardian of a child less than 16 years of age shall not permit the child to operate a 3-wheeled ATV.

(4) Subject to subsections (5), (6), and (17), the owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by a child less than 16 years of age unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

(5) The owner or person in charge of a 4-wheeled ATV shall not knowingly permit the vehicle to be operated by a child less than 12 years of age, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(6) The owner or person in charge of a 3-wheeled ATV shall not knowingly permit the vehicle to be operated by a child less than 16 years of age.

(7) The owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by a person who is incompetent to operate the vehicle because of mental or physical disability, except as provided in section 81131.

(8) Not later than April 1, 1995, the department of education shall implement a comprehensive ORV information, safety education, and training program that shall include the training of operators and the preparation and dissemination of information and safety advice to the public. The program shall provide for the training of youthful operators and for the issuance of ORV safety certificates to those who successfully complete the training provided under the program and may include separate instruction for each type of ORV.

(9) In implementing a program that is established pursuant to this section, the department of education shall cooperate with private organizations and associations, private and public corporations, the department of natural resources, the department of state, and local governmental units. The department of education shall consult with ORV and environmental organizations and associations in regard to the subject matter of a training program and performance testing that leads to certification of ORV operators.

(10) The department of education may designate a person it considers qualified to provide course instruction and to award ORV safety certificates.

(11) The department of education may promulgate rules to implement subsections (8) to (10).

(12) Subject to subsections (13), (14), and (17), a child who is less than 16 years of age may operate an ORV if the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued pursuant to this section or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

(13) A child who is less than 12 years of age shall not operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(14) A child who is less than 16 years of age shall not operate a 3-wheeled ATV.

(15) When operating an ORV under subsection (12), a child shall present the ORV safety certificate to a peace officer upon demand.

(16) Notwithstanding any other provision of this section, an operator who is under 12 years of age shall not cross a highway or street. An operator who is not less than 12 years of age but less than 16 years of age may cross a highway or street or operate on the right-of-way or shoulder of designated access routes pursuant to section 81131 if the operator has a valid ORV safety certificate in his or her immediate possession and meets any other requirements under this section for operation of the vehicle.

(17) The requirement of possession or presentation of an ORV safety certificate under this section shall not take effect until implementation of the program for the vehicle proposed to be operated required by subsection (8). The requirement of possession or presentation of an ORV safety certificate under this section for operation of a 2-wheeled ORV or an ATV type ORV shall not take effect until March 1, 1996.

Sec. 81130. (1) A person who is under 16 years of age, before operating an ATV or ORV, shall complete an ORV safety education course approved by the department of education. This course may include a written examination and a driving test designed to test the competency of the applicant. Upon successful completion of this safety education course, a person shall receive an ORV safety certificate.

(2) A safety education course conducted by a college or university, an intermediate school district, a local school district, a law enforcement agency, other governmental agency located in this state, or department of education approved nonprofit service organization shall be conducted in compliance with this section. An agency or a school conducting a course under this subsection may apply to the department for a grant from the fund for costs associated with conducting a course.

(3) Except for a course conducted by a private business enterprise as provided by subsection (4), an applicant for a safety education course under this section shall pay not more than a \$25.00 course fee or in the case of a university or community college a fee not more than the cost of 1 credit hour of instruction. The course fees shall only be used for funding the administration and implementation of the course.

(4) An ATV or ORV, or both, safety education course required by this section and approved by the department of education may be conducted by a private business enterprise. A private business enterprise may charge a course fee not to exceed the cost of conducting the course.

(5) The superintendent of public instruction shall designate a person to be the state coordinator of the ATV and ORV safety education program. A person designated under this subsection shall have successfully completed ATV and ORV safety courses.

(6) The superintendent of public instruction shall designate a person who has successfully completed ATV and ORV safety courses to perform annual inspections of course sites.

Sec. 81131. (1) A local unit of government may pass an ordinance establishing access routes along streets and highways under its jurisdiction, if those access routes do not involve state or federal highways, and if they meet the requirements of the plan developed pursuant to section 81127. If necessary, consent of a state or federal land management agency shall be obtained for the location of the route.

(2) A municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality.

(3) A board of county road commissioners, a county board of commissioners, and a local unit of government do not have a duty to maintain a highway under their respective jurisdictions in a condition reasonably safe and convenient for the operation of ORVs, except the following ORVs:

(a) ORVs registered as motor vehicles as provided in the code.

(b) ORVs permitted by an ordinance as provided in subsection (2).

(4) Beginning October 19, 1993, a board of county road commissioners, a county board of commissioners, and a county are, and, beginning on April 25, 1995, a municipality is, immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use of an ORV on maintained or unmaintained highways, shoulders, and rights-of-way over which the board of county road commissioners, the county board of commissioners, or the local unit of government has jurisdiction. The immunity provided by this subsection does not apply to actions that constitute gross negligence. Gross negligence is defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Sec. 81132. (1) The department may promulgate rules governing the operation and conduct of ORVs, vehicle speed limits, use of vehicles by day and hour, and the establishment and designation of areas within which vehicles may be used in a manner compatible with, and that will best protect, the public safety and general welfare on the frozen surface of public waters, and that will preserve the submerged marshlands adjacent to the borders of the Great Lakes, lake St. Clair, and the navigable inland waters of the state.

(2) The department, on its own initiative or upon receipt of a certified resolution of the governing body of a local unit of government may initiate investigations into the need for special rules governing the operation of vehicles on the frozen surface of public waters and the submerged marshlands adjacent to the borders of the Great Lakes, lake St. Clair, and the navigable inland waters of the state. If controls for that activity are considered necessary, or when the amendment or rescission of an existing rule is required, a rule shall be prepared. Notice of a public hearing shall be made not less than 10 days prior to the hearing, in a newspaper of general circulation in the area within which the rules are to be imposed, amended, or rescinded.

(3) The proposed rule shall then be submitted to the governing body of the political subdivision in which the affected frozen waters or marshes lie. Within 30 calendar days, the governing body shall inform the department that it approves or disapproves of the proposed rule. If the governing body disapproves the proposed rule, further action shall not be taken. If the governing body approves the proposed rule, a local ordinance may be enacted which shall be identical to the rule, and which ordinance shall not be effective until the rule is in effect in accordance with law. The department shall then promulgate the rule.

(4) When an ordinance is enacted under the authority of a rule, and that rule is subsequently suspended by the legislature, or amended or rescinded by the department, the ordinance shall also be suspended, amended, or repealed.

(5) A local law enforcement officer may enforce an ordinance enacted pursuant to this section, and a state law enforcement officer shall enforce a rule promulgated under this section.

Sec. 81133. A person shall not operate an ORV:

(a) At a rate of speed greater than is reasonable and proper, or in a careless manner having due regard for conditions then existing.

(b) Unless the person and any passenger in or on the vehicle is wearing on his or her head a crash helmet and protective eyewear approved by the United States department of transportation. This subdivision does not apply if the vehicle is equipped with a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened safety belt.

(c) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight.

(d) Unless equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible when the brake is activated to the rear of the vehicle when the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.

(e) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose; on state owned lands under the control of the department other than game areas, state parks, or recreational areas where the operation would be in violation of rules promulgated by the department; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the department; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the department may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property.

(f) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle, or within 100 feet of a fishing shanty or shelter or an area that is cleared of snow for skating purposes, except at the minimum speed required to maintain controlled forward movement of the vehicle, or as may be authorized by permit in special events.

(g) Unless the vehicle is equipped with a spark arrester type United States forest service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter which meets the requirement of ANSI S1.4 1983, using procedure and ancillary equipment therein described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the United States environmental protection agency when tested according to the provisions of the current SAE J1287, June 86 test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this part, manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this state, shall conform to the noise emission levels established by the United States environmental protection agency under the noise control act of 1972, Public Law 92-574, 86 Stat. 1234.

(h) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except on property owned or under the operator's control or on which the operator is an invited guest, or on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on an ORV access route as authorized by local ordinance.

(i) In or upon the lands of another without the written consent of the owner, owner's agent or lessee, when required by part 731. The operator of the vehicle is liable for damage to private property, including, but not limited to, damage to trees, shrubs, growing crops, or injury to living creatures or damage caused through vehicle operation in a manner so as to create erosive or other ecological damage to private property. The owner of the private property may recover from the person responsible nominal damages of not less than the amount of damage or injury. Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate against trespass does not imply consent to ORV use.

(j) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except during an emergency or for law enforcement purposes, to go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle, to remove a deer, elk, or bear from public land which has been taken under a valid license; or except for the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, and timber harvest operations; or on property owned or under control of the operator or on which the operator is an invited guest. A hunter removing game pursuant to this subdivision shall be allowed to leave the designated trail or forest road only to retrieve the game and shall not exceed 5 miles per hour. A vehicle registered under the code is exempt from this subdivision while operating on a public highway or a public or private road capable of sustaining automobile traffic. A person holding a valid permit to hunt from a standing vehicle issued pursuant to part 401, or a handicapper using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road, is exempt from this subdivision.

(k) While transporting on the vehicle a bow unless unstrung or encased, or a firearm unless unloaded and securely encased, or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism.

(l) On or across a cemetery or burial ground, or land used as an airport.

(m) Within 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area.

(n) On an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as established in section 81127.

(o) In or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure.

(p) To hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill a bird or animal, wild or domesticated.

(q) In a manner so as to leave behind litter or other debris.

(r) In a manner contrary to operating regulations on public lands.

(s) While transporting or possessing, in or on the vehicle, alcoholic liquor in a container that is open or uncapped or upon which the seal is broken, except under either of the following circumstances:

(i) The container is in a trunk or compartment separate from the passenger compartment of the vehicle.

(ii) If the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is encased or enclosed.

(t) While transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.

(u) On adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on an ORV access route as authorized by local ordinance.

Sec. 81134. (1) A person who is under the influence of intoxicating liquor or a controlled substance, as defined by section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws, or a combination of intoxicating liquor and a controlled substance shall not operate an ORV.

(2) A person whose blood contains 0.10% or more by weight of alcohol shall not operate an ORV.

(3) The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person who is under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance.

(4) Except as otherwise provided in this section, a person who is convicted of a violation of subsection (1), (2), or (3) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both, together with costs of the prosecution. As part of the sentence for a violation of subsection (1) or (2), the court shall order the person convicted not to operate an ORV for a period of not less than 6 months or more than 2 years.

(5) On a second conviction under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2) within a period of 7 years, a person is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

(6) On a third or subsequent conviction within a period of 10 years under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), a person is guilty of a felony. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

(7) As part of the sentence for a violation of subsection (1) or (2), or a local ordinance substantially corresponding to subsection (1) or (2), the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(8) Before imposing sentence for a violation of subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(9) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of this section.

Sec. 81135. (1) A person shall not operate an ORV if, due to the consumption of intoxicating liquor, a controlled substance, as defined by section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws, or a combination of intoxicating liquor and a controlled substance, the person has visibly impaired his or her ability to operate the ORV. If a person is charged with violating section 81134, a finding of guilty is permissible under this section.

(2) Except as otherwise provided in this section, a person convicted of a violation of this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$300.00, or both, together with costs of the prosecution. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 90 days or more than 1 year.

(3) A person who violates this section or a local ordinance substantially corresponding to this section, and has 1 or more prior convictions under this section or section 81134 or a local ordinance substantially corresponding to this section or section 81134, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both. If the person convicted has only 1 prior conviction described in this subsection, as part of the sentence, the court shall order the person not to operate an ORV for a period of not less than 6 months or more than 18 months. If the person has 2 or more prior convictions described in this subsection, the court shall order the person not to operate an ORV for a period of not less than 1 year or more than 2 years.

(4) As part of the sentence for a violation of this section or a local ordinance substantially corresponding to this section, the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(5) Before imposing sentence for a violation of this section or a local ordinance substantially corresponding to this section, the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(6) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as a result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of this section.

Sec. 81136. (1) In a criminal prosecution for violating section 81134 or 81135 or a local ordinance substantially corresponding to section 81134 or 81135, or in a criminal prosecution for negligent homicide or manslaughter resulting from the operation of an ORV while the operator is alleged to have been impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or to have had a blood alcohol content of 0.10% or more by weight of alcohol, the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath shall be admissible into evidence.

(2) If a chemical test of an operator's blood, urine, or breath is given, the results of the test shall be made available to the person charged with an offense enumerated in subsection (1) or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in a criminal proceeding. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.

(3) Except in a prosecution relating solely to a violation of section 81134(2), the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath shall give rise to the following presumptions:

(a) If there was at the time 0.07% or less by weight of alcohol in the operator's blood, it shall be presumed that the operator was not under the influence of intoxicating liquor.

(b) If there was at the time in excess of 0.07% but less than 0.10% by weight of alcohol in the operator's blood, it shall be presumed that the operator's ability to operate an ORV was impaired within the provisions of section 81135 due to the consumption of intoxicating liquor.

(c) If there was at the time 0.10% or more by weight of alcohol in the operator's blood, it shall be presumed that the operator was under the influence of intoxicating liquor.

(4) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the alcoholic content of the blood under this part. Liability for a crime or civil damages predicated on the act of withdrawing blood and related procedures shall not attach to a qualified person who withdraws blood or assists in the withdrawal in accordance with this part unless the withdrawal is performed in a negligent manner.

(5) A person arrested for a crime enumerated in subsection (1) who takes a chemical test administered at the request of a peace officer, as provided in this part, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this section within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the defendant's innocence or guilt of a crime enumerated in subsection (1). If the person arrested is administered a chemical test by a person of his or her own choosing, the person arrested shall be responsible for obtaining a chemical analysis of the test sample. The person shall be informed that he or she has the right to demand that a person of his or her choosing administer 1 of the chemical tests described in this section, that the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant, and that the person arrested shall be responsible for obtaining a chemical analysis of the test sample.

(6) A person arrested shall be advised that if the person refuses the request of a peace officer to take a test described in this section, a test shall not be given without a court order. The person arrested shall also be advised that the person's refusal of the request of a peace officer to take a test described in this section shall result in the suspension of the person's right to operate an ORV.

(7) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(8) If a jury instruction regarding a defendant's refusal to submit to a chemical test under this section is requested by the prosecution or the defendant, the jury instruction shall be given as follows:

"Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of the defendant's guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant."

(9) If after an accident the operator of an ORV involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in a criminal prosecution for a crime described in subsection (1) to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

(10) If after an accident the operator of an ORV involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining blood alcohol content or presence of a controlled substance, or both. The medical examiner shall give the results of the chemical analysis to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

Sec. 81137. (1) Except as provided in subsection (2), a person who operates an ORV is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood, and may be requested by a peace officer to submit to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood if:

(a) The person is arrested for a violation of section 81134(1) or (2) or 81135 or a local ordinance substantially corresponding to section 81134(1) or (2) or 81135.

(b) The person is arrested for negligent homicide or manslaughter resulting from the operation of an ORV, and the peace officer has reasonable grounds to believe that the person was operating the ORV while impaired by or under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

Sec. 81138. (1) A person who is requested pursuant to section 81137(1) to take a chemical test shall be advised of the right to refuse to submit to chemical tests; and if the person refuses the request of a peace officer to submit to chemical tests, a test shall not be given without a court order.

(2) If a person refuses the request of a peace officer under section 81137(1) to submit to a chemical test, a written report shall be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person committed a violation described in section 81137(1) and that the person refused to submit to a chemical test upon the request of the peace officer and was advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 81139. (1) Upon receipt of a report made pursuant to section 81138, the secretary of state shall immediately notify the person in a writing, mailed to the person's last known address, that the report has been received and that within 14 days after the date of the notice the person may request an administrative hearing as provided in section 81140.

(2) The notice shall specifically state that failure to request a hearing within 14 days shall result in the suspension of the person's right to operate an ORV and that the person is not required to retain counsel for the hearing, although counsel will be permitted to represent the person at the hearing.

Sec. 81140. (1) If a person who refuses to submit to a chemical test pursuant to section 81138 does not request an administrative hearing within 14 days after the date of notice pursuant to section 81139, the secretary of state shall suspend the person's right to operate an ORV for a period of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year.

(2) If an administrative hearing is requested, the secretary of state shall appoint a hearing officer to conduct the hearing. Not less than 10 days' notice of the hearing shall be provided by mail to the person submitting the request, to the peace officer who filed the report under section 81138, and, if a prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths and issue subpoenas for the attendance of necessary witnesses, and may grant a reasonable request for an adjournment. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person committed a crime described in section 81137(1).

(b) Whether the person was placed under arrest for a crime described in section 81137(1).

(c) Whether the person reasonably refused to submit to a chemical test upon request of the officer.

(d) Whether the person was advised of his or her rights under section 81136.

(3) An administrative hearing conducted under this section is not a contested case for the purposes of chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. The hearing shall be conducted in an impartial manner. A final decision or order of a hearing officer shall be made in writing or stated in the record, and shall include findings of fact based exclusively on the evidence presented and matters officially noticed, and shall specify any sanction to be imposed against the person involved. A copy of the final decision or order shall be delivered or mailed immediately to the person and the peace officer.

(4) After the administrative hearing, if the person is found to have unreasonably refused to submit to a chemical test, the secretary of state shall suspend the person's right to operate an ORV for a period of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year. Within 60 days after the final decision or order is issued by the hearing officer, the person may file a petition in the circuit court of the county in which the arrest was made to

review the suspension. The scope of the court's review shall be limited to the issues provided in section 106 of Act No. 306 of the Public Acts of 1969, being section 24.306 of the Michigan Compiled Laws.

(5) The circuit court shall enter an order setting the cause for hearing for a date certain that is not more than 60 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, birth date, and driver's license number, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 50 days before the date set for the hearing. The department shall cause a record to be made of the proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review, the department shall transmit to the court in which the petition was filed, not less than 10 days before the matter is set for review, the original or a certified copy of the official record of the proceedings.

Sec. 81141. (1) A peace officer who has reasonable cause to believe that a person was operating an ORV and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate the ORV, may require the person to submit to a preliminary chemical breath analysis.

(2) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(3) The results of a preliminary chemical breath analysis shall be admissible in a criminal prosecution for a crime enumerated in section 81136(1) or in an administrative hearing held under section 81140, solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subsection does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(4) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 81136, 81137, 81138, 81139, and 81140 for the purposes of chemical tests described in those sections.

(5) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer shall be responsible for a civil infraction. A civil infraction under this subsection shall be processed in the same manner as a civil infraction under the code.

Sec. 81142. A person whose right to operate an ORV has been suspended pursuant to this part and who operates an ORV is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$1,000.00, or both.

Sec. 81143. (1) The operator of a vehicle involved in an accident resulting in injuries to, or the death of, a person, or resulting in property damage in an estimated amount of \$100.00 or more, shall immediately, by the quickest available means of communication, notify a state police officer, or the sheriff's office of the county in which the accident occurred. The police agency receiving the notice shall complete a report of the accident on forms prescribed by the director of the department of state police and forward the report to the department of state police and the department.

(2) A medical facility to which a person injured in an accident involving an ORV is transported shall report the accident to the department of state police.

(3) The department of state police, in cooperation with the department, shall collect and evaluate information concerning accidents involving ORVs.

(4) The operator of a vehicle involved in an accident upon public or private property resulting in injury to or the death of a person shall immediately stop at the scene of an accident and shall render to any person injured in the accident reasonable assistance in securing medical aid or transportation.

Sec. 81144. If a peace officer has reasonable cause to believe that a person was, at the time of an accident, the operator of an ORV involved in the accident and was operating the ORV while under the influence of an intoxicating liquor, a controlled substance as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws, or a combination of intoxicating liquor and a controlled substance, or was operating the ORV while his or her ability to operate an ORV was impaired due to the consumption of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance, the peace officer may arrest the alleged operator of the ORV without a warrant.

Sec. 81145. (1) Law enforcement officers may issue appearance tickets for violations of this part, pursuant to sections 9a to 9g of chapter 4 of Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(2) In a proceeding for a violation of this part involving prohibited operation or conduct, the registration number or numbered decal or vehicle identification number displayed on an ORV shall constitute prima facie evidence that the owner of the vehicle was the person operating the vehicle at the time of the offense; unless the owner identifies the

operator to law enforcement officials, the vehicle was reported as stolen at the time of the violation, or that the vehicle was stolen or not in use at the time of the violation.

Sec. 81146. (1) An operator of an ORV, who is given by hand, voice, emergency light, or siren a visual or audible signal by a law enforcement officer acting in the lawful performance of his or her duty, directing the operator to bring the vehicle to a stop, and who willfully fails to obey the signal by increasing speed, extinguishing lights, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor. The officer giving the signal shall be in uniform, and the officer's vehicle shall be easily identifiable as an official law enforcement vehicle.

(2) The operator of a vehicle on the private premises of another, when visibly hailed by the owner or the owner's authorized agent, shall bring the vehicle to an immediate stop and provide personal identification. Refusal to obey such a request to stop or subsequent escape or attempt to escape is a misdemeanor.

Sec. 81147. (1) Except as otherwise provided in this part, a person who violates a provision of this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$50.00 or more than \$1,000.00, or both, for each violation of the part.

(2) On and after the date the civil procedures act is enacted into law, a person who violates sections 81105, 81107, 81115, 81116, 81121, 81130, and 81133(b), (c), (d), (f), (g), (h), (j), (l), and (m) is responsible for a civil violation and subject to a civil penalty of not more than \$500.00.

(3) A person shall not remove, deface, or destroy a sign or marker placed by the department indicating the boundaries of an ORV trail or area or that marks a route.

(4) In addition to the penalties otherwise provided under this part, a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of this part to the condition it was in before the violation occurred.

(5) The department or any other peace officer may impound the ORV of a person who violates a provision of this part that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation.

(6) Upon conviction of a person for violation of a provision of this part that is punishable as a misdemeanor or any other provision of this part that results in damage to the particular area in which the ORV was used, a court of competent jurisdiction may order an ORV and any personal property on the ORV seized as a result of the violation returned to the owner or upon recommendation of the local prosecuting attorney turned over to the department. If the ORV and any other property is turned over to the department, they shall be disposed of in the manner provided for condemnation of property in part 16. The proceeds realized by the department under this subsection shall first be used to restore areas damaged by ORV use with the balance to be deposited in the ORV trail improvement fund.

Sec. 81148. A person shall not have an ORV condemned pursuant to section 81147 if the trespass is the result of an emergency situation.

Sec. 81149. The department shall conduct a survey to determine the total unrefunded gasoline sales tax money it estimates to have been collected from the sale of gasoline relating to the nonhighway use of ORVs, and shall submit a report to the legislature along with a recommendation as to the method by which the unrefunded gasoline sales tax money estimated to have been collected shall be appropriated to benefit ORV users. The first survey shall be submitted to the legislature prior to January 31, 1977 and every third year thereafter. The department shall include in its budget requests information detailing survey programs.

Sec. 81150. The department shall disseminate information to its field officers and to state and local law enforcement agencies on a uniform interpretation of this part and each officer's duties and responsibilities in enforcing this part.

SNOWMOBILES

PART 821 SNOWMOBILES

Sec. 82101. As used in this part:

(a) "Conviction" means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt or probate court disposition on a violation of this part, regardless of whether the penalty is rebated or suspended.

(b) "Dealer" means any person engaged in the sale, lease, or rental of snowmobiles as a regular business.

(c) "Former section 15a" means section 15a of former Act No. 74 of the Public Acts of 1968, as constituted prior to May 1, 1994.

(d) "Highway or street" means the entire width between the boundary lines of every way publicly maintained if any part thereof is open to the use of the public for purposes of vehicular travel.

(e) "Law of another state" means a law or ordinance enacted by another state or by a local unit of government in another state.

(f) "Long-term incapacitating injury" means an injury that causes a person to be in a comatose, quadriplegic, hemiplegic, or paraplegic state, which state is likely to continue for 1 year or more.

(g) "Operate" means to ride in or on and be in actual physical control of the operation of a snowmobile.

(h) "Operator" means any person who operates or is in actual physical control of a snowmobile.

(i) "Owner" means any of the following:

(i) A person who holds the legal title to a snowmobile.

(ii) A vendee or lessee of a snowmobile that is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee.

(iii) A person renting a snowmobile or having the exclusive use of a snowmobile for more than 30 days.

(j) "Probate court disposition" means the entry of a probate court order of disposition for a child found to be within the provisions of chapter XIII of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.28 of the Michigan Compiled Laws.

(k) "Prosecuting attorney", except as the context requires otherwise, means the attorney general, the prosecuting attorney of a county, or the attorney representing a local unit of government.

(l) "Right-of-way" means that portion of a highway or street less the roadway and any shoulder.

(m) "Roadway" means that portion of a highway or street improved, designated, or ordinarily used for vehicular travel. If a highway or street includes 2 or more separate roadways, the term roadway refers to any such roadway separately, but not to all such roadways collectively.

(n) "Shoulder" means that portion of a highway or street on either side of the roadway that is normally snowplowed for the safety and convenience of vehicular traffic.

(o) "Snowmobile" means any motor-driven vehicle designed for travel primarily on snow or ice of a type that utilizes sled-type runners or skis, an endless belt tread, or any combination of these or other similar means of contact with the surface upon which it is operated, but is not a vehicle that must be registered under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(p) "Zone 1" means all of the Upper Peninsula.

(q) "Zone 2" means all of that part of the Lower Peninsula north of a line beginning at and drawn from a point on the Michigan-Wisconsin boundary line due west of the westerly terminus of river road in Muskegon county; thence due east to the westerly terminus of river road; thence north and east along the center line of the river road to its intersection with highway M-120; thence northeasterly and easterly along the center line of highway M-120 to the junction of highway M-20; thence easterly along the center line of M-20 to its junction with US-10 at the Midland-Bay county line; thence easterly along the center line of the "business route" of highway US-10 to the intersection of Garfield road in Bay county; thence north along the center line of Garfield road to the intersection of the Pinconning road; thence east along the center line of Pinconning road to the intersection of the Seven Mile road; thence north along the center of the Seven Mile road to the Bay-Arenac county line; thence north along the center line of the Lincoln School road (county road 25) in Arenac county to the intersection of highway M-61; thence east along the center line of highway M-61 to the junction of highway US-23; thence northerly and easterly along the center line of highway US-23 to the center line of the Au Gres river; thence southerly along the center line of the river to its junction with Saginaw Bay of Lake Huron; thence north 78° east to the international boundary line between the United States and the Dominion of Canada.

(r) "Zone 3" means all of that part of the Lower Peninsula south of the line described in subdivision (q).

Sec. 82102. Snowmobiles are exempt from all taxes and fees imposed on vehicles under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, and the motor vehicle accident claims act, Act No. 198 of the Public Acts of 1965, being sections 257.1101 to 257.1133 of the Michigan Compiled Laws.

Sec. 82102a. (1) The Michigan snowmobile advisory committee is created in the department. The committee shall consist of 7 individuals appointed by the director for 2-year terms. The members of the former snowmobile advisory board serving on April 29, 1994 shall serve on the committee until the expiration of their terms on the snowmobile advisory board. The director shall appoint 1 member of the committee as chairperson and that member shall serve as chairperson at the pleasure of the director. The membership of the committee shall consist of the following:

(a) Three persons representing the Michigan snowmobile association, 1 from each of the department's 3 regions. One of the 3 shall also have experience as an instructor in a snowmobile safety program.

- (b) One person representing trail sponsors.
- (c) One person representing the business community.
- (d) Two persons representing at-large trail users.
- (2) The committee shall meet twice each year and at the call of the committee chairperson as needed.
- (3) On October 1, 1996, the director shall advise the governor regarding whether there is a continuing need for the existence of the committee.
- (4) The Michigan snowmobile advisory committee shall advise the department regarding all of the following:
 - (a) The development of criteria for safety education and training programs.
 - (b) The allocation of funds from the recreational snowmobile trail improvement fund.
 - (c) The promulgation of rules affecting snowmobile use in this state.
 - (d) The development of annual updates to the comprehensive plan for implementing a statewide recreational and snowmobile trails system.
 - (e) Implementation of the recommendations made by snowmobile users regarding trails that should be designated for snowmobile use.
 - (f) The development of a comprehensive plan for the use of snowmobiles in this state.
- (5) As used in this section, "committee" means the Michigan snowmobile advisory committee.

Sec. 82103. (1) Except as otherwise provided, a snowmobile shall not be operated unless the owner first obtains a certificate of registration and a registration decal. The certificate of registration shall be secured at the time of purchase or transfer of ownership. A certificate of registration or a registration decal is not required for a snowmobile operated exclusively on lands owned or under the control of the snowmobile owner or for a snowmobile used entirely in a safety education and training program conducted by a certified snowmobile safety instructor and authorized pursuant to section 82108.

- (2) A person who is convicted of a violation of this section shall be fined not more than \$50.00.

Sec. 82104. A certificate of registration or a registration decal is not required for a snowmobile that is exclusively operated in a special event of limited duration conducted according to a prearranged schedule under a permit from the governmental unit having jurisdiction.

Sec. 82105. (1) The owner of each snowmobile requiring registration by this state before operation of the snowmobile in this state shall file an application for registration with the department of state on forms provided by the department of state. If the snowmobile was purchased from a retail dealer in this state, application for initial registration shall be made with the dealer at the point of sale. The dealer shall issue a temporary registration permit in a form received from and approved by the department of state that is valid for 15 days after the date of sale. Each retail dealer shall submit registrations and fees to the department of state not less than once each week. The application shall be signed by the owner of the snowmobile and shall be accompanied by a fee of \$15.00. Upon receipt of the application in approved form, the department of state shall enter the application upon its records and issue to the applicant a certificate of registration and decal. The certificate of registration shall contain the number awarded to the snowmobile, the name and address of the owner, and other information the department of state considers necessary. The certificate of registration shall be pocket-size, shall accompany the vehicle, shall be legible, and shall be made available for inspection upon demand by a peace officer.

(2) The owner of a snowmobile at the time application for a certificate of registration is made shall pay a fee of \$15.00 and be issued a certificate of registration and a registration decal. The certificate of registration and registration decal authorizes the operation of the snowmobile for a 3-year period that begins on October 1 and expires on September 30 of the third year. The certificate of registration and registration decal may be renewed by payment of a fee of \$15.00 beginning July 1 of the expiration year. The registration decal shall be displayed as prescribed by rule promulgated by the department of state.

(3) The department of state may destroy a record of a certificate of registration 5 years after expiration of the certificate.

Sec. 82106. (1) Except as otherwise provided in this part, \$10.00 of the revenue received from the registration fee under this part shall be deposited in the snowmobile registration fee fund. From the revenues deposited in the snowmobile registration fee fund under this part, the legislature shall make an annual appropriation of not more than \$3.00 from each registration fee collected during each fiscal year to the department of state for administration of the registration provisions of this part and an annual appropriation to the department of not less than \$7.00 from each registration fee collected during each fiscal year for purposes set forth in section 82107, \$2.00 of which shall be used for the state financial assistance program for counties described in section 82107. Any money not required for

administration of the registration provisions of this part shall be credited each year to the recreational snowmobile trail improvement fund. Five dollars from each registration fee collected during each fiscal year shall be deposited in the recreational snowmobile trail improvement fund and shall be administered by the department for the purposes of planning, construction, maintenance, and acquisition of trails and areas for the use of snowmobiles, or access to those trails and areas, and basic snowmobile facilities. Consideration shall be given in planning the expenditures of the funds to providing recreational opportunities for bicyclists, hikers, equestrians, and other nonconflicting recreational trail users as ancillary benefits of the program.

(2) The department shall designate a state recreational trail coordinator and shall maintain a comprehensive plan for implementing a statewide recreational and snowmobile trails system. The comprehensive plan shall be reviewed and updated each year by the department.

(3) The money appropriated under this section to the department for snowmobile trails and areas, for access to those trails or areas, and for basic snowmobile facilities may be expended for the acquisition, development, and maintenance on any land in the state. The money may be used to purchase lands or secure easements, leases, permits, or other appropriate agreements permitting use of private property for snowmobile trails, basic facilities, and areas which may be used by bicyclists, hikers, equestrians, and other nonconflicting off-season recreational trail users, if the easements, leases, permits, or other agreements provide public access to the trail, use areas, and support facilities.

(4) Recreational trail facilities or major improvements shall not be constructed on private land unless a written agreement in the form of an easement, lease, or permit for a public trail right-of-way having a term of not less than 5 years is made between the owner of the land and the department.

(5) The money shall be expended in a manner and as part of the overall plan of the department for an interconnecting network of statewide snowmobile trails and use areas giving consideration to expected snowfall and availability for use with adequate snow cover. Consideration shall be given in the plan for alternative nonconflicting off-season recreational trail uses.

Sec. 82107. (1) The annual budget request of the department shall include an amount for enforcement of this part, for snowmobile safety education and training programs, and for a state financial assistance program provided for under this section.

(2) Each county of the state shall be entitled to receive financial assistance from the state as provided in this section. Each county in this state shall be encouraged to develop a snowmobile safety education and training program based on the criteria set forth in section 82108. A county board of commissioners desiring to conduct a snowmobile program shall submit to the department by November 30 of each year an estimate of authorized expenditures for the following calendar year, in a form and containing the information which the department requires. The department shall review the entire request and may approve the county request for financial assistance. The department shall annually survey the state financial assistance program to assist in determining the amount of financial assistance to be allocated to a county for its snowmobile program.

(3) The amount of financial assistance from the state to be allocated to a county pursuant to this section shall be determined by the department. The department shall evaluate each request from a county for financial assistance and may give priority to counties where, in the determination of the department, a greater need for financial assistance exists. The department shall review the county's statement of authorized expenditures actually incurred and if satisfied shall provide financial assistance in an amount not to exceed 75% of the county's estimated authorized expenditures for the past calendar year. If the county's authorized expenditures actually incurred for the past calendar year exceeded the county's estimated authorized expenditures, the department may provide financial assistance in excess of 75% of the county's estimated authorized expenditures but not in excess of 75% of the county's authorized expenditures actually incurred. Financial assistance allocated to a county under this section shall be used exclusively for the conduct of the county snowmobile program as provided by this part and the rules promulgated under this part. Within 90 days after the close of each calendar year, a county board of commissioners shall submit to the department a statement of authorized expenditures actually incurred, on a form and containing the information the department requires. A county submitting a statement or supplement to the statement that is received subsequent to the 90-day period shall not be eligible for financial assistance.

(4) The department of treasury shall periodically audit the county records pertaining to this program to assure the proper disposition of the money in accordance with this section and rules promulgated under this section. If the audit discloses a refund of state aid money is due the state, the county treasurer, within 30 days of the completion of the audit, shall send to the department the amount of the refund due the state, which the department shall return to the state treasury.

(5) The department and the county sheriffs shall cooperate in the conduct of the program. The county sheriffs shall maintain records and submit reports in form and containing information as the department may require.

(6) The department may promulgate rules to implement this section.

Sec. 82108. (1) The department shall design by May 1, 1995 the minimum content of a comprehensive snowmobile safety education and training program, which shall include the preparation and dissemination of snowmobile information and safety advice to the public and training of operators. The content of the program shall include provision for the training of youthful operators at least 12 but less than 17 years of age and for the issuance of snowmobile safety certificates to those who successfully complete the training provided under the program. A person less than 17 years of age who successfully completes a training program shall carry the safety certificate on his or her person whenever operating a snowmobile in this state. The department and the counties shall encourage persons 17 years of age or over to take the program.

(2) The minimum content of a snowmobile safety education and training program shall include the following:

- (a) Description of the snowmobile and its main parts.
- (b) Description of machine controls, safety and operating procedures, and loading and towing procedures.
- (c) General content of snowmobile and highway laws and rules.
- (d) Safety hazards of operation, including possible hearing damage, and environmental consequences of snowmobile use.

(e) Performance and written tests.

(f) Familiarization with the snowmobile trail system in this state.

(3) The fee charged by a county for a training program shall be not more than \$5.00.

(4) In implementing a program that is established pursuant to this section, the department shall cooperate with private organizations and associations, private and public corporations, schools, and local governmental units. The department shall consult with the department of state police and county sheriffs in regard to subject matter of a training program and performance testing that leads to certification of snowmobile operators. However, a county may expand the course content beyond the minimum requirements established by subsection (2).

(5) The department may designate any person it considers qualified to provide course instruction and to award snowmobile safety certificates.

(6) A person less than 17 years of age who fails to have a safety certificate on his or her person is subject to a fine of not more than \$25.00.

(7) A person who has a valid safety certificate from another state or province shall not be required to complete the safety education and training program in this state.

Sec. 82109. (1) From the money appropriated to the department from the recreational snowmobile trail improvement fund for the purpose of planning, constructing, maintaining, and acquiring trails and areas for the use of snowmobiles, or access to those trails and areas, and basic snowmobile facilities, an amount of not less than 40% but not more than 80% shall be allocated upon application to local units of government and nonprofit incorporated snowmobile clubs and organizations considered eligible by the department because of the interest of the nonprofit incorporated club or association in snowmobile activities, under rules promulgated by the department.

(2) Allocations for snowmobile trail maintenance costs shall be according to a formula promulgated by the state recreational trail coordinator which shall provide an amount up to 100% of the actual cost of maintaining the trail per year. An allocation shall not be made for a trail unless the trail is available for snowmobile use and is approved by the department. An allocation for the cost of leasing of land and the acquisition of easements, permits, or other agreements, and for trail liability insurance may equal 100% of incurred expense. Money available for development shall be distributed on a 100% grant basis, 75% at the time of approval but not later than April 1 of the year of development and 25% upon completion of the development. A development shall be commenced the same year the funds are distributed. An application may include a request for leasing land or acquiring easements, permits, or other agreements for the use of land, and for funds for development or maintenance of trails. Trail specifications shall be prescribed by the department.

(3) Signs shall not be provided under this section unless the snowmobile trails meet minimum state snowmobile trail construction standards and are funded for snowmobile season maintenance. A snowmobile organization or association may apply to the department on forms prescribed by the department for signs or funds for signs on or before a date determined by the department.

(4) Upon application by a local unit of government or nonprofit incorporated snowmobile clubs and organizations, the department may allocate up to 100% of the cost of initial signs of snowmobile routes that connect authorized trails or that offer entrance to or exit from trails leading to the local unit of government. An application shall be submitted to the department on a form prescribed by the department.

(5) Allocations under this section shall remain available until expended if a contract or commitment has been entered into under this section.

(6) The department of state and the department shall include in their annual budget requests information detailing their snowmobile programs.

Sec. 82110. (1) The recreational snowmobile trail improvement fund is created in the state treasury. The fund shall receive money as provided by law and from any gifts or contributions to the fund. The state treasurer shall direct the investment of the fund. Interest and earnings from the fund shall be credited to the fund. The fund shall be administered by the department and shall be used solely for the improvement of snowmobile trails and other nonconflicting recreational purposes.

(2) Five dollars of each fee collected under section 82105, \$9.00 of each fee collected under section 82118, and not less than 80% of the revenue from the fees collected under sections 82114 and 82115 shall be deposited in the fund.

(3) The department shall promulgate rules for the administration of the fund.

(4) All funds allocated under this part shall be for projects that are open to the public.

(5) Any money remaining in the recreational snowmobile trail improvement fund at the end of a fiscal year shall not be credited to or revert to the general fund but shall remain in the fund and shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes stated in this section.

Sec. 82111. (1) The snowmobile registration fee fund is created in the state treasury. The fund shall receive money as provided by law and from any gifts or contributions to the fund. The state treasurer shall direct the investment of the fund. Interest and earnings from the fund shall be credited to the fund.

(2) Money deposited in the general fund pursuant to section 82106 as of May 1, 1994 is transferred to the snowmobile registration fee fund. Money remaining in the snowmobile registration fee fund at the end of a fiscal year shall remain in the fund and shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes stated in this part.

Sec. 82112. (1) The department, in consultation with the snowmobile advisory board, shall conduct a review of the effectiveness of operation of the snowmobile program by the forestry division of the department and submit a written report to the house and senate committees that consider natural resources and conservation legislation by July 1, 1996.

(2) The review shall include, but not be limited to, consideration of the following:

(a) The manner in which trail improvement funds and snowmobile registration fee funds are spent and whether the spending is in accordance with this part.

(b) The manner in which the grant process has been implemented and to whom grants have been awarded during the time of the review.

(c) Establishment and maintenance of the snowmobile trails system.

(d) Long-term planning pertaining to the trails system.

(e) Contract grooming of snowmobile trails versus grooming of trails by employees of the department.

Sec. 82113. (1) The owner of a snowmobile having been issued a certificate of registration for the snowmobile shall attach in a permanent manner to each side of the forward half of the snowmobile the registration decal assigned to that snowmobile.

(2) Not earlier than 90 days before the expiration date of a certificate, a registration decal or other device may be issued indicating that the certificate of registration is in full force and effect.

(3) A certificate of registration shall expire pursuant to section 82105.

(4) The department of state may award a certificate of number directly or may authorize a person to act as its agent for the awarding of a certificate of number.

(5) Records of the department of state made or kept pursuant to this part shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 82114. (1) The owner of a snowmobile shall notify the department of state within 15 days if the snowmobile is destroyed or abandoned, or is sold, or an interest in the snowmobile is transferred either wholly or in part to another person, or if the owner's address no longer conforms to the address appearing on the certificate of registration. The notice shall consist of a surrender of the certificate of registration on which the proper information shall be noted on a place to be provided. If the surrender of the certificate of registration is by reason of the snowmobile being destroyed or abandoned, the department of state shall cancel the certificate of registration and enter that fact in the records of the department of state, and the number may be then reassigned. The department of state may destroy the record of a surrendered certificate of registration 1 year after its surrender.

(2) If the surrender of the certificate of registration is by reason of a change of address on the part of the owner, the new address shall be recorded by the department of state and a certificate of registration bearing that information shall be returned to the owner.

(3) The transferee of a snowmobile registered under this part, within 15 days after acquiring the snowmobile, shall apply to the department of state for issuance of a new certificate of registration for the snowmobile, giving his or her name, address, and the previous registration number of the snowmobile and pay to the department of state the fee prescribed in section 82105. Upon receipt of the application and fee, the department of state shall issue a new certificate of registration for the snowmobile to the new owner. Unless the application is made and the fee paid within 15 days of transfer of ownership, the snowmobile is without certificate of registration, and a person shall not operate the snowmobile until a valid certificate of registration is issued.

(4) If a certificate of registration is lost, mutilated, or illegible, the owner of the snowmobile shall obtain a duplicate of the certificate of registration upon application and payment of a fee of \$5.00.

(5) If a valid registration decal is lost, mutilated, or illegible, the owner of the snowmobile may obtain a replacement registration decal upon submission of proof of registration and payment of a fee of \$5.00.

Sec. 82115. A dealer or manufacturer, upon application to the department of state upon forms provided by it, may obtain certificates of registration for use in the testing or demonstrating of snowmobiles upon payment of \$10.00 for each of the first 2 registration certificates. Additional certificates as the dealer may require may be issued at a cost of \$5.00 each and used by the applicant only in the testing or demonstrating of snowmobiles by temporary placement of the registration decal on the snowmobile being tested or demonstrated. Any 1 certificate issued pursuant to this section may be used on only 1 snowmobile at any given time. The temporary placement of registration decals shall be as prescribed by this part or rules promulgated under this part.

Sec. 82116. (1) A snowmobile that is manufactured after December 1, 1972 for sale in this state shall have an identifying number that is stamped into the frame of the snowmobile or into a plate affixed to the frame and is unique from an identifying number on any other snowmobile. The number shall be stamped in a place where it is easily visible with a minimum of physical effort and it shall be termed the vehicle number. A manufacturer shall furnish to a requesting police agency, to the department of state, and to the department information as to the location of vehicle numbers on snowmobiles it produces. The vehicle number shall be printed on the certificate of registration issued by the department of state to the owner.

(2) Possession of a snowmobile with an altered, defaced, or obliterated vehicle number is a misdemeanor, punishable by imprisonment for not more than 1 year, or by a fine of not more than \$1,000.00, or both.

Sec. 82117. (1) A dealer shall maintain in safe operating condition all snowmobiles rented, leased, or furnished by him or her. The dealer or the dealer's agents or employees shall explain the operation of the snowmobile being rented, leased, or furnished and, if the dealer or the dealer's agent or employee believes the person to whom the snowmobile is to be rented, leased, or furnished is not competent to operate the snowmobile with competency to himself or herself and to the safety of others, the dealer shall refuse to rent, lease, or furnish the snowmobile. By October 15, 1994, the department shall furnish each dealer with a safety education checklist of not more than 1 page in length that the dealer shall distribute to each person who purchases, rents, or leases a snowmobile from that dealer.

(2) Any dealer renting, leasing, or furnishing any snowmobile shall carry a policy of liability insurance subject to limits exclusive of interests and costs, with respect to such snowmobile, as follows: \$20,000.00 because of bodily injury to or death of 1 person in any 1 accident and subject to that limit for 1 person, \$40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and \$10,000.00 because of injury to or destruction of property of others in any 1 accident; or, in the alternative, any dealer renting, leasing, or furnishing any snowmobile shall demand and be shown proof that the person renting, leasing, or being furnished a snowmobile carries liability policy of at least the type and coverage as specified in this subsection.

Sec. 82118. (1) In addition to registration of a snowmobile pursuant to section 82105 or registration in another state or province, beginning October 1, 1994, a person who desires to operate a snowmobile in this state shall purchase a Michigan snowmobile trail permit sticker. The Michigan snowmobile trail permit issued under this section shall be valid for a period of 1 year which begins on October 1 and ends on the following September 30. The fee for the permit is \$10.00. Fifty cents of the fee shall be retained by the department for administrative costs. Fifty cents of the fee shall be retained by the agent selling the permit. Nine dollars of the fee shall be credited to the recreational snowmobile trail improvement fund created in section 82110.

(2) The trail permit sticker shall be permanently affixed to the forward half of the snowmobile.

(3) The department may contract with a person to act as an agent of the department of state for the purpose of issuing Michigan snowmobile trail permits. The department of state shall sell the permits to agents in bulk. Agents may obtain a refund from the department for any permits that are not sold.

(4) An agent who uses or allows the use of a permit by anyone except the snowmobile user to whom the permit is sold is guilty of a misdemeanor, punishable by a fine of \$50.00 for each instance of such use or allowed use.

(5) The department of state may suspend a certificate of registration when the department of state determines that the required fee has not been paid and remains unpaid after reasonable notice or demand. In addition to the required fee, a \$10.00 penalty shall be assessed and collected against any person who tenders an insufficient check or draft in payment of the fee.

(6) A person who fails to secure a permit under this section is responsible for a civil infraction and subject to a fine of \$50.00 plus court costs.

Sec. 82119. A person shall not operate a snowmobile upon a public highway, land used as an airport or street, or on a public or private parking lot not specifically designated for the use of snowmobiles except under the following conditions and circumstances:

(a) A snowmobile may be operated on the right-of-way of a public highway, except a limited access highway, if it is operated at the extreme right of the open portion of the right-of-way and with the flow of traffic on the highway. However, a snowmobile may be operated on the right-of-way of a public highway against the flow of traffic if the right-of-way is a snowmobile trail designated by the department in the plan developed pursuant to section 82106(2) and is approved by the state transportation department and the department. Snowmobiles operated on the right-of-way of a public highway, as provided in this subdivision, shall travel single file and shall not be operated abreast except when overtaking and passing another snowmobile. In the absence of a posted snowmobile speed limit, a snowmobile operated on the right-of-way of a public highway, as provided in this subdivision, shall be limited to the speed limit posted on the public highway.

(b) A snowmobile may be operated on the roadway or shoulder when necessary to cross a bridge or culvert if the snowmobile is brought to a complete stop before entering onto the roadway or shoulder and the driver yields the right-of-way to an approaching vehicle on the highway.

(c) In a court action in this state where competent evidence demonstrates that a vehicle that is permitted to be operated on a highway pursuant to the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, is in a collision with a snowmobile on a roadway, the driver of the snowmobile involved in the collision shall be considered prima facie negligent.

(d) A snowmobile may be operated across a public highway other than a limited access highway, at right angles to the highway, for the purpose of getting from 1 area to another when the operation can be done in safety and another vehicle is not crossing the highway at the same time in the same general area. An operator shall bring his or her snowmobile to a complete stop before proceeding across the public highway and shall yield the right-of-way to all oncoming traffic.

(e) Snowmobiles may be operated on a highway in a county road system that is not normally snowplowed for vehicular traffic and on the plowed right-of-way or shoulder when no right-of-way exists on a snowplowed highway in the county road system, outside the corporate limits of a city or village, that is designated and marked for snowmobile use by the county road commission having jurisdiction. Upon the request of a county road commission that has designated all county roads outside the corporate limits of a city or village for snowmobile use, the state transportation department shall erect at county road commission expense and shall maintain, in accordance with the Michigan manual of uniform traffic control devices standards, the basic snowmobile sign unit together with a supplemental panel stating "permitted on right-of-way or shoulder of all (county name) roads-Act 74 of P.A. 1968" at the county line on all state trunk line highways and county roads.

(f) A duly constituted law enforcement officer of a local unit of government or the state may authorize use of a snowmobile on a public highway or street within his or her jurisdiction when an emergency occurs and conventional motor vehicles cannot be used for transportation due to snow or other extreme highway conditions.

(g) A snowmobile may be operated on a highway or street for a special event of limited duration conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. The event may be conducted on the frozen surface of public waters only under permit from the department.

(h) A city or village by ordinance may designate 1 or more specific public highways or streets within its jurisdiction as egress and ingress routes for the use of snowmobiles. A city or village acting under the authority of this subdivision shall erect and maintain, in accordance with the Michigan manual of uniform traffic control devices standards, a sign unit giving proper notice of the designation.

Sec. 82120. (1) A parent or legal guardian shall not permit his or her child who is less than 12 years of age to operate a snowmobile without the direct supervision of an adult except on land owned or under the control of the parent or legal guardian.

(2) A person who is at least 12 but less than 17 years of age may operate a snowmobile if 1 of the following conditions exist:

(a) The person is under the direct supervision of a person who is 21 years of age or older.

(b) The person has in his or her immediate possession a snowmobile safety certificate issued pursuant to a program conducted under section 82107.

(c) The person is on land owned or under the control of his or her parent or legal guardian.

(d) The person possesses a snowmobile safety certificate issued to the person under the authority of a law of another state or province of Canada.

(3) A person who is operating a snowmobile pursuant to subsection (2)(b) shall present the snowmobile safety certificate to any peace officer upon demand.

(4) Notwithstanding section 82119, an operator who is less than 12 years of age shall not cross a highway or street. An operator who is at least 12 years of age but less than 17 years of age may cross a highway or street only if he or she has a valid snowmobile safety certificate in his or her immediate possession.

(5) The owner of a snowmobile shall not permit the snowmobile to be operated contrary to this section.

(6) When the judge of a juvenile court determines that a person who is less than 17 years of age has violated this part, the judge shall immediately report the determination to the department. The department upon receiving a notice of a determination pursuant to this subsection may suspend the snowmobile safety certificate without a hearing.

Sec. 82121. A snowmobile shall not be used to hunt, pursue, worry, or kill a wild bird or animal.

Sec. 82122. (1) A snowmobile shall not be operated unless it has at least 1 headlight, 1 taillight, and adequate brakes capable, while the snowmobile travels on packed snow and carries an operator who weighs 175 pounds or more, of stopping the snowmobile in not more than 40 feet from an initial steady speed of 20 miles per hour or of locking the snowmobile's traction belt or belts.

(2) A person shall not sell or offer to sell in this state a snowmobile manufactured after July 1, 1978, unless it meets the minimum safety standards for snowmobile product certification of the snowmobile safety and certification committee's November 23, 1976, volume 3, safety standards for snowmobiles for product certification, including detailed standard supplement and test specifications and procedures, covering machine sound levels, seats, controls, brake systems, fuel systems, shields and guards, electrical systems and lighting, reflectors, handgrips, and general hazard requirements. Proof of compliance with this section shall be in the form of certification by a qualified independent testing company that is not affiliated with the manufacturer and is approved by the department.

Sec. 82123. A person operating or riding on a snowmobile shall wear a crash helmet on his or her head. Crash helmets shall be approved by the United States department of transportation. This section does not apply to a person riding on or operating a snowmobile on his or her own private property.

Sec. 82124. (1) Any municipality may pass an ordinance regulating the operation of snowmobiles if the ordinance meets substantially the minimum requirements of this part. A local unit of government may not adopt an ordinance that:

(a) Imposes a fee for a license.

(b) Specifies accessory equipment to be carried on the snowmobile.

(c) Requires a snowmobile operator to possess a motor vehicle driver license.

(d) Restricts operation of a snowmobile on the frozen surface of public waters or on lands owned by or under the control of the state except pursuant to section 82125.

(2) A board of county road commissioners, a county board of commissioners, and a county have no duty to maintain any highway under their jurisdiction in a condition reasonably safe and convenient for the operation of snowmobiles.

(3) Beginning on October 19, 1993, a board of county road commissioners, a county board of commissioners, and a county are immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use of a snowmobile on maintained or unmaintained highways, shoulders, and rights-of-way over which the board of county road commissioners, the county board of commissioners, or the county has jurisdiction. The immunity provided by this subsection does not apply to actions which constitute gross negligence. Gross negligence is defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Sec. 82125. (1) The department may promulgate rules to govern the operation and conduct of snowmobiles, speed limits, and the times when a snowmobile may be used and to establish and designate areas where snowmobiles may be used in a manner that will ensure compatible use and best protection of the safety and general welfare of the public on the frozen surface of public waters.

(2) The department, on its own initiative or upon receipt of a certified resolution of the governing body of a political subdivision, may initiate investigations into the need for special rules to govern the operation of snowmobiles on the frozen surface of public waters. If controls for an activity are considered necessary, or amendment or repeal of an existing rule is required, the department shall prepare a rule for consideration at a public hearing. Notice of the public

hearing shall be published in a newspaper of general circulation in the area where the rules are to be imposed, amended, or repealed, at least 10 days before the hearing.

(3) After a hearing is held pursuant to subsection (2), the proposed rule shall be submitted to the governing body of the political subdivision in which the affected frozen waters lie. The governing body shall inform the department that it approves or disapproves of the proposed rule within 30 days after receiving the rule from the department. If the governing body disapproves the proposed rule, further action shall not be taken. If the governing body approves the proposed rule, it may enact an ordinance that is identical to the proposed rule and the department shall promulgate the rule. An ordinance enacted pursuant to this subsection is not effective until the proposed rule is promulgated and effective.

(4) An ordinance that is the same as a rule that is suspended by the legislature or amended or repealed by the department shall likewise be suspended, amended, or repealed. The governing body, by majority vote, may repeal the ordinance at any time.

(5) Local law enforcement officers may enforce ordinances enacted pursuant to this section, and state and county enforcement officers shall enforce rules that are promulgated pursuant to this section.

Sec. 82126. (1) A person shall not operate a snowmobile under any of the following circumstances:

(a) At a rate of speed greater than is reasonable and proper having due regard for conditions then existing.

(b) In a forest nursery, planting area, or public lands posted or reasonably identifiable as an area of forest reproduction when growing stock may be damaged or posted or reasonably identifiable as a natural dedicated area that is in zone 2 or zone 3.

(c) On the frozen surface of public waters within 100 feet of a person, including a skater, not in or upon a snowmobile or within 100 feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the snowmobile or on an area which has been cleared of snow for skating purposes unless the area is necessary for access to the public water.

(d) Without a muffler in good working order and in constant operation from which noise emission at 50 feet at right angles from vehicle path under full throttle does not exceed 86 DBA, decibels on the "a" scale, on a sound meter having characteristics defined by American standards association S1, 4-1966 "general purpose sound meter". A snowmobile manufactured after July 1, 1977, and sold or offered for sale in this state shall not exceed 78 decibels of sound pressure at 50 feet as measured under the 1974 society of automobile engineers code J-192a. This subdivision does not apply to a snowmobile that is being used in an organized race on a course which is used solely for racing.

(e) Within 100 feet of a dwelling between 12 midnight and 6 a.m., at a speed greater than the minimum required to maintain forward movement of the snowmobile.

(f) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except during an emergency, for law enforcement purposes, to go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle, or for the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, and timber harvest operations, or on the person's own property or property under the person's control or as an invited guest.

(g) While transporting on the snowmobile a bow, unless unstrung, or a firearm, unless unloaded and securely encased or equipped with, and made inoperative by, a manufactured keylocked trigger housing mechanism.

(h) On or across a cemetery or burial ground.

(i) Within 100 feet of a slide, ski, or skating area except when traveling on a country road right-of-way pursuant to section 82119 or a snowmobile trail that is designated and funded by the department. A snowmobile may enter such an area for the purpose of servicing the area or for medical emergencies.

(j) On a railroad or railroad right-of-way. This prohibition shall not apply to railroad personnel, public utility personnel, law enforcement personnel while in the performance of their duties, a railroad or railroad right-of-way rendered inoperable by the removal or partial removal of the railroad tracks, and persons using, between December 1, 1992 and March 31, 1993, between December 1, 1993 and March 31, 1994, and between December 1, 1994 and March 31, 1995, a demonstration snowmobile trail located on a state owned railroad right-of-way operated by the Detroit and Mackinaw railway company, or on a railroad right-of-way owned by the Detroit and Mackinaw railway company connecting to a state owned railroad right-of-way operated by the Detroit and Mackinaw railway company, between Gaylord and Frederic, which also meets the conditions imposed in subsections (2) and (3).

(2) The demonstration snowmobile trail shall be constructed, operated, and maintained by a person other than the person owning the railroad right-of-way and the person operating the railroad pursuant to terms of a lease agreement under which the person operating the trail agrees to do all of the following:

(a) Indemnify the person owning the railroad right-of-way and the person operating the railroad against any claims associated with or arising from the construction, maintenance, operation, and use of the trail.

(b) Provide liability insurance in the amount of \$2,000,000.00 naming the person owning the railroad right-of-way and the person operating the railroad as named insureds.

(c) Meet any other obligations or provisions considered appropriate by the person owning the railroad right-of-way including, but not limited to, the payment of rent that the person owning the railroad right-of-way or the person operating the railroad is authorized to charge under this part and the meeting of all construction, operating, and maintenance conditions imposed by the person owning the railroad right-of-way and the person operating the railroad regarding the demonstration snowmobile trail project.

(3) The demonstration snowmobile trail shall be clearly demarcated by fencing and signing and shall occupy the outer edge of the railroad right-of-way, as far from the edge of the railroad tracks as possible, but in any case not closer than 20 feet from the edge of the railroad tracks unless topography or other natural or manmade features require the trail to lie within 20 feet of the edge of those railroad tracks. The design of the trail, including the location of fencing and signing, shall be included upon plan sheets by the person constructing, operating, and maintaining the trail, and shall be approved in writing by the person owning the right-of-way and the person operating the railroad. Signing shall conform to specifications issued by the department to its snowmobile trail operator grantees.

(4) The state transportation department, in cooperation with the Detroit and Mackinaw railway company and the person operating the demonstration snowmobile trail, shall conduct a study each year during development, construction, and operation of the trail to evaluate the demonstration snowmobile trail project, and to examine the feasibility and desirability of broadening statutory authority to establish snowmobile trails on functional railroad rights-of-way in Michigan. The findings of each study shall be summarized in a report to the legislature to be submitted not later than September 1 of 1993, 1994, and 1995.

(5) Notwithstanding section 82101, for purposes of this section, "operate" means to cause to function, run, or manage.

(6) A person shall not alter, deface, damage, or remove a snowmobile trail sign or control device.

Sec. 82127. (1) A person shall not operate a snowmobile in this state if either of the following applies:

(a) The person is under the influence of intoxicating liquor or a controlled substance, or both.

(b) The person has a blood alcohol content of 0.10% or more by weight of alcohol.

(2) The owner of a snowmobile or a person in charge or in control of a snowmobile shall not authorize or knowingly permit the snowmobile to be driven or operated by a person who is under the influence of intoxicating liquor or a controlled substance, or both, or who has a blood alcohol content of 0.10% or more by weight of alcohol.

(3) A person shall not operate a snowmobile when, due to the consumption of an intoxicating liquor or a controlled substance, or both, the person's ability to operate the snowmobile is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person who operates a snowmobile under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10% or more by weight of alcohol, and by the operation of that snowmobile causes the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years, or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A person who operates a snowmobile under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10% or more by weight of alcohol, and by the operation of that snowmobile causes a long-term incapacitating injury to another person is guilty of a felony punishable by imprisonment for not more than 5 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

Sec. 82128. (1) If a person is convicted of violating section 82127(1), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor and may be punished by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than 90 days.

(iii) A fine of not less than \$100.00 or more than \$500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00 and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than 1 year.

(ii) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to imprisonment for not less than 1 year or more than 5 years, or a fine of not less than \$500.00 or more than \$5,000.00, or both.

(2) A term of imprisonment imposed under subsection (1)(b)(ii) shall not be suspended.

(3) A person sentenced to perform service to the community under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service if ordered by the court.

(4) In addition to the sanctions prescribed under subsection (1) and section 82127(4) and (5), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws, order the person to pay the costs of the prosecution. The court shall also impose sanctions under section 82142.

(5) A person who is convicted of violating section 82127(2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both.

(6) As used in this section, "prior conviction" means a conviction for a violation of section 82127(1), (4), or (5), former section 15a(1), (4), or (5) of Act No. 74 of the Public Acts of 1968, or former section 15a, a local ordinance substantially corresponding to section 82127(1) or former section 15a, or a law of another state substantially corresponding to section 82127(1), (4), or (5) or former section 15a.

Sec. 82129. (1) If a person is convicted of violating section 82127(3), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than 90 days.

(iii) A fine of not more than \$300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(2) In addition to the sanctions prescribed in subsection (1), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws, order the person to pay the costs of the prosecution. The court shall also impose sanctions under section 82142.

(3) A person sentenced to perform service to the community under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service as ordered by the court.

(4) As used in this section, "prior conviction" means a conviction for a violation of section 82127(1), (3), (4), or (5), section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or former section 15a, a local ordinance substantially corresponding to section 82127(1) or (3) or former section 15a, or a law of another state substantially corresponding to section 82127(1), (3), (4), or (5) or former section 15a.

Sec. 82130. (1) If the prosecuting attorney intends to seek an enhanced sentence under section 82128 or 82129 based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information filed in district court, circuit court, recorder's court, municipal court, or probate court a statement listing the defendant's prior convictions.

(2) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) An admission by the defendant.

(3) A person who is convicted of an attempted violation of section 82127(1) or (3) or a local ordinance substantially corresponding to section 82127(1) or (3) shall be punished as if the offense had been completed.

(4) When issuing an order under this part, the secretary of state and the court shall treat a conviction of an attempted violation of section 82127(1) or (3), former section 15a(1) or (3) of Act No. 74 of the Public Acts of 1968, a local ordinance substantially corresponding to section 82127(1) or (3), or a law of another state substantially corresponding to section 82127(1) or (3) the same as if the offense had been completed.

Sec. 82131. (1) A person shall not operate a snowmobile without displaying a lighted headlight and a lighted taillight.
(2) This section does not apply to a snowmobile of a model year 25 years old or older.

Sec. 82132. The operator of a snowmobile involved in an accident resulting in injuries to or the death of any person or property damage in an estimated amount of \$100.00 or more shall immediately by the quickest means of communication notify a state police officer or officers, the sheriff's office of the county in which the accident occurred, or the office of the police department of the local unit of government in which the accident occurred. The police agency receiving the notice shall complete a report of the accident on forms prescribed by the director of the department of state police and forward the report to the department of state police within 14 days after the date of the accident. The department of state police shall forward a copy of all snowmobile accident reports to the department within 14 days after receipt of the accident report.

Sec. 82133. Except as otherwise provided in this part, a person who violates this part is guilty of a misdemeanor.

Sec. 82134. (1) A peace or police officer may issue appearance tickets for violations of this part pursuant to sections 9a to 9e of chapter 4 of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9e of the Michigan Compiled Laws.

(2) In a proceeding for a violation of this part involving prohibited operation or conduct, the registration number displayed on a snowmobile constitutes prima facie evidence that the owner of the snowmobile was the person operating the snowmobile at the time of the offense.

Sec. 82135. An operator of a snowmobile who is given by hand, voice, emergency light, or siren a visual or audible signal by a peace, police, or conservation officer acting in the lawful performance of his or her duty, directing the operator to bring his or her snowmobile to a stop, and who willfully fails to obey the direction by increasing his or her speed or extinguishing his or her lights, or who otherwise attempts to flee or elude the officer, is guilty of a misdemeanor. The officer giving the signal shall be in uniform. A vehicle or snowmobile which is used by an officer at night for purposes of enforcing this part shall be identified as an official law enforcement vehicle or snowmobile.

Sec. 82136. (1) A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a snowmobile involved in the accident in this state while in violation of section 82127(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 82127(1) or (3).

(2) A peace officer who has reasonable cause to believe that a person was operating a snowmobile and that, by the consumption of intoxicating liquor, the person may have affected his or her ability to operate a snowmobile may require the person to submit to a preliminary chemical breath analysis. The following apply with respect to a preliminary chemical breath analysis:

(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 82143(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(c) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 82143 to 82146 for the purposes of chemical tests described in those sections.

(d) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is guilty of a misdemeanor.

Sec. 82137. (1) The following apply with respect to a chemical test and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance, or both, in an operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

(b) A person arrested for a crime described in section 82143(1) shall be advised of all of the following:

(i) That if the person takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, the person has the right to demand that someone of the person's own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this part and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that the person is responsible for obtaining a chemical analysis of a test sample obtained pursuant to the person's own request.

(ii) That if the person refuses the request of a peace officer to take a test described in subparagraph (i), the test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(iii) That the person's refusal of the request of a peace officer to take a test described in subparagraph (i) will result in issuance of an order that the person not operate a snowmobile.

(2) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician, qualified to withdraw blood and acting in a medical environment, may withdraw blood at the request of a peace officer for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in a person's blood, as provided in this subsection. A qualified person who withdraws or analyzes blood, or assists in the withdrawal or analysis, in accordance with this part is not liable for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures unless the withdrawal or analysis is performed in a negligent manner.

(3) A rule relating to a chemical test for alcohol or a controlled substance promulgated under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, applies to a chemical test administered under this part.

Sec. 82138. (1) A chemical test described in section 82137 shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 82143(1). A person who takes a chemical test administered at the request of a peace officer, as provided in section 82137, shall be given a reasonable opportunity to have someone of the person's own choosing administer 1 of the chemical tests described in section 82137 within a reasonable time after the person's detention, and the results of the test are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by someone of the person's own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.

(2) If, after an accident, the operator of a snowmobile involved in an accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(3) If, after an accident, the operator of a snowmobile involved in an accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

Sec. 82139. (1) The provisions of sections 82137 and 82138 relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(2) If a chemical test described in sections 82137 and 82138 is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

Sec. 82140. (1) Except in a prosecution relating solely to a violation of section 82127(1)(b), the amount of alcohol in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath gives rise to the following presumptions:

(a) If there was at the time 0.07% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a snowmobile was not impaired due to the consumption of intoxicating liquor and that the defendant was not under the influence of intoxicating liquor.

(b) If there was at the time in excess of 0.07% but less than 0.10% by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a snowmobile was impaired within the provisions of section 82127(3) due to the consumption of intoxicating liquor.

(c) If there was at the time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(2) A person's refusal to submit to a chemical test as provided in sections 82137 and 82138 is admissible in a criminal prosecution for a crime described in section 82143(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

Sec. 82141. (1) Before accepting a plea of guilty or nolo contendere under section 82127 or a local ordinance substantially corresponding to section 82127(1), (2), or (3), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation.

(2) Before imposing sentence, other than court-ordered operating sanctions, for a violation of section 82127(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 82127(1) or (3), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

Sec. 82142. (1) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 82127(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 82127(1) or (3), whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions established under section 82130, except those convictions that, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following sanctions:

(a) For a conviction under section 82127(4) or (5), the court shall order, without an expiration date, that the person not operate a snowmobile.

(b) For a conviction under section 82127(1) or a local ordinance substantially corresponding to section 82127(1):

(i) If the court finds that the person has no prior convictions within 7 years for a violation of section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or former section 15a or another snowmobile substance abuse offense or that the person has 1 prior conviction within 7 years for a violation of section 82127(3), former section 15a(3) of Act No. 74 of the Public Acts of 1968, a local ordinance substantially corresponding to section 82127(3), or a law of another state substantially corresponding to section 82127(3), the court shall order that the person not operate a snowmobile for not less than 6 months or more than 2 years and shall require that the person take and successfully complete the snowmobile safety education and training program before operating a snowmobile.

(ii) If the court finds that the person has 1 or more prior convictions within 7 years for a violation of section 82127(1), (4), or (5), former section 15a(1), (4), or (5) of Act No. 74 of the Public Acts of 1968, or former section 15a, a local ordinance substantially corresponding to section 82127(1) or former section 15a, or a law of another state substantially corresponding to section 82127(1), (4), or (5) or former section 15a, or that the person has 2 or more prior convictions within 10 years for a violation of section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or former section 15a, or another snowmobile substance abuse offense, the court shall order, without an expiration date, that the person not operate a snowmobile.

(c) For a conviction under section 82127(3) or a local ordinance substantially corresponding to section 82127(3):

(i) If the court finds that the convicted person has no prior conviction within 7 years for a violation of section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, former section 15a, or another snowmobile substance abuse offense, the court shall order that the person not operate a snowmobile for not less than 90 days or more than 1 year.

(ii) If the court finds that the person has 1 prior conviction within 7 years for a violation of section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, former section 15a, or another snowmobile substance abuse offense, the court shall order that the person not operate a snowmobile for not less than 6 months or more than 2 years.

(iii) If the court finds that the person has 2 or more prior convictions within 10 years for a violation of section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, former section 15a, or another snowmobile substance abuse offense, the court shall order, without an expiration date, the person not to operate a snowmobile.

(2) As used in this section, "another snowmobile substance abuse offense" means a local ordinance substantially corresponding to section 82127(1) or (3) or a law of another state substantially corresponding to section 82127(1), (3), (4), or (5).

Sec. 82143. (1) A person who operates a snowmobile is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

(a) The person is arrested for a violation of section 82127(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 82127(1) or (3).

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a snowmobile, and the peace officer had reasonable grounds to believe that the person was operating the snowmobile while impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or while having a blood alcohol content of 0.10% or more by weight of alcohol.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) A chemical test described in subsection (1) shall be administered as provided in sections 82137 and 82138.

Sec. 82144. (1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 82137 or 82138, a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) If a person refuses a chemical test offered pursuant to section 82137 or 82138, or submits to the chemical test and the test reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately forward a written report to the secretary of state. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 82143(1), and either that the person has refused to submit to the test upon the request of the peace officer and has been advised of the consequences of the refusal or that the test revealed a blood alcohol content of 0.10% or more by weight of alcohol. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 82145. (1) If a person refuses to submit to a chemical test pursuant to section 82144, the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in section 82146. The form of the notice shall be prescribed and furnished by the secretary of state.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in issuance of an order that the person not operate a snowmobile. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel is permitted to represent the person at the hearing.

Sec. 82146. (1) If a person who refuses to submit to a chemical test pursuant to section 82144 does not request a hearing within 14 days of the date of notice pursuant to section 82145, the secretary of state shall issue an order that the person not operate a snowmobile for 6 months or, for a second or subsequent refusal within 7 years, for 1 year.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.322 of the Michigan Compiled Laws. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 82144, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and, except for delay attributable to the unavailability of the defendant, a witness, or material evidence or to an interlocutory appeal or exceptional circumstances, but not for delay attributable to docket congestion, shall be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 82143(1).

(b) Whether the person was placed under arrest for a crime described in section 82143(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of his or her rights under section 82137.

(3) The hearing officer shall make a record of proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review pursuant to section 82150 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall order that the person not operate a snowmobile for 6 months or, for a second or subsequent refusal within 7 years, for 1 year. The person may file a petition in the circuit court of the county in which the arrest was made to review the order as provided

in section 82150. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 82144 may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 82150.

Sec. 82147. (1) Notwithstanding a court order issued under section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, sections 82141 to 82142, or a local ordinance substantially corresponding to section 82127(1) or (3), or sections 82141 to 82142, if a court has not ordered a person not to operate a snowmobile as authorized by this part, the secretary of state shall issue an order that the person not operate a snowmobile as follows:

(a) For not less than 90 days or more than 1 year, upon receiving a record of the conviction of the person for a violation of section 82127(3), former section 15a(3) of Act No. 74 of the Public Acts of 1968, a local ordinance substantially corresponding to section 82127(3), or a law of another state substantially corresponding to section 82127(3), if the person has no prior convictions within 7 years for a violation of section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or former section 15a, a local ordinance substantially corresponding to section 82127(1) or (3) or former section 15a, or a law of another state substantially corresponding to section 82127(1), (3), (4), or (5) or former section 15a.

(b) A violation of section 324, 413, or 414 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.324, 750.413, and 750.414 of the Michigan Compiled Laws; or a violation of section 1 of Act No. 214 of the Public Acts of 1931, being section 752.191 of the Michigan Compiled Laws.

(c) For not less than 6 months or more than 2 years, if the person has the following convictions within a 7-year period, whether under the law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) One conviction under section 82127(1), former section 15a(1) of Act No. 74 of the Public Acts of 1968, or former section 15a.

(ii) Two convictions under section 82127(3), former section 15a(3) of Act No. 74 of the Public Acts of 1968, or former section 15a.

(iii) One conviction under section 82127(1) or former section 15a(1) of Act No. 74 of the Public Acts of 1968 and 1 conviction under section 82127(3), former section 15a(3) of Act No. 74 of the Public Acts of 1968, or former section 15a.

(iv) One conviction under section 82127(4) or (5) or former section 15a(4) or (5) of Act No. 74 of the Public Acts of 1968 followed by 1 conviction under section 82127(3) or former section 15a(3) of Act No. 74 of the Public Acts of 1968.

(2) If the secretary of state receives records of more than 1 conviction or probate court disposition of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies under this section.

Sec. 82148. (1) Upon receipt of the appropriate records of conviction, the secretary of state shall issue an order with no expiration date that the person not operate a snowmobile to a person having any of the following convictions, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Two convictions of a felony involving the use of a snowmobile within 7 years.

(b) Any combination of 2 convictions within 7 years for 1 or more of the following:

(i) A violation of section 82127(1), former section 15a(1) of Act No. 74 of the Public Acts of 1968, or former section 15a.

(ii) A violation of section 82127(4) or (5) or former section 15a(4) or (5) of Act No. 74 of the Public Acts of 1968.

(c) One conviction under section 82127(4) or (5) or former section 15a(4) or (5) of Act No. 74 of the Public Acts of 1968.

(d) Any combination of 3 convictions within 10 years for a violation of section 82127(1), (3), (4), or (5), former section 15a(1), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or former section 15a.

(2) The secretary of state shall issue an order with no expiration date that a person not operate a snowmobile notwithstanding a court order issued under section 82127, sections 82141 to 82142, or a local ordinance substantially corresponding to section 82127 or sections 82141 to 82142. The secretary of state shall not terminate an indefinite order issued under this part until both of the following occur:

(a) The later of the following:

(i) The expiration of not less than 1 year after the order was issued.

(ii) The expiration of not less than 5 years after the date of a subsequent issuance of an indefinite order occurring within 7 years after the date of a prior order.

(b) The person meets the requirements of the department of state.

(3) Multiple convictions or probate court dispositions resulting from the same incident shall be treated as a single violation for purposes of issuance of an order under this section.

(4) A person who is aggrieved by the issuance of an order by the secretary of state under this section may request a hearing with the secretary of state. The hearing shall be requested within 14 days after issuance of an order under this section by the secretary of state. If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.322 of the Michigan Compiled Laws.

(5) The hearing officer shall make a record of proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review pursuant to section 82150 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(6) Judicial review of an administrative sanction under this section is governed by the law in effect at the time the offense was committed or attempted.

Sec. 82149. (1) If a person is charged with, or convicted of, a violation of section 82127(1), (2), (3), (4), or (5), former section 15a(1), (2), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or a local ordinance substantially corresponding to section 82127(1), (2), or (3), and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, within 14 days after the notice is issued, the secretary of state will issue an order with no expiration date that the person not operate a snowmobile. If the person fails to appear within the 7-day period or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately issue the order and send a copy to the person by personal service or first-class mail sent to the person's last known address.

(2) An order imposed under subsection (1) remains in effect until both of the following occur:

(a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation are resolved.

(b) The person has paid to the court a \$25.00 administrative order processing fee.

Sec. 82150. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 82146, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 82146 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to section 82146, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) Except as provided in subsections (4) and (6), the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a snowmobile. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) In reviewing a determination under section 82146, the court shall confine its consideration to a review of the record prepared pursuant to section 82146 to determine whether the hearing officer properly determined the issues enumerated in section 82146.

(5) In reviewing a determination resulting in issuance of an order under section 82148(1)(b), (c), or (d), the court shall confine its consideration to a review of the record prepared pursuant to section 82148. The court shall set aside the

determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

- (a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.
- (b) In excess of the statutory authority or jurisdiction of the secretary of state.
- (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

(6) This section does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under section 82127, sections 82141 to 82142 or a local ordinance substantially corresponding to section 82127(1), (2), or (3).

Sec. 82151. (1) Within 63 days after the determination, a person who is aggrieved by a final determination of the secretary of state under this part may petition the circuit court for the county in which the conviction or determination resulting in issuance of the order that the person not operate a snowmobile for an order staying the order. Except as provided in subsection (2), the court may enter an ex parte order staying the order subject to terms and conditions prescribed by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court, or for a lesser time that the court considers proper.

(2) The court shall not enter an ex parte order staying the order if the order is based upon a claim of undue hardship.

Sec. 82152. (1) A person who is ordered not to operate a snowmobile and who has been notified of the order by personal service or first-class mail shall not operate a snowmobile. A person shall not knowingly permit a snowmobile owned by the person to be operated by a person who is subject to such an order. A person who violates this subsection is guilty of a misdemeanor punishable as follows:

(a) By imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both.

(b) For a second or subsequent violation punishable under this subsection, by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) Upon receiving a record of the conviction or probate court disposition of a person upon a charge of unlawful operation of a snowmobile while the person is subject to an order not to operate a snowmobile, the secretary of state shall immediately extend the length of the order for an additional like period.

(3) If the secretary of state receives records of more than 1 conviction or probate court disposition resulting from the same incident, all of the convictions or probate court dispositions shall be treated as a single violation for purposes of extending the length of an order under subsection (2).

(4) If a person is convicted of violating subsection (1), the court shall order cancellation of the certificate of registration for the snowmobile, unless the snowmobile was stolen or permission to use the snowmobile was not knowingly given. The secretary of state shall not issue a certificate of registration for a snowmobile whose registration is canceled until after the expiration of 90 days after the cancellation.

Sec. 82153. (1) When a person is convicted under section 82152(1), the snowmobile, if it is owned by that person, shall be ordered impounded for not less than 30 or more than 120 days from the date of judgment.

(2) An order of impoundment issued pursuant to subsection (1) is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the snowmobile to the storage for insurance coverage purposes.

(3) The owner of a snowmobile impounded pursuant to this section is liable for expenses incurred in the removal and storage of the snowmobile whether or not the snowmobile is returned to him or her. The snowmobile shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the snowmobile is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the snowmobile, the snowmobile shall be considered abandoned.

(4) Nothing in this section affects the rights of a conditional vendor, chattel mortgagee, or lessor of a snowmobile registered in the name of another person as owner who becomes subject to this part.

Sec. 82154. A conviction based on a plea of *nolo contendere* shall be treated in the same manner as a conviction based on a plea of guilty or a finding of guilt for all purposes under this part.

Sec. 82155. Whether of definite or indefinite length, an order not to operate a snowmobile does not expire until the person subject to the order pays an administrative order processing fee of \$125.00 to the secretary of state. The state treasurer shall deposit \$10.00 of the fee in the drunk driving prevention equipment and training fund created under

section 625h(1) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625h of the Michigan Compiled Laws, and \$30.00 in the drunk driving caseflow assistance fund created under section 625h(5) of Act No. 300 of the Public Acts of 1949, being section 257.625h of the Michigan Compiled Laws. The state treasurer shall allocate the balance of the fee to the department of state for the administration of orders issued under this part.

Sec. 82156. In order to provide an individual, historical snowmobiling record, the secretary of state shall create and maintain a central file that includes the name of each person who is convicted of an offense, who fails to comply with an order or judgment issued, or against whom an order is entered under this part or former Act No. 74 of the Public Acts of 1968. A certified copy of an order, record, or paper maintained in this record is admissible in evidence in like manner as the original and is prima facie proof of the facts stated in the original.

Sec. 82157. (1) Each district judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of this part or former Act No. 74 of the Public Acts of 1968 or of a local ordinance corresponding to this part or former Act No. 74 of the Public Acts of 1968 regulating the operation of snowmobiles.

(2) Within 14 days after a conviction, forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating this part or a local ordinance corresponding to this part regulating the operation of snowmobiles, except as provided in subsection (11), the district judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the record of the court for the case. The abstract shall be certified to be true and correct by signature, stamp, or facsimile signature by the person required to prepare the abstract. If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance corresponding to this part, the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state.

(3) The abstract or report required under this section shall be made upon a form furnished by the secretary of state and shall include all of the following:

- (a) The name, address, and date of birth of the person charged or cited.
- (b) The date and nature of the violation.
- (c) The type of snowmobile operated at the time of the violation.
- (d) The date of the conviction, finding, forfeiture, judgment, or determination.
- (e) Whether bail was forfeited.
- (f) Any order issued by the court pursuant to this part.
- (g) Other information considered necessary to the secretary of state.

(4) As used in subsections (5) to (7), "felony in which a snowmobile was used" means a felony during the commission of which the person operated a snowmobile and while operating the snowmobile presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

- (a) The snowmobile was used as an instrument of the felony.
- (b) The snowmobile was used to transport a victim of the felony.
- (c) The snowmobile was used to flee the scene of the felony.
- (d) The snowmobile was necessary for the commission of the felony.

(5) If a person is charged with a felony in which a snowmobile was used, the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court: "You are charged with the commission of a felony in which a snowmobile was used. If you are convicted and the judge finds that the conviction is for a felony in which a snowmobile was used, as defined in section 82157 of the natural resources and environmental protection act, the secretary of state will order you not to operate a snowmobile in this state."

(6) If a child is accused of an act the nature of which constitutes a felony in which a snowmobile was used, the prosecuting attorney or juvenile court shall include the following statement on the petition filed in the probate court: "You are accused of an act the nature of which constitutes a felony in which a snowmobile was used. If the accusation is found to be true and the judge or referee finds that the nature of the act constitutes a felony in which a snowmobile was used, as defined in section 82157 of the natural resources and environmental protection act, the secretary of state will order you not to operate a snowmobile in this state."

(7) If the judge or juvenile court referee determines as part of the sentence or disposition that the felony for which the defendant was convicted or adjudicated and with respect to which notice was given pursuant to subsection (5) or (6) is a felony in which a snowmobile was used, the clerk of the court shall forward an abstract of the court record of that conviction or adjudication to the secretary of state.

(8) Every person required to forward abstracts to the secretary of state under this section shall certify for the period from January 1 through June 30 and for the period from July 1 through December 31 that all abstracts required to be forwarded during the period have been forwarded. The certification shall be filed with the secretary of state not later than 28 days after the end of the period covered by the certification. The certification shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name and title of the person required to forward abstracts.

(b) The court for which the certification is filed.

(c) The time period covered by the certification.

(d) The following statement: "I certify that all abstracts required by section 82157 of the natural resources and environmental protection act, for the period ____ through ____ have been forwarded to the secretary of state."

(e) Other information the secretary of state considers necessary.

(f) The signature of the person required to forward abstracts.

(9) The failure, refusal, or neglect of a person to comply with this section constitutes misconduct in office and is grounds for removal from office.

(10) Except as provided in subsection (11), the secretary of state shall keep all abstracts received under this section at the secretary of state's main office, and the abstracts shall be open for public inspection during the office's usual business hours. The secretary of state shall enter each abstract upon the snowmobiling record of the person to whom it pertains and shall record the information in a manner that makes the information available to peace officers through the law enforcement information network.

(11) The court shall not submit, and the secretary of state shall discard and not enter on the snowmobiling record, an abstract for a conviction or civil infraction determination for a violation of this part that could not be the basis for the secretary of state's issuance of an order not to operate a snowmobile in this state. The secretary of state shall discard and not enter on the snowmobiling record an abstract for a bond forfeiture that occurred outside this state.

(12) The secretary of state shall inform the court of the violations of this part that are used by the secretary of state as the basis for issuance of an order not to operate a snowmobile in this state.

(13) If a conviction or civil infraction determination is reversed upon appeal, the court shall transmit a copy of the order of reversal to the secretary of state, and the secretary of state shall enter the order in the proper book or index in connection with the record of the conviction or civil infraction determination.

(14) The secretary of state may permit a city or village department, bureau, person, or court to modify the requirement as to the time and manner of reporting a conviction, civil infraction determination, or settlement to the secretary of state if the modification will increase the economy and efficiency of collecting and utilizing the records. If the permitted abstract of court record reporting a conviction, civil infraction determination, or settlement originates as a part of the written notice to appeal, authorized in section 82134, the form of the written notice and report shall be as prescribed by the secretary of state.

Sec. 82158. (1) The operator or person in charge of a snowmobile being used or operated in this state, who is by hand, voice, emergency light or siren, or a visual or audible signal directed to bring his or her snowmobile to a stop by any peace, police, or conservation officer who is in uniform and empowered to enforce this part or the provisions of a local ordinance or rules established under this part, shall immediately bring the snowmobile to a stop or maneuver it in a manner that permits the officer to come alongside. A vehicle or snowmobile that is used by an officer at night for purposes of enforcing this part shall be identified as an official law enforcement vehicle or snowmobile. The operator or person in charge of the snowmobile and any other person on board shall give his or her correct name and address, exhibit the certificate of registration awarded for the snowmobile, and submit to a reasonable inspection of the snowmobile and to a reasonable inspection and test of the equipment of the snowmobile.

(2) A person who willfully fails to obey the direction by increasing his or her speed or extinguishing his or her lights, or who otherwise attempts to flee or elude the officer, is guilty of a misdemeanor.

(3) A person who is detained for a violation of this part or of a local ordinance substantially corresponding to a provision of this part and who furnishes a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person is guilty of a misdemeanor.

(4) A peace officer who observes a violation by a person of this part or of a local ordinance or rule established under this part may arrest the person without a warrant.

Sec. 82159. If a person is arrested without a warrant for any of the following, the arrested person shall be taken, without unreasonable delay, before a magistrate or judge who is within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense, and who is nearest or most accessible with reference to the place where the arrest is made:

(a) The person is arrested upon a charge of negligent homicide.

(b) The person is arrested under section 82127 or a local ordinance substantially corresponding to section 82127. If in the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by section 82134.

Sec. 90106. (1) The following acts that are codified in article III, chapter 4, entitled recreation, are repealed:

<u>PUBLIC ACT NO.</u>	<u>YEAR OF ACT</u>	<u>MICHIGAN COMPILED LAWS SECTION</u>
326	1965	299.121 to 299.127
316	1965	299.111 to 299.116
221	1987	318.531 to 318.541
327	1988	318.551 to 318.560
329	1988	318.571 to 318.586
27	1993	299.131 to 299.144
225	1964	318.231 to 318.233
323	1976	317.171 to 317.181
201	1953	300.201
149	1960	318.301 to 318.314
48	1952	322.601 to 322.608
130	1994	318.331 to 318.337
57	1993	322.821 to 322.826
173	1929	299.51 to 299.57
355	1927	318.61 to 318.67
201	1958	318.201 to 318.208
22	1907	318.91 to 318.93
45	1943	318.101 to 318.102
20	1955	318.71 to 318.72
70	1957	318.121 to 318.122
54	1909	318.81 to 318.84
320	1947	281.501 to 281.511
125	1959	281.531 to 281.538
187	1964	281.521 to 281.523
79	1988	281.1251 to 281.1268
66	1952	281.541 to 281.543
303	1967	281.1001 to 281.1199
160	1976	281.1201 to 281.1223
319	1975	257.1601 to 257.1626
74	1968	257.1501 to 257.1543

(2) The following acts and parts of acts are not codified in this act but are repealed:

<u>PUBLIC ACT NUMBER</u>	<u>YEAR OF ACT</u>	<u>MICHIGAN COMPILED LAW SECTIONS</u>
257	1968	318.351 to 318.362
108	1969	318.371 to 318.387

Section 2. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) House Bill No. 4351.
- (b) House Bill No. 4350.
- (c) House Bill No. 4348.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.