Act No. 60
Public Acts of 1995
Approved by the Governor
May 23, 1995
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STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995

Introduced by Reps. Murphy, Middaugh, Alley and Hill

ENROLLED HOUSE BILL No. 4351

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 sections 107 and 90102 and parts 7, 16, 18, 19, 21, 25, 35, 37, 45, 59, 61, 63, 65, 85, 91, 93, 119, 193, and 195; 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 sections 107 and 90102 and parts 7, 16, 18, 19, 21, 25, 35, 37, 45, 59, 61, 63, 65, 85, 91, 93, 119, 193, and 195 and by amending the headings of certain parts to read as follows:

Sec. 107. It is the intention of the legislature that editorial changes in the language of statutes codified as parts within this act not be construed as changes to the meanings of those statutes.

PART 7 FOREST AND MINERAL RESOURCE DEVELOPMENT

Sec. 701. As used in this part, "fund" means the forest and mineral resource development fund created in section 703.

Sec. 702. The department shall do all of the following:

(a) Administer a grant and loan program pursuant to sections 704 and 705.

(b) Provide advice and recommendations to the legislature, the governor, and executive departments in order to promote the development of the forestry and forest products industry and the mineral extraction and utilization industry in this state.

(c) Develop programs and coordinate existing and proposed programs to encourage innovative and competitively viable economic development of forest and mineral related industry.

(d) Stimulate and encourage the forestry and forest products industry and the mineral extraction and utilization industry through grants and loans made under this part.

(e) Review existing laws and regulations pertaining to forestry and the mineral industry and develop proposals for new laws or changes in existing law to improve this state's forest and mineral resource development as considered appropriate by the department.

(f) Promote and provide for educational programs for the general public and members of local government to increase awareness of the importance of the forestry and forest products industry and the mineral industry to this state.

(g) Consult with representatives of science, industry, labor, government, and other groups and utilize the services of public and private organizations, including colleges and universities, as the department considers necessary or helpful.

Sec. 703. (1) The forest and mineral resource development fund is created as a separate fund in the department of treasury to be administered and expended by the department for the purpose of making grants and loans pursuant to sections 704 and 705.

(2) There shall be appropriated annually from the general fund of the state, or from any special revenue source that is dedicated to forest and mineral resource development or from funds made available by the private sector, a sufficient sum to carry out the requirements of this part. Of the money appropriated by the legislature, the department shall make grants and loans as provided in sections 704 and 705 in a manner that as nearly as practicable results in an even distribution of grants and loans to encourage the state's forestry and forest products industry and grants and loans to encourage the state's mineral industry.

(3) In addition to the appropriated funds, the fund shall include all repayments of principal and interest and earnings generated under a loan granted under this part.

(4) Appropriations made to the fund and interest and earnings generated by the fund do not lapse to the general fund at the end of the fiscal year for which an appropriation was made, but shall remain in the fund to be expended as provided in this part.

Sec. 704. (1) The department shall establish a forest and mineral resource development grant and loan program. The department shall promulgate rules necessary to implement the grant and loan program provided in this part.

(2) The department shall annually publish information about grants and loans available under this part in a manner selected by the department as best calculated to give notice to persons likely to be interested in the grants or loans, or both.

(3) Information regarding grants and loans available under this part and application forms for grants and loans shall be distributed by the department upon request.

(4) An application for a grant or loan under this section shall be on a form provided by the department and shall contain information required by the department.

(5) The department may make a grant or a loan to a person as determined to be appropriate by the department for any of the following projects that pertain to new technologies, innovative technologies, or procedures, products, or marketing techniques, to encourage the state's forestry or forest products industry or the mineral extraction and utilization industry:

(a) Market development projects.

(b) Resource base information development projects.

(c) Feasibility study projects.

(d) Research projects.

(e) Development projects.

(f) Research and development projects.

(6) The department may require that matching funds be provided as a condition for making a grant or loan under this section.

(7) The department in making grants and loans under this section shall consider all of the following:

(a) The potential for the project, if funded, to assist the forest products industry or the mineral industry in this state.

(b) The potential for the project, if funded, to create jobs in the forest products industry or the mineral industry in this state.

(c) If the applicant's project proposes the development of a new technology or product, the likelihood that the technology or product would enhance the competitiveness of this state's forest products industry or mineral industry.

(d) If the applicant's project involves the development of a new technology or product, whether the applicant provides a feasibility study with results supportive of project initiation.

(e) The potential for the project to be applied or utilized by persons in this state other than the applicant.

(f) The ability of the applicant to contribute matching funds for the project.

(g) If the applicant's project involves research, the likelihood that the applicant may qualify for further research grants or loans or follow-up grants or loans from other sources.

(h) Other factors as considered appropriate by the department.

(8) In determining the rate of interest to be assessed on loans made under this part, the department shall select an interest rate that is below the average annual effective prime lending rate for commercial banks as reported by the federal reserve system.

Sec. 705. (1) An application for a grant or loan made under this part shall be reviewed and prioritized by the department each fiscal year.

(2) Not less than 60 days prior to the end of each fiscal year, the department shall report the following information regarding the grants or loans made under this part to the governor and the legislature:

(a) The name and address of each person to whom a grant or loan was issued during the reporting year.

(b) The nature of the project that received a grant or loan during the reporting year.

(c) The amount of money received by each person who received a grant or loan during the reporting year.

(d) The county in which the project is located.

(e) The number of new employment opportunities, if any, that resulted from grants or loans made during the reporting year.

(f) The number of new employment opportunities, if any, that are expected to result from grants or loans that are anticipated in the next reporting year.

PART 16 ENFORCEMENT OF LAWS FOR PROTECTION OF WILD BIRDS, WILD ANIMALS, AND FISH

Sec. 1601. The department and any officer appointed by the department shall do all of the following:

(a) Enforce the statutes and laws of this state for the protection, propagation, or preservation of wild birds, wild animals, and fish.

(b) Enforce all other laws of this state that pertain to the powers and duties of the department or the commission.

(c) Bring or cause to be brought or prosecute or cause to be prosecuted actions and proceedings in the name of the people of this state for the purpose of punishing any person for the violation of statutes or laws described in this section.

Sec. 1602. (1) The department, or an officer appointed by the department, may file a complaint and commence proceedings against any person for a violation of any of the laws or statutes described in section 1601, without the sanction of the prosecuting attorney of the county in which the proceedings are commenced. In such a case, the officer is not obliged to furnish security for costs. The department, or an officer appointed by the department, may appear for the people in any court of competent jurisdiction in any cases for violation of any of the statutes or laws described in section 1601, may prosecute the cases in the same manner and with the same authority as the prosecuting attorney of any county in which the proceedings are commenced, and may sign vouchers for the payment of jurors' or witnesses' fees in those cases in the same manner and with the same authority as prosecuting attorneys in criminal cases. Whenever an officer appointed by the department has probable cause to believe that any of the statutes or laws mentioned in section 1601 have been or are being violated by any particular person, the officer has the power to search, without warrant, any boat, conveyance, vehicle, automobile, fish box, fish basket, game bag, game coat, or any other receptacle or place, except dwellings or dwelling houses, or within the curtilage of any dwelling house, in which nets, hunting or fishing apparatuses or appliances, wild birds, wild animals, or fish may be possessed, kept, or carried by the person, and an officer appointed by the department may enter into or upon any private or public property for that purpose or for the purpose of patrolling, investigating, or examining when he or she has probable cause for believing that any of the statutes or laws described in section 1601 have been or are being violated on that property. The term "private property" as used in this part does not include dwellings or dwelling houses or that which is within the curtilage of any dwelling house. An officer appointed by the department shall at any and all times seize and take possession of any and all nets, hunting or fishing apparatuses or appliances, or other property, wild birds, wild animals, or fish, or any part or parts thereof, which have been caught, taken, killed, shipped, or had in possession or under control, at a time, in a manner, or for a purpose, contrary to any of the statutes or laws described in section 1601, and the seizure may be made without a warrant. A common carrier is not responsible for damages or otherwise to any owner, shipper, or consignee by reason of any such seizure. When a complaint is made on oath to any magistrate authorized to issue warrants in criminal cases that any wild birds, wild animals, or fish, any part or parts of wild birds, wild animals, or fish, or any nets, hunting or fishing apparatuses or appliances, or other property have been or are being killed, taken, caught, had in possession or under control, or shipped, contrary to the statutes or laws described in section 1601, and that the complainant believes the property to be stored, kept, or concealed in any particular house or place, the magistrate, if he or she is satisfied that there is probable cause for the belief, shall issue a warrant to search for the

property. The warrant shall be directed to the department, or an officer appointed by the department, or to any other peace officer. All wild birds, wild animals, fish, nets, boats, fishing or hunting appliances or apparatuses, or automobiles or other property of any kind seized by an officer shall be turned over to the department to be held by the department subject to the order of the court as provided in this part.

(2) For the purposes of this part, "probable cause" or "probable cause to believe" is present on the part of a peace officer if there are facts that would induce any fair-minded person of average intelligence and judgment to believe that a law or statute had been violated or was being violated contrary to any of the statutes or laws described in section 1601.

Sec. 1603. (1) The following courts have jurisdiction to determine whether seized property shall be confiscated as provided in section 1604:

(a) The common pleas court of the city of Detroit, if the property is seized in the city of Detroit and if the property is not appraised by the officer seizing the property at more than $10,000.00 in value.

(b) The district court, if the property is seized within this state, other than in a city having a municipal court or a common pleas court or in a village served by a municipal court, and if the property is not appraised by the officer seizing the property at more than $10,000.00 in value.

(c) A municipal court, if the property is seized in a city having a municipal court or in a village served by a municipal court and if the property is not appraised by the officer seizing the property at more than $1,500.00 in value.

(d) The circuit court, if the property is seized within this state and if the property exceeds the value specified in subdivision (a), (b), or (c) as appraised by the officer seizing the property.

(2) If the circuit court has jurisdiction under subsection (1), the proceeding shall be commenced in the county in which the property is seized.

(3) If the district court has jurisdiction under subsection (1), venue for a proceeding shall be as follows:

(a) In the county in which the property is seized, if the property is seized in a district of the first class.

(b) In the district in which the property is seized, if the property is seized in a district of the second or third class.

Sec. 1604. (1) The officer seizing the property shall file a verified complaint in the court having jurisdiction and venue over the seizure of the property pursuant to section 1603. 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.

(2) 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 registered mail to the last known address of the owner. If the last known address of the owner is 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 address of the owner. If the last known 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.

(3) Upon the hearing of the complaint, if the court determines that the property mentioned in the petition was caught, killed, 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 may be made condemning and confiscating the property and directing its sale or other disposal by the department, the proceeds from which shall be paid into the state treasury and credited to the game and fish protection fund created in part 435. If the owner or person lawfully in possession of the property seized signs a property release, a court proceeding is not necessary. At the hearing, if the court determines that the property was not caught, killed, possessed, shipped, or used contrary to law, the court shall order the department to return the property immediately to its owner.

Sec. 1605. The proceedings for the condemnation and confiscation of any property under this part are subject to review or certiorari as provided in this part. A writ of certiorari may be issued within 10 days after final judgment and determination in any condemnation proceeding for the purpose of reviewing any error in the proceeding. Notice of the certiorari shall be served upon the department within 10 days after the date of issue, in the same manner as notice is required to be given of certiorari for reviewing judgments rendered by a justice of the peace, and the writ shall be

issued and served and bond given and approved in the same manner as is required for reviewing judgments by justices of the peace.

Sec. 1606. (1) The department and conservation officers appointed by the department are peace officers vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers by the general laws of this state; have the same power to serve criminal process as sheriffs; have the same right as sheriffs to require aid in executing process; and are entitled to the same fees as sheriffs in performing those duties.

(2) The department may commission state park officers to enforce within the boundaries of the state parks rules promulgated by the department and any laws of this state specified in those rules as enforceable by commissioned state park officers. In performing those enforcement activities, commissioned state park officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of this state.

(3) If a conservation officer or a state park officer commissioned pursuant to subsection (2) arrests a person without warrant for a misdemeanor committed in the officer's presence that is punishable by imprisonment for not more than 90 days or a fine, or both, instead of immediately bringing the person for arraignment by the court having jurisdiction, the officer may issue to and serve upon the person an appearance ticket as authorized by sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(4) An appearance pursuant to an appearance ticket may be made in person, by representation, or by mail. If appearance is made by representation or mail, a district judge, a municipal judge, or a judge of recorder's court of Detroit may accept a plea of guilty and payment of a fine and costs on or before the definite court date indicated on the appearance ticket, or may accept a plea of not guilty for purposes of arraignment, both with the same effect as though the person personally appeared before the court. If appearance is made by representation or mail, a district court magistrate may accept a plea of guilty upon an appearance ticket and payment of a fine and costs on or before the definite court date indicated on the appearance ticket for those offenses within the magistrate's jurisdiction, as prescribed by section 8511 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.8511 of the Michigan Compiled Laws, or may accept a plea of not guilty for purposes of arraignment, if authorized to do so by the judge of the district court district, with the same effect as though the person personally appeared before the court. The court, by giving not less than 5 days' notice of the date of appearance, may require appearance in person at the place designated in the appearance ticket.

(5) This section does not prevent the execution of a warrant for the arrest of the person as in other cases of misdemeanors if necessary.

(6) If a person fails to appear, the court, in addition to the fine assessed if the person is found guilty for the offense committed, may add to the fine and costs levied against the person additional costs incurred in compelling the appearance of the person, which additional costs shall be returned to the general fund of the unit of government incurring the costs.

(7) The department, in conjunction with the Michigan state employees association of the American federation of state, county, and municipal employees and the Michigan professional employees society, shall study the feasibility of allowing full-time employees of the department to perform the duties of conservation officers under certain circumstances.

Sec. 1607. (1) The department may appoint persons to function as volunteer conservation officers. A volunteer conservation officer shall be appointed to assist a conservation officer in the performance of the conservation officer's duties. While a volunteer conservation officer is assisting a conservation officer, the volunteer conservation officer has the same immunity from civil liability as a conservation officer, and shall be treated in the same manner as an officer or employee under section 8 of Act No. 170 of the Public Acts of 1964, being section 691.1408 of the Michigan Compiled Laws. The volunteer conservation officer shall not carry a firearm while functioning as a volunteer conservation officer.

(2) As used in this section, "volunteer" means a person who provides his or her service as a conservation officer without pay.

(3) To qualify as a volunteer conservation officer, a person shall meet all of the following qualifications:

(a) Have no felony convictions. In determining whether the person has a felony conviction, the person shall present documentation to the department that a criminal record check through the law enforcement information network has been conducted by a law enforcement agency.

(b) Have completed 10 hours of training conducted by the law enforcement division of the department.

(4) Upon compliance with subsection (3) and upon recommendation by the department, a person may be appointed as a volunteer conservation officer. An appointment shall be valid for 3 years. At the completion of the 3 years, the volunteer conservation officer shall comply with the requirements of this section in order to be reappointed as a volunteer conservation officer.

(5) A volunteer conservation officer's appointment is valid only if the volunteer conservation officer is on assignment with, and in the company of, a conservation officer.

Sec. 1608. A person who knowingly or willfully obstructs, resists, or opposes the department, an officer appointed by the department, or any other peace officer in the performance of the duties and execution of the powers prescribed in this part or in any statute or law, in making an arrest or search as provided in this part, or in serving or attempting to serve or execute any process or warrant issued by lawful authority, or who obstructs, resists, opposes, assaults, beats, or wounds the department, any officer appointed by the department, or any other peace officer while the department or officer is lawfully making an arrest or search, lawfully serving or attempting to serve or execute any such process or warrant, or lawfully executing or attempting to execute or lawfully performing or attempting to perform any of the powers and duties provided for in the statutes or laws described in section 1601, is guilty of a misdemeanor, punishable as provided in section 479 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.479 of the Michigan Compiled Laws. In making an arrest or search as provided in this part, or in serving or attempting to serve or execute any process or warrant, the department, any officer appointed by the department, or any other peace officer shall identify himself or herself by uniform, badge, insignia, or official credentials.

Sec. 1609. In all prosecutions for violation of the law for the protection of game and fish, the sentencing court shall assess, as costs, the sum of $10.00, to be known as the judgment fee. When collected, the judgment fee shall be paid into the state treasury to the credit of the game and fish protection fund created in part 435.

PART 18 UNIFORM TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS

Sec. 1801. As used in this part:

(a) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States of America that has enacted a law identical to this part or provides access to its courts and administrative agencies that is substantially equivalent to the access provided in this part.

Sec. 1802. An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this state may be brought in this state.

Sec. 1803. A person who suffers, or is threatened with, injury to his or her person or property in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this state has the same rights to relief with respect to the injury or threatened injury, and may enforce those rights in this state as if the injury or threatened injury occurred in this state.

Sec. 1804. The law to be applied in an action or other proceeding brought pursuant to this part, including what constitutes "pollution," is the law of this state, excluding choice of law rules.

Sec. 1805. This part does not accord a person injured or threatened with injury in a jurisdiction outside of this state any rights superior to those that the person would have if injured or threatened with injury in this state.

Sec. 1806. Any right provided in this part is in addition to and not in derogation of any other rights.

Sec. 1807. The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this part only to the extent that it would apply to a person injured or threatened with injury in this state.

Sec. 1808. This part shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this part among jurisdictions enacting it.

PART 19 NATURAL RESOURCES TRUST FUND

Sec. 1901. As used in this part:

(a) "Board" means the Michigan natural resources trust fund board established in section 1905.

(b) "Economic development revenue bonds (oil and gas revenues), series 1982A, dated December 1, 1982" includes bonds refunding these bonds, provided that any refunding bonds mature no later than September 1, 1994.

(c) "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 thereof, which authority is legally constituted to provide public recreation.

(d) "Total expenditures" means the amounts actually expended from the trust fund as authorized by section 1903(1) and (2).

(e) "Trust fund" means the Michigan natural resources trust fund established in section 35 of article IX of the state constitution of 1963.

Sec. 1902. (1) The Michigan natural resources trust fund is established in the state treasury. The trust fund shall consist of all bonuses, rentals, delayed rentals, and royalties collected or reserved by the state under provisions of leases for the extraction of nonrenewable resources from state owned lands. However, the trust fund shall not include bonuses, rentals, delayed rentals, and royalties collected or reserved by the state from the following sources:

(a) State owned lands acquired with money appropriated from the game and fish protection fund created in part 435.

(b) State owned lands acquired with money appropriated from the subfund account created by former section 4 of the Kammer recreational land trust fund act of 1976, former Act No. 204 of the Public Acts of 1976.

(c) State owned lands acquired with money appropriated from related federal funds made available to the state under chapter 899, 50 Stat. 917, 16 U.S.C. 669 to 669b and 669c to 669i, commonly known as the federal aid in wildlife restoration act, or chapter 658, 64 Stat. 430, 16 U.S.C. 777 to 777e, 777f to 777i, and 777k to 777*l*, commonly known as the federal aid in fish restoration act.

(2) Notwithstanding subsection (1), until the trust fund reaches an accumulated principal of $400,000,000.00, $10,000,000.00 of the revenues from bonuses, rentals, delayed rentals, and royalties described in this section otherwise dedicated to the trust fund that are received by the trust fund each state fiscal year shall be transferred to the state treasurer for deposit into the Michigan state parks endowment fund created in section 74119. However, until the trust fund reaches an accumulated principal of $400,000,000.00, in any state fiscal year, not more than 50% of the total revenues from bonuses, rentals, delayed rentals, and royalties described in this section otherwise dedicated to the trust fund that are received by the trust fund each state fiscal year shall be transferred to the Michigan state parks endowment fund. To implement this subsection, until the trust fund reaches an accumulated principal of $400,000,000.00, the department shall transfer 50% of the money received by the trust fund each month pursuant to subsection (1) to the state treasurer for deposit into the Michigan state parks endowment fund. The department shall make this transfer on the last day of each month or as soon as practicable thereafter. However, not more than a total of $10,000,000.00 shall be transferred in any state fiscal year pursuant to this subsection.

(3) In addition to the contents of the trust fund described in subsection (1), the trust fund shall consist of money transferred to the trust fund pursuant to section 1909.

(4) The trust fund may receive appropriations, money, or other things of value.

(5) The state treasurer shall direct the investment of the trust fund.

Sec. 1903. (1) Subject to the limitations of this part and of section 35 of article IX of the state constitution of 1963, the interest and earnings of the trust fund in any 1 state fiscal year may be expended in subsequent state fiscal years only for the following purposes:

(a) The acquisition of land or rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty.

(b) The development of public recreation facilities.

(c) The administration of the fund, including payments in lieu of taxes on state owned land purchased through the trust fund.

(2) In addition to the money described in subsection (1), 33-1/3% of the money, exclusive of interest and earnings, received by the trust fund in any state fiscal year may be expended in subsequent state fiscal years for the purposes described in subsection (1). However, the authorization for the expenditure of money provided in this subsection does not apply after the state fiscal year in which the total amount of money in the trust fund, exclusive of interest and earnings and amounts authorized for expenditure under this section, exceeds $200,000,000.00.

(3) An expenditure from the trust fund may be made in the form of a grant to a local unit of government, subject to the following conditions:

(a) The grant is used for the purposes described in subsection (1) and meets the requirements of either subdivision (b) or (c).

(b) A grant for the purposes described in subsection (1)(a) is matched by the local unit of government or public authority with at least 25% of the total cost of the project.

(c) A grant for the purposes described in subsection (1)(b) is matched by the local unit of government with 25% or more of the total cost of the project.

(4) Not less than 25% of the total amounts made available for expenditure from the trust fund from any state fiscal year shall be expended for acquisition of land and rights in land, and not more than 25% of the total amounts made

available for expenditure from the trust fund from any state fiscal year shall be expended for development of public recreation facilities.

(5) During the first 3 state fiscal years after October 1, 1985, not less than 15% of the total expenditures from the trust fund shall be expended for development of public recreational facilities. However, at the request of the legislature or the governor, the board may suspend the requirement of this subsection in order to permit the acquisition of land or rights in land of exceptional statewide significance.

Sec. 1904. The amount accumulated in the trust fund shall not exceed $400,000,000.00, exclusive of interest and earnings and amounts authorized for expenditure under this part. Any amount of money that would be a part of the trust fund but for the limitation stated in this section shall be deposited in the Michigan state parks endowment fund created in section 74119, until the Michigan state parks endowment fund reaches an accumulated principal of $800,000,000.00. After the Michigan state parks endowment fund reaches an accumulated principal of $800,000,000.00, any money that would be part of the Michigan state parks endowment fund but for this limitation shall be distributed as provided by law.

Sec. 1905. (1) The Michigan natural resources trust fund board is established within the department. The board 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. The board shall be administered under the supervision of the department and the department shall offer its cooperation and aid to the board and shall provide suitable offices and equipment for the board.

(2) The board shall consist of 5 members. The members shall include the director or a member of the commission as determined by the commission, and 4 residents of the state to be appointed by the governor with the advice and consent of the senate.

(3) The terms of the appointive members shall be 4 years, except that of those first appointed, 1 shall be appointed for 1 year, 1 shall be appointed for 2 years, 1 shall be appointed for 3 years, and 1 shall be appointed for 4 years.

(4) The appointive members may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office.

(5) Vacancies on the board shall be filled for the unexpired term in the same manner as the original appointments.

(6) The board may incur expenses necessary to carry out its powers and duties under this part and shall compensate its members for actual expenses incurred in carrying out their official duties.

Sec. 1906. (1) The board shall elect a chairperson and establish its administrative procedures. The business which the board 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 meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The board shall meet not less than bimonthly and shall record its proceedings. A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Before January 16 of each year, the board shall report to the governor and to the legislature detailing the operations of the board for the preceding 1-year period. The board shall also make special reports as requested by the governor or the legislature.

Sec. 1907. (1) The board shall determine which lands and rights in land within the state should be acquired and which public recreation facilities should be developed with money from the trust fund and shall submit to the legislature in January of each year a list of those lands and rights in land and those public recreation facilities that the board has determined should be acquired or developed with trust fund money, compiled in order of priority.

(2) This list shall be accompanied by estimates of total costs for the proposed acquisitions and developments.

(3) The board shall supply with each list a statement of the guidelines used in listing and assigning the priority of these proposed acquisitions and developments.

(4) The legislature shall approve by law the lands and rights in land and the public recreation facilities to be acquired or developed each year with money from the trust fund.

Sec. 1908. (1) Beginning on October 1, 1985, the board shall adopt as its own any decision made by the state recreational land acquisition trust fund board of trustees under the Kammer recreational land trust fund act of 1976, former Act No. 204 of the Public Acts of 1976, and shall administer to completion any project pending under that act.

(2) Appropriations made pursuant to former Act No. 204 of the Public Acts of 1976 shall remain valid after October 1, 1985 and may be expended until the projects approved through the appropriations are complete. Any funds

appropriated pursuant to former Act No. 204 of the Public Acts of 1976 but unexpended after completion of the projects funded under that act shall be deposited in the trust fund and may be appropriated as natural resources trust funds.

(3) Funds available for appropriation under former Act No. 204 of the Public Acts of 1976 as of October 1, 1985, but not appropriated as of that date, may be appropriated by the legislature under the terms and conditions of that act. Any funds appropriated as provided in this subsection but unexpended after completion of the projects for which the money was appropriated shall be deposited in the trust fund and may be appropriated as natural resources trust funds.

(4) The interest and earnings on money appropriated pursuant to former Act No. 204 of the Public Acts of 1976 or subsection (3) but not expended shall be deposited in the trust fund.

Sec. 1909. On October 1, 1985, the state treasurer shall do the following:

(a) Transfer to the game and fish protection fund created in part 435 any money in the subfund account created by former section 4 of the Kammer recreational land trust fund act of 1976, former Act No. 204 of the Public Acts of 1976.

(b) Transfer to the trust fund any money remaining in the state recreational land acquisition trust fund created in the Kammer recreational land trust fund act of 1976, former Act No. 204 of the Public Acts of 1976, after the transfer required by subdivision (a) is accomplished.

(c) Transfer to the trust fund any money or other assets in the heritage trust fund created in the heritage trust fund act of 1982, former Act No. 327 of the Public Acts of 1982.

(d) Transfer from the general fund to the trust fund an amount of money equal to all the money received by the general fund between December 22, 1984, the date on which section 35 of article IX became part of the state constitution of 1963, and October 1, 1985, the effective date of former Act No. 101 of the Public Acts of 1985, from bonuses, rentals, delayed rentals, and royalties collected or reserved by the state under provisions of leases for the extraction of nonrenewable resources from state owned lands, except money from bonuses, rentals, delayed rentals, and royalties excluded from the trust fund under 1902(1).

Sec. 1910. (1) On October 1, 1985, the department shall transfer any writing or document prepared, owned, used, in the possession of, or retained by the state recreational land acquisition trust fund board of trustees under former Act No. 204 of the Public Acts of 1976 to the board.

(2) On October 1, 1985, the department of treasury shall transfer any writing or document prepared, owned, used, in the possession of, or retained by the heritage trust fund board of trustees under former Act No. 327 of the Public Acts of 1982 to the board or the bondholder protection board, as appropriate to the function of each board.

PART 21 GENERAL REAL ESTATE POWERS

SUBPART 1 SALE OF STATE LANDS FOR PUBLIC PURPOSES

Sec. 2101. (1) The department may sell sites to school districts and churches and sell lands for public purposes to public educational institutions; to the United States; and to governmental units of the state and to agencies thereof from tax reverted state lands under the control of the department, at a price fixed by a formula determined by the state tax commission. The department may transfer jurisdiction of tax reverted state lands for public purposes to any department, board, or commission of the state. The application for the purchase or transfer of tax reverted state lands shall be made by the proper officers of a school district, church, public educational institution, the United States, governmental unit, agency, department, board, or commission upon forms prepared and furnished by the department for that purpose.

(2) The department may sell tax reverted lands to any agency described in subsection (1), and the transfer of the lands is not subject to a reverter clause. If a conveyance or transfer of lands is made to a governmental unit without a reverter clause, the department may convey or transfer the lands at an appraisal value as determined by the state tax commission or at a nominal fee that includes any amount paid by the department for maintaining the lands in a condition that is protective of the public health and safety. If lands are conveyed or transferred for a nominal fee and are subsequently sold by the governmental unit for a valuable consideration, the proceeds from such a sale, after deducting the fee and any amount paid by the local governmental units for maintaining the lands in a condition that is protective of the public health and safety, shall be accounted for to the state, county, township, and school district in which the lands are situated pro rata according to their several interests in the lands arising from the nonpayment of taxes and special assessments on the lands as the interest appears in the offices of the state treasurer or county, city, or village treasurers.

Sec. 2102. Notwithstanding section 2101, the department may convey tax reverted land to a public agency described in section 2101 without monetary consideration but subject to a reverter to this state upon termination of the use of the land for which the conveyance was approved by the department or upon any use of the land other than the use for which the conveyance was approved.

SUBPART 2 DELINQUENT TAXES ON PART-PAID LANDS

Sec. 2103. (1) On October 1 of each year, the department shall prepare lists showing the descriptions of lands upon which taxes have been assessed for the current year while the lands were part-paid, but which had been patented by the state, and upon which taxes have not been paid, and shall forward the lists to the supervisor of the township where the lands are located.

(2) The supervisor of the township receiving a list described in subsection (1) shall reassess the taxes reported in the list for the same land.

(3) The township treasurer shall collect and return the taxes in the same manner as provided for the collection and return of other taxes.

SUBPART 3 EXCHANGE OF STATE LANDS

Sec. 2104. Any of the lands under the control of the department, the title to which is in this state and which may be sold and conveyed or are a part of the state lands, as well as lands later acquired by this state, or any part or portion of those lands, may be exchanged for lands of equal area or approximately equal value belonging to the United States or owned by private individuals if in the opinion of the department it is in the interest of the state to do so.

Sec. 2105. If the department determines that it is in the best interests of the state to relinquish or convey to the United States under the laws of the United States any part or portion of the lands described in section 2104 in exchange for other lands of equal area or approximately equal value to be selected by the department from the unappropriated public lands in this state that belong to the United States and that may be relinquished or conveyed to the state by the United States under the laws of the United States, the department shall maintain a description of the lands belonging to the state that are to be relinquished or conveyed to the United States, and, upon making arrangements with the proper authorities of the United States, the department shall execute the proper conveyance to the United States of the lands to be relinquished or conveyed. This conveyance shall be void if the lands of an equal area or approximately equal value are not relinquished or conveyed by the United States to the state in lieu of the lands and in accordance with selections made by the department.

Sec. 2106. If the department determines that it is in the best interests of the state to exchange any of the lands mentioned in section 2104 for lands of an equal area or of approximately equal value belonging to private individuals, the department shall maintain a description of the lands to be conveyed and a description of the lands belonging to individuals to be deeded to the state. Before any of the lands are deeded to an individual as provided in this subpart, the person or persons owning the lands to be deeded to the state shall execute a conveyance of those lands to the state. The attorney general shall examine the title to the lands deeded to the state and certify to the department whether or not the conveyance is sufficient to vest in the state a good and sufficient title to the land free from any liens or encumbrances. If the attorney general certifies that the deed vests in the state a good and sufficient title to the deeded lands free from any liens or encumbrances, the department shall execute a deed to the individual of the lands to be conveyed by the state selected by the department in lieu of the lands.

Sec. 2107. If the state acquires lands under this subpart, under former Act No. 193 of the Public Acts of 1911, or pursuant to the laws of the United States providing for an exchange of lands between the United States and the state, the lands acquired by the state shall become a part or portion of that class of lands to which the lands relinquished in lieu of the lands formerly belonged, and shall be subject to the same supervision and control and laws of the state to which the lands relinquished or conveyed by the state would have been subject had they remained the property of the state. However, an application from private individuals for the exchange of their lands for lands proposed to be acquired by the state from the United States under section 2104 shall not be received, filed, or in any manner considered or acted upon until after the state has received conveyance of the lands from the United States, and then applications from private individuals for the exchange of their lands shall be filed, considered, and acted upon only in the order in which they are received.

Sec. 2108. Any land that is exchanged, relinquished, or otherwise conveyed to the United States under this subpart shall be conveyed pursuant to the property rights acquisition act, Act No. 201 of the Public Acts of 1986, being sections 3.251 to 3.262 of the Michigan Compiled Laws.

SUBPART 4 RECORD OF DEEDS FOR TAX HOMESTEAD LANDS

Sec. 2109. The department shall record, in a suitable book or books kept for that purpose, true copies of all deeds issued by the department for tax homestead lands under the laws of this state providing for the disposal of tax homestead lands, and these copies of deeds issued and deeds which may hereafter be issued are legal records. These legal records, or a transcript of the records, duly certified by the department or other officer having custody of the

records, may be read in evidence in all courts of this state, with the same force and effect as the original tax homestead deed.

Sec. 2110. The registers of deeds in the several counties of this state shall receive and record all copies of tax homestead deeds, duly certified to by the department or other officer having the custody of the records, and the record of the certified copy has the same force and effect as the record of the original deed.

Sec. 2111. The department or other officer having charge of the records described in this subpart shall, upon application from any person, make a certified copy of any tax homestead deed, as provided in this subpart, upon the payment by the applicant of $1.50 for each certified copy. As a condition precedent to the recording of a copy of the deed, there shall be attached to the certified copy a sworn statement of the grantee named in the deed, or his or her assign, heir, trustee, or grantee, that the original deed has been lost or is not available for record, and any person swearing falsely under this subpart is subject to the penalties of perjury.

SUBPART 6 SALE AND RECLAMATION OF SWAMP LANDS

Sec. 2120. (1) The department shall adopt the notes of the surveys on file in the surveyor general's office as the basis upon which they will receive the swamp lands granted to the state by an act of congress of September 28, 1850.

(2) Swamp lands described in subsection (1) shall only be sold in the same legal subdivisions in which they are received by the state, and none of the lands are subject to private entry until the lands have been offered for sale at public auction as provided in former Act No. 187 of the Public Acts of 1851.

(3) The department may procure all necessary books, maps, or plats of swamp lands as required for the speedy and systematic transaction of the business of the department, and all proper charges for the books, maps, or plats shall be paid out of funds received from the sale of lands under former Act No. 187 of the Public Acts of 1851.

SUBPART 7 RECEIPT OF MONEY FROM SALE OF SWAMP LANDS

Sec. 2121. The state treasurer may receive from the United States any money that may have been received, or that may hereafter be received, for any of the swamp lands donated to this state, and the department may take an assignment of all bounty land warrants received for any swamp lands sold in this state since the act of congress approved September 28, 1850, and release the interest of the state in any lands sold or entered with the warrants to purchasers or their assigns.

SUBPART 8 EASEMENTS OVER STATE OWNED LANDS

Sec. 2123. The department may grant an easement over state owned land under the jurisdiction of the department to an individual only if all of the following conditions are met:

(a) The individual does not have other access to the individual's land.

(b) The easement does not conflict with an existing program or management plan of the department or a local ordinance.

(c) The roadway for which the easement is granted is open to public access and is not a roadway for the exclusive use of the grantee.

(d) The easement provides the logical and most feasible access to the individual's land.

(e) The width of the roadway is restricted to the minimum consistent with the quality of the road required.

(f) The individual agrees to construct, if necessary, and maintain the road.

(g) The individual offers a similar roadway easement to the department across the land to which the easement is to provide access.

Sec. 2124. The department shall not grant an easement over state owned land under the jurisdiction of the department if any of the following occur:

(a) The proposed easement is over land designated as a wilderness area, wild area, or natural area under part 351.

(b) The proposed easement is over land in an area closed to vehicular traffic pursuant to a management plan approved by the department.

(c) The construction or use of the new or existing roadway will result in unnecessary damage to or destruction of the surface, soil, animal life, fish or aquatic life, or property.

Sec. 2125. (1) The department shall not grant an easement over state owned land under the jurisdiction of the department to an individual unless that individual has an interest, as that term is defined in this section, in the land to which the easement is to provide access.

(2) As used in this section, "interest" means an estate in possession other than a chattel interest, which may be in severalty, joint tenancy, tenancy by the entireties, or tenancy in common.

(3) The words and phrases used in subsection (2) to define interest shall be construed pursuant to chapter 62 of the Revised Statutes of 1846, being sections 554.1 to 554.46 of the Michigan Compiled Laws; Act No. 126 of the Public Acts of 1925, being section 557.81 of the Michigan Compiled Laws; and Act No. 210 of the Public Acts of 1927, being sections 557.101 to 557.102 of the Michigan Compiled Laws.

Sec. 2126. Before the department may grant an easement under this subpart, the individual applying for the easement shall pay charges as required by the department. The charges shall be the same as those charges required for the granting of an easement under Act No. 10 of the Public Acts of 1953, being section 322.651 of the Michigan Compiled Laws.

Sec. 2127. The revenues received from the charges levied under section 2126, less amounts necessary to pay the expenses of administering this subpart, shall be credited to the state fund from which the revenue is appropriated for the payment in lieu of taxes on the land crossed.

Sec. 2128. (1) If the land to which an easement is granted by the department pursuant to this subpart or former Act No. 421 of the Public Acts of 1982 is subsequently subdivided, as this term is defined by section 102 of the subdivision control act, Act No. 288 of the Public Acts of 1967, being section 560.102 of the Michigan Compiled Laws, the easement shall terminate.

(2) If an individual who obtains an easement pursuant to this subpart violates the terms of the easement, the easement shall terminate, and any rights in the easement shall terminate, after opportunity for a hearing under 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, is provided.

SUBPART 9 EASEMENTS FOR PUBLIC UTILITIES

Sec. 2129. The department may grant easements, upon terms and conditions the department determines just and reasonable, for state and county roads and for the purpose of constructing, erecting, laying, maintaining, and operating pipelines, electric lines, telecommunication systems, and facilities for the intake, transportation, and discharge of water, including pipes, conduits, tubes, and structures usable in connection with the lines, telecommunication systems, and facilities, over, through, under, and upon any and all lands belonging to the state which are under the jurisdiction of the department and over, through, under, and upon any and all of the unpatented overflowed lands, made lands, and lake bottomlands belonging to or held in trust by this state. Except as otherwise specifically provided by law, revenue received as the result of the granting of an easement shall be deposited in the state fund from which revenues are appropriated for the payment in lieu of taxes required to be paid in relation to state land under subpart 14.

SUBPART 10 LAND EXCHANGE FACILITATION FUND

Sec. 2130. As used in this subpart:

(a) "Board" means the Michigan natural resources trust fund board established in part 19.

(b) "Fund" means the land exchange facilitation fund created in section 2134.

(c) "Land" includes lands, tenements, and real estate and rights to and interests in lands, tenements, and real estate.

Sec. 2131. (1) Except as otherwise provided in subsection (2), the department may designate as surplus land any state owned land that is under the control of the department and that has been dedicated for public use and may, on behalf of the state, sell that land if the department determines all of the following:

(a) That the sale will not diminish the quality or utility of other state owned land.

(b) That the sale is not otherwise restricted by law.

(c) That the sale is in the best interests of the state.

(d) That 1 or both of the following conditions are met:

(*i*) The land has been dedicated for public use for not less than 5 years immediately preceding its sale and is not needed to meet a department objective.

(*ii*) The land is occupied for a private use through inadvertent trespass.

(2) The department shall not authorize the sale of surplus land as provided in subsection (1) if the proceeds from the sale of the land will cause the fund to exceed $500,000.00.

Sec. 2132. (1) The department may sell surplus land at a price of not less than its fair market value as determined by an appraisal.

(2) The sale of surplus land shall be conducted by the department through 1 of the following methods:

(a) A sealed or oral bid public auction sale.

(b) A negotiated sale.

(3) The sale of surplus land through a sealed or oral bid public auction sale shall be to the highest bidder. A bid shall not be accepted for less than the fair market value of the surplus land as determined by an appraisal.

(4) A notice of the sale of surplus land shall be given as provided in section 2133.

(5) The proceeds from the sale of surplus land shall be deposited into the fund.

(6) Surplus land that is sold under this subpart shall be conveyed by quitclaim deed approved by the attorney general and shall reserve to the state all rights to coal, oil, gas, and other minerals, excluding sand and gravel, found on, within, and under the land.

Sec. 2133. (1) A notice of a sealed or oral bid public auction sale of surplus lands shall be published at least once in a newspaper as defined in section 1461 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.1461 of the Michigan Compiled Laws, not less than 10 days before the sale. The newspaper shall be published in the county where the surplus lands are located. If a newspaper is not published in the county where the surplus lands are located, the notice shall be published in a newspaper in a county nearest to the county in which the lands are located. A notice shall describe the general location of the surplus lands to be offered at the sale and the date, time, and place of the sale. Upon request, the department shall furnish a list of surplus lands being offered for sale at public auction. The surplus land sale list shall include all of the following:

(a) The date, time, and place of sale.

(b) Descriptions of surplus lands being offered.

(c) The conditions of sale.

(2) A notice of a negotiated sale of surplus lands shall be published at least once in a newspaper as defined in section 1461 of the revised judicature act of 1961 not less than 10 days before the department authorizes the sale. The newspaper shall be published in the county where the surplus lands are located. If a newspaper is not published in the county where the surplus lands are located, the notice shall be published in a newspaper in a county nearest to the county in which the lands are located. A notice shall describe the general location of the surplus lands offered in a negotiated sale and the date, time, and place that the department will meet to authorize the sale. Upon request, the department shall furnish a list of surplus lands being offered in a negotiated sale. The surplus land negotiated sale list shall include both of the following:

(a) The date, time, and place that the department will meet to authorize the sale.

(b) Descriptions of surplus lands being offered.

Sec. 2134. (1) A land exchange facilitation fund is created in the state treasury. The fund shall be administered by the department and shall be used only as provided in section 2135.

(2) Any money, including interest earned by the fund, remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall not be credited to or revert to the general fund.

Sec. 2135. (1) Money from the fund shall be used by the department only for the following purposes:

(a) Upon the recommendation of the department and authorization of the board, the purchase of land for natural resources management, administration, and public recreation that has been approved by the legislature for purchase pursuant to section 1908.

(b) The costs of advertising, appraisals, negotiations, and closings incurred by the department in the sale of surplus land.

(c) The costs of appraisals, negotiations, and closings incurred by the department in the purchase of land authorized by this subpart.

(2) If the board does not authorize or reject a recommendation of the department to purchase land within 60 days, the department may purchase the land identified in the recommendation.

(3) The report required by section 506 shall include a summary of all the disbursements of money from the fund for the purposes enumerated in subsection (1).

Sec. 2136. This subpart does not limit the authority of the department to do 1 or both of the following:

(a) To exchange land as provided in subpart 3.

(b) To sell land as provided in 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.

SUBPART 11 CONSERVATION AND HISTORIC PRESERVATION EASEMENT

Sec. 2140. As used in this subpart:

(a) "Conservation easement" means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

(b) "Historic preservation easement" means an interest in land that provides a limitation on the use of a structure or site that is listed as a national historic landmark under chapter 593, 49 Stat. 593, 16 U.S.C. 461 to 467, commonly known as the historic sites, buildings, and antiquities act; is listed on the national register of historic places pursuant to the national historic preservation act of 1966, Public Law 89-665, 16 U.S.C. 470 to 470a, 470b, and 470c to 470x-6; is listed on the state register of historic sites pursuant to Act No. 10 of the Public Acts of 1955, being sections 399.151 to 399.152 of the Michigan Compiled Laws; or is recognized under a locally established historic district created pursuant to the local historic districts act, Act No. 169 of the Public Acts of 1970, being sections 399.201 to 399.215 of the Michigan Compiled Laws, or requires or prohibits certain acts on or with respect to the structure or site, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the structure or site or in an order of taking, if the interest is appropriate to the preservation or restoration of the structure or site.

Sec. 2141. A conservation easement granted to a governmental entity or to a charitable or educational association, corporation, trust, or other legal entity is enforceable against the owner of the land or body of water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity, including a conservation easement executed before March 31, 1981. The easement shall be recorded with the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value without actual notice.

Sec. 2142. A historic preservation easement granted to a governmental entity or to a charitable or educational association, corporation, trust, or other legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b) is enforceable against the owner of the structure or site subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to the particular structure or site, or the fact that the benefit may be assigned to another governmental entity or legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b), including a historic preservation easement executed before March 31, 1981. The easement shall be recorded with the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value without actual notice.

Sec. 2143. This subpart does not render unenforceable a restriction, easement, covenant, or condition that does not have the benefit of this subpart.

Sec. 2144. (1) A conservation easement or historic preservation easement is an interest in real estate, and a document creating 1 of those easements shall be considered a conveyance of real estate and shall be recorded in accord with Act No. 103 of the Public Acts of 1937, being sections 565.201 to 565.203 of the Michigan Compiled Laws, in relation to the execution and recording of instruments. The easement shall be enforced either by an action at law or by an injunction or other equitable proceedings.

(2) A conservation easement may be assigned to a governmental or other legal entity, which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

(3) A historic preservation easement may be assigned to a governmental or other legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b), and the governmental or legal entity shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

SUBPART 12 ACQUISITION OF SURFACE LANDS FOR WATER QUALITY CONTROL

Sec. 2145. The business of mining and beneficiating low-grade iron ore, as defined in Act No. 77 of the Public Acts of 1951, being sections 211.621 to 211.626 of the Michigan Compiled Laws, and the business of the beneficiating and agglomerating of underground iron ore as defined in Act No. 68 of the Public Acts of 1963, being sections 207.271 to 207.279 of the Michigan Compiled Laws, are declared to be in the public interest and necessary to the public welfare, and the acquisition of private property for development of an adequate water supply, for development of the necessary storage, and for processing and treatment of liquid and solid wastes or other nonmarketable products resulting from the business is declared to be for a public purpose. The department may acquire by condemnation parcels of land that are needed for the establishment of areas, settling ponds, and basins for the storage, processing, and treatment of the wastes or other products, together with the necessary appurtenant canals, pipelines, power lines, sluiceways, roadways, dams, and dikes. The department shall lease, convey, or exchange such parcels of land to any person engaged in or proposing to engage in the business of mining and beneficiating low-grade iron ore or beneficiating and agglomerating underground iron ore, or both, upon a showing to the satisfaction of the department that the person has acquired at least 75% of the necessary land and that the person has been unable to purchase the remaining necessary parcels at a fair market value, and upon the further showing to the satisfaction of the department that the remaining parcels are necessary for the development and operation of the water supply areas, settling ponds, and basins to prevent the unlawful pollution of waters of the state or to comply with the requirements of other public agencies of the state. This subpart does not authorize the taking of any property owned by a political subdivision of the state or devoted to or used for a public or railroad purpose or the taking of any private property lying within the limits of any incorporated city or village or lands within a recorded plat in an unincorporated village.

Sec. 2146. The department shall provide adequate compensation for any owner-occupied residences of owner-occupied or owner-operated farmland that it condemns pursuant to this subpart to enable the owners of the property to purchase like property suitable to their needs and in standard condition from the proceeds of the compensation, which shall at a minimum be equal to the valuation of the housing or agricultural land as of the date when proceedings for the condemnation were initiated by the department.

Sec. 2147. The department shall require as a condition for the issuance of any lease or conveyance authorized by this subpart the payment by the lessee of the full amount of compensation made or to be made by the department for the lands it has condemned. The lease shall contain provisions that protect the ownership of materials that are deposited upon the lands.

SUBPART 13 TAX ON TAX REVERTED, RECREATION, AND FOREST LANDS

Sec. 2150. (1) On December 1 of each year, there shall be paid into the treasury of each county in which are located tax reverted, recreation, or forest lands under the control and supervision of the department, and any other lands held by the department, except lands purchased after January 1, 1933 for natural resource purposes, a tax of $2.50 per acre or major portion of an acre on all the lands that belong to the state on December 1 in each year. This tax shall be in lieu of all other taxes now levied against the state land under any existing law. State land on which payments in lieu of taxes are made pursuant to subpart 14 are exempt from this subpart. The department of treasury shall make a detailed statement of account between the state and each county in which the lands are situated, including the descriptions of the lands, and render the statement to the county treasurer of the county. The department of treasury shall cause a warrant to be drawn on the state treasurer payable for the amount indicated on the statement of account to be due to the county. The county treasurer of each county shall immediately make up a detailed statement of the account between the county and each township and school district, prorating the amount received by the county according to the number of acres of the lands located in each unit. The proration shall be 40% to county general fund, 40% to township general fund, and 20% to school operating fund. The county treasurer shall immediately issue his or her warrant to each of the units according to the statement.

(2) The tax on tax reverted, recreation, forest lands, or other lands under the control of the department on which payments are made under this subpart shall be paid from the general fund.

Sec. 2151. The department shall enter upon its records against each description of the land the amounts provided by this subpart and shall certify the amounts to the department of treasury, which shall draw a warrant on the state treasurer for those amounts, the tax on tax reverted, recreation, forest lands, or other lands under the control of the department to be paid out of any money in the general fund not otherwise appropriated. The amounts shall be forwarded by the department of treasury to the county treasurers.

SUBPART 14 PAYMENT IN LIEU OF TAXES ON CERTAIN STATE LANDS

Sec. 2152. For the purpose of this subpart, the department shall furnish the state tax commission with a list of all real property owned by the state and controlled by the department that was or is acquired on or after January 1, 1933 by purchase from the owner or owners of the real property and the Mason game farm, showing all descriptions.

Sec. 2153. The valuation of lands described in section 2152, for the purposes of this subpart, shall be fixed by the state tax commission on or before February 1 of each year, and the state tax commission shall, on or before February 15 of each year, make a report to the assessing districts of the state in which the lands are located, giving a description of the land in the assessing district held by the state with the valuation as fixed by the state tax commission. The state tax commission shall furnish a value to the assessing officers that shall be at the same value as other property is assessed in the assessment district. In fixing the valuation, the state tax commission shall not include improvements made to or placed upon such lands. Upon receipt of the report by the assessing officer, he or she shall enter upon the assessment rolls of each municipality or assessing district the respective descriptions of the lands with the fixed value and assess such lands for the purposes of this subpart at the same rate as other real property in the assessing district, except that adjustment to the value certified by the state tax commission may be made by the assessing officer to reflect any general adjustment of assessed valuation from the prior year that is not included in the state tax commission computation. If an adjustment to the value certified by the state tax commission is made, the assessing officer shall certify to the department, not later than the first Wednesday after the first Monday in March, the amount and percentage of any general adjustment of assessed valuation and the amount and percentage of any change in the assessment roll; the relation of the total valuation to that reported by the state tax commission; and the adjusted total of conservation land. Assessments for special improvements shall not be included.

Sec. 2154. (1) The treasurer or other officer charged with the collection of taxes for an assessing district shall forward a statement of the assessment to the Lansing office of the department, which shall review the statement and, if the amount of the assessment has been determined according to this subpart, authorize the state treasurer to pay the amount of the assessment by warrant on the state treasury.

(2) If the amount of the assessment is not paid within the time provided for the payment of property taxes pursuant to 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, interest and penalties may be imposed by the local property tax collecting unit in the same manner provided for delinquent property taxes in Act No. 206 of the Public Acts of 1893. However, interest and penalties shall not be imposed for a tax that is collected in the summer for the first time by a local property tax collecting unit.

SUBPART 15 PROTECTION OF STATE OWNED LANDS

Sec. 2155. As used in this subpart, "damages" means the fair market value on the stump or at the mill, whichever is greater of a forest product cut or removed, or the fair and actual value of any other property removed or damaged in trespass, plus any other damages caused before, during, or after the cutting or removal.

Sec. 2156. (1) Unless a person has the written permission of the department or is acting as authorized in R 299.321 or R 299.331 of the Michigan administrative code, a person shall not enter upon, or induce or direct any person to enter upon, any state owned land and cut, or induce or direct to be cut, or remove, or induce or direct to be removed, any logs, posts, poles, ties, shrubs, or trees, or any other forest product. In addition, a person shall not injure or remove, or induce or direct any other person to injure or remove, any buildings, fences, improvements, sand, gravel, marl or other minerals, or other property belonging to or appertaining to state owned land.

(2) A person shall not accept or receive by purchase or otherwise a forest product, improvement, or other property unlawfully cut or removed, or both, knowing the property to have been unlawfully cut or removed, or both, in violation of subsection (1).

Sec. 2157. (1) If the damages are $100.00 or less, for a first violation of section 2156, a person is responsible for a civil fine of not more than $500.00. If the damages are $100.00 or less, for a second or subsequent violation of section 2156, a person 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 $500.00, or both, and the costs of prosecution.

(2) If the damages are more than $100.00 but less than $1,000.00, a person who violates section 2156 is guilty of a misdemeanor, punishable by imprisonment for not more than 180 days, or a fine of not less than $500.00 or more than $5,000.00, or both, and the costs of prosecution.

(3) If the damages are $1,000.00 or more, a person who willfully violates section 2156 is guilty of a felony, punishable by imprisonment for not more than 180 days, or a fine of not less than $1,000.00 or more than $10,000.00, and the costs of prosecution.

Sec. 2158. (1) In addition to the penalties provided for in section 2157, a person convicted of violating this subpart shall forfeit in a civil action filed by the state a sum of up to 3 times the actual damages, but not less than $50.00, that were caused by the unlawful act, and court costs and attorney fees. In addition, the material or other property cut or removed shall be seized by the state, and title to the property shall be in the state. In addition, equipment used to violate this subpart may be seized and disposed of to the best advantage of the state as determined by the department as required under sections 1603 and 1604.

(2) A court in which a conviction for a violation of this subpart is obtained shall order the defendant to forfeit to the state a sum as set forth in subsection (1). If 2 or more defendants are convicted of a violation of this subpart, the forfeiture shall be declared against them jointly.

(3) If a defendant fails to pay upon conviction the sum ordered by the court to be forfeited, the court shall either impose a sentence and require the defendant, as a condition of the sentence, to satisfy the forfeiture in the amount prescribed and fix the manner and time of payment, or make a written order permitting the defendant to pay the sum to be forfeited in installments at those times and in those amounts that in the opinion of the court the defendant is able to pay.

(4) If a defendant defaults in payment of the sum forfeited or of an installment of that sum, the court on motion of the department or upon its own motion may require the defendant to show cause why the default should not be treated as a civil contempt, and the court may issue a summons or warrant of arrest for his or her appearance. Unless the defendant shows that the default was not due to an intentional refusal to obey the order of the court or a failure to make a good faith effort to obtain the funds required for the payment, the court shall find that the default constitutes a civil contempt.

(5) If in the opinion of the court the defendant's default in the payment of the forfeiture does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the forfeiture or of each installment, or revoking the forfeiture or the unpaid portion of the forfeiture, in whole or in part.

(6) A default in the payment of the forfeiture or an installment payment may be collected by any means authorized for the enforcement of a judgment under chapter 60 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.6001 to 600.6098 of the Michigan Compiled Laws.

(7) A court receiving forfeiture damages shall remit the damages with an abstract or register of actions to the department, which shall deposit the damages with the state treasurer, who shall deposit the damages in the fund that was used to purchase the land on which the violation occurred.

(8) All money received by the disposal of seized property under this subpart shall be deposited with the state treasurer, who shall deposit the money in the fund that was used to purchase the land on which the violation occurred.

SUBPART 16 CERTIFIED COPIES OF FIELD NOTES, MAPS, RECORDS, AND PAPERS

Sec. 2160. Upon receipt of an application of any person, and payment by the applicant of the fees provided for in this part, the department shall make and deliver to the applicant a true copy of any field notes, maps, records, or papers possessed by the department appertaining to land titles or to the original surveys of any of the lands in this state. Such a true copy, when certified to by the department under its seal, or the record thereof when recorded in the office of the register of deeds of the proper county, may be admitted in evidence in all courts and places in which the title or boundary of any land is in question, and shall have the same force and effect, as evidence, as though chapter XXXVI, 5 Stat. 384, had named the department as the officer to whom the surveyor general should deliver all the field notes, maps, records, and other papers appertaining to land titles.

Sec. 2161. The following schedule of prices and charges shall be observed by the department:

(a) For field and meander notes, per survey township, $8.00.

(b) For each official certificate with seal, $1.00.

(c) For township plats showing vacant state lands only, each, 25 cents.

(d) For township plats showing vacant state lands with streams, each, 50 cents.

(e) For copies of all records and papers that the department may be required to furnish by law, for each 100 words, 15 cents.

(f) For tax statements on each description of land, per year, 6 cents.

Sec. 2162. The fees received for all services under this part shall be paid into the state treasury and credited to the general fund.

PART 25 ENVIRONMENTAL EDUCATION

Sec. 2501. The purpose of this part is to facilitate an understanding by citizens of this state of the natural environment including an understanding of basic sciences, ecological sciences, and of the connection between human beings, air, land, water, and other living things, as well as how these systems relate to the global environment, thus making it possible for human beings to make informed decisions regarding protection and conservation of the environment and utilization of the natural resources in a wise and prudent fashion.

Sec. 2502. As used in this part:

(a) "Coordinator" means the coordinator of environmental education provided for in section 2503.

(b) "Environmental education" means the teaching of factual information regarding the natural environment, including basic sciences, ecological sciences, agricultural sciences, and other relevant subject matter, and the interdisciplinary process of developing a citizenry that is knowledgeable about the total environment and has the capacity and the commitment to engage in inquiry, problem solving, decision making, and action that will assure environmental quality.

Sec. 2503. The department shall appoint a coordinator of environmental education within the department of natural resources. The coordinator's primary responsibilities shall be to do the following:

(a) Coordinate the efforts of the department related to environmental education.

(b) Work with the department of education and with local education institutions, not-for-profit educational and environmental organizations, broadcasting entities, and private sector interests to support development of curricula, special projects, and other activities to increase understanding of the basic sciences and of natural resources and the environment.

(c) Provide technical assistance to school districts, schools, and educators wishing to undertake projects including, but not limited to, water quality, air quality monitoring, or habitat protection.

(d) If an environmental education advisory committee is established pursuant to section 2504, coordinate with the department in staffing the advisory committee.

(e) Provide assistance to the commission in implementing statewide environmental education strategies developed by the department and the department of education.

(f) Assist in identifying grants or other sources of funding for innovative educators and students of environmental education.

(g) Recommend the appropriate mechanism for establishment of a clearinghouse of environmental education materials, which would make environmental education materials available to educators throughout the state.

(h) Provide or support existing training and professional development programs for educators.

(i) Assist in the incorporation of environmental education into curriculum objectives for the state's elementary and secondary schools and develop appropriate assessment mechanisms.

(j) Promote awareness of section 1171a of the school code of 1976, Act No. 451 of the Public Acts of 1976, being section 380.1171a of the Michigan Compiled Laws.

Sec. 2504. (1) The director may establish an environmental education advisory committee. If the director establishes an environmental education advisory committee, the advisory committee shall be broadly representative of the following:

(a) Executive agencies.

(b) Environmental or conservation organizations.

(c) Business or industry.

(d) Individuals with knowledge and experience in general education.

(e) Individuals with knowledge and practical experience in environmental education.

(f) Individuals with knowledge and experience in the production of food and fiber products.

(g) The general public.

(2) If the director establishes an environmental education advisory committee under subsection (1), the director shall charge the advisory committee with 1 or more of the following responsibilities:

(a) To advise the coordinator, the department, and the department of education on matters related to environmental education in this state.

(b) To assist in coordination of and promotion of environmental education activities in the state.

(c) To coordinate and assist in the development of a scope and sequence model for environmental education in the state's elementary and secondary schools.

(d) To assist in the incorporation of environmental education into curriculum objectives for the state's elementary and secondary schools and to develop appropriate assessment mechanisms.

(e) To coordinate and assist in the compilation of curriculum materials to assist in the utilization of the scope and sequence model developed pursuant to subdivision (c) and to meet curriculum objectives.

(f) To assist the coordinator in implementing a statewide environmental education strategies.

(g) To recommend appropriate teacher training.

(h) To perform other duties as identified by the director.

(3) The business that an environmental education advisory committee established under this section may perform shall be conducted at a public meeting of the advisory committee 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. If established pursuant to this section, the environmental education advisory committee shall actively solicit public testimony at its meetings.

(4) By July 19, 1997, the director shall prepare and submit to the legislature a report that evaluates the effectiveness of this part and that recommends whether the environmental education advisory committee, if established pursuant to this section, should be continued.

Sec. 2505. (1) The environmental education fund is created within the state treasury.

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

(3) Twenty-five percent of the civil fines collected annually under the following parts or their predecessor acts, but not more than $150,000.00 in any fiscal year, shall be appropriated to the fund:

(a) Part 31.

(b) Part 111.

(c) Part 115.

(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 shall be used to implement this part and may be used for the establishment and operation of a clearinghouse of environmental education materials, which would make environmental education materials available to educators throughout the state.

PART 35 USE OF WATER IN MINING LOW-GRADE IRON ORE

Sec. 3501. As used in this part:

(a) "Low-grade iron ore" means iron-bearing rock in the Upper Peninsula of this state that is not merchantable as ore in its natural state and from which merchantable ore can be produced only by beneficiation or treatment.

(b) "Low-grade iron ore mining property" includes the ore beneficiation or treatment plant and other necessary buildings, facilities, and lands located in the Upper Peninsula of this state.

Sec. 3502. Substantial deposits of low-grade iron ore are located in the Upper Peninsula of this state. The development and continuation of the industry of mining and beneficiating low-grade ores will provide employment and generally improve economic conditions in that area and will be in the public interest and for the public welfare of this state. As the mining and beneficiating of the low-grade iron ore requires considerable quantities of water, it is necessary that persons engaged in or about to engage in the mining and beneficiation of low-grade iron ores be assured of an adequate and continuing supply of water for the operations to protect the large capital expenditures required for mills, plants, and other improvements. Therefore, the use of water in connection with the mining and beneficiation of low-grade iron ores is in the public interest, for the public welfare, and for a public purpose, and permits for the use of water or waters may be issued by the department in connection with the mining and beneficiation of low-grade iron ores as provided in this part.

Sec. 3503. The department may grant permits for the drainage, diversion, control, or use of water when necessary for the operation of a low-grade iron ore mining property. The operator of the low-grade iron ore mining property may make application for the permit to the department in the form prescribed by the department. The application shall contain information and data as may be prescribed by the department in its rules and regulations. Not later than 60 days following receipt of an application, the department shall fix the time and place for a public hearing on the application and shall publish notice of the hearing. The notice shall be published twice in each county involved in at least

1 newspaper of general circulation in the county. At the hearing, the applicant and any other interested party may appear, present witnesses, and submit evidence. Following the hearing, the department may grant the permit and publish notice of the granting of the permit, in the manner provided for publication of notice of hearing, upon finding the following conditions:

(a) That the proposed drainage, diversion, control, or use of waters is necessary for the mining of substantial deposits of low-grade iron ore, and that other feasible and economical methods of obtaining a continuing supply of water for that purpose are not available to the applicant.

(b) That the proposed drainage, diversion, control, or use of waters will not unreasonably impair the interests of the public or of riparians in lands or waters or the beneficial public use of lands, and will not endanger the public health or safety.

Sec. 3504. Neither the state nor any of its officers, agents, or employees shall incur any liability because of the issuance of a permit under this part or of any act or omission of the permittee or his or her agents or servants under or in connection with a permit issued under this part.

Sec. 3505. Every permit granted under this part shall be for a term as is necessary to permit the mining to exhaustion and beneficiation of all low-grade iron ore referred to in the permit application, but not to exceed 50 years. The department may prescribe in the permit such time as it considers reasonable for the commencement or completion of any operations or construction under the permit or the exercise of the rights granted in the permit. The original term of the permit or the time allowed for the performance of any condition in the permit may be extended by the department upon application of the permittee.

Sec. 3506. Every permit issued by the department under this part shall give to the permittee the right to use the water specified in the permit at the times, in the manner, in the quantity, and under the circumstances as specified in the permit, subject to the conditions contained in the permit, and shall be irrevocable except for a breach or violation of the terms and conditions of the permit. If the department finds, upon consideration of the needs of the applicant, the public interest to be served by the use of the water by the applicant, and all other facts relating to the use of the water, that the public interest requires the inclusion in the permit of a provision that will authorize modification or revocation of the permit, then the department may provide for modification or revocation of the permit by including in the permit the specific grounds upon which the permit may be modified or revoked by the department in the public interest. A permit issued pursuant to this part shall not be revoked for breach or violation of the terms and conditions of the permit or be revoked or modified upon other grounds specified in the permit unless the permittee has been given an opportunity to be heard on the grounds for the proposed revocation or modification after 30 days' written notice to the permittee. A permit shall not be revoked for breach or violation of the terms and conditions of the permit unless the permittee has been given an opportunity to correct or remedy the alleged breach or violation within a reasonable time and has failed to do so. Every notice shall specify the grounds for the proposed revocation or modification and, in the event of a proposed modification, the extent of the modification. If a violation of the conditions of a permit exists that in the judgment of the department threatens the public interest in the waters involved as to require abatement without first giving 30 days' written notice to the permittee, the department may issue an emergency order for abatement, which order shall have the same validity as if a 30 days' written notice had been given and the permittee had been granted a hearing. The emergency order shall remain in force no longer than 21 days from its effective date. Failure to comply with an emergency order constitutes grounds for revocation of the permit.

Sec. 3507. (1) The department is responsible for enforcing this part.

(2) At any hearing, the department, or its duly authorized agents, has the power to administer oaths, to take testimony and compel the introduction of written evidence, to issue subpoenas, and to compel the attendance of witnesses.

Sec. 3508. The department shall promulgate rules to implement this part. Any interested person has the right of judicial review from any decision, order, or permit made or granted by the department under 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.

PART 37 WATER POLLUTION CONTROL FACILITIES; TAX EXEMPTION

Sec. 3701. As used in this part:

(a) "Facility" means any disposal system, including disposal wells, or any treatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating water pollution caused by industrial waste.

(b) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any paper or wood, which is capable of polluting the waters of the state.

(c) "Treatment works" means any plant, pumping station, incinerator, or other works or reservoir used primarily for the purpose of treating, stabilizing, isolating, or holding industrial waste.

(d) "Disposal system" means a system used primarily for disposing of or isolating industrial waste and includes pipelines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne industrial waste to a point of disposal, treatment, or isolation, except that which is necessary to the manufacture of products.

Sec. 3702. (1) An application for a water pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of industrial waste pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any facility.

Sec. 3703. If the department finds that the facility is designed and operated primarily for the control, capture, and removal of industrial waste from the water, and is suitable, reasonably adequate, and meets the intent and purposes of part 31, the department shall notify the state tax commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

Sec. 3704. (1) For the period subsequent to the effective date of the certificate and continuing as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed 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.

(2) Tangible personal property purchased and installed as a component part of the facility shall be exempt from both of the following:

(a) Sales taxes imposed under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(b) Use taxes imposed under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(3) The certificate shall state the total acquisition cost of the facility entitled to exemption.

Sec. 3705. The state tax commission shall send a water pollution control tax exemption certificate, when issued, by certified mail to the applicant, and certified copies by certified mail to the assessor of the taxing unit in which any property to which the certificate relates is located or to be located and to the department of treasury, which copies shall be filed of record in their offices. Notice of the state tax commission's refusal to issue a certificate shall be sent by certified mail to the applicant, to the department of treasury, and to the assessor.

Sec. 3706. (1) The state tax commission, on notice by certified mail to the applicant and opportunity for a hearing, on its own initiative or on complaint of the department, the department of treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, shall modify or revoke the certificate if any of the following appear:

(a) The certificate was obtained by fraud or misrepresentation.

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate.

(c) The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose.

(2) On the mailing by certified mail to the certificate holder, the department of treasury, and the local assessor of notice of the action of the state tax commission modifying or revoking a certificate, the certificates shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable if a certificate had not been issued are immediately due and

payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

Sec. 3707. A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the finding and order of the state tax commission in the manner and form and within the time provided by 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.

Sec. 3708. The state tax commission may promulgate rules as it considers necessary for the administration of this part. These rules shall not abridge the authority of the department to determine whether or not industrial waste pollution control exists within the meaning of this part.

PART 45 BONDS FOR PREVENTION AND ABATEMENT OF WATER POLLUTION

Sec. 4501. The term "municipality" or "municipalities" as used in this part means and includes a county, city, village, township, school district, metropolitan district, port district, drainage district, authority, or other governmental authority, agency, or department within or of the state with power to acquire, construct, improve, or operate facilities for the prevention or abatement of water pollution, or any combination of such governmental agencies.

Sec. 4502. The legislature hereby determines all of the following:

(a) That it is essential for the public health, safety, and welfare of the state and the residents of the state to undertake a complete program of construction of facilities to abate and prevent pollution of the water in and adjoining the state, the program to be undertaken by the state in cooperation with any municipalities and with such aid from the United States government or its agencies as is available.

(b) That abating and preventing pollution of the water in and adjoining the state is essential to the encouragement of business, industrial, agricultural, and recreational activities within the state.

(c) That the encouragement of business, industrial, agricultural, and recreational activities in the state by abating and preventing pollution of the water in and adjoining the state will benefit the economy of the state by encouraging businesses and industries to locate or expand within the state in order to provide more employment within the state.

(d) That abating and preventing pollution of the water in and adjoining the state is in furtherance of the purpose and the public policy of the state as expressed in sections 51 and 52 of article IV of the state constitution of 1963 and to carry out the remaining unfunded portions of the program for which electors of the state authorized the issuance of general obligation bonds.

Sec. 4503. The state shall borrow the sum of $335,000,000.00 and issue the general obligation bonds of the state, pledging the faith and credit of the state for the payment of the principal and interest on the bonds, for the purpose of providing money for the planning, acquisition, and construction of facilities for the prevention and abatement of water pollution, consisting of trunk and interceptor sewers, sewage treatment plants and facilities, improvements and additions to existing sewage treatment plants and facilities, and such other structures, devices, or facilities as will prevent or abate water pollution, and for the making of grants, loans, and advances to municipalities, in accordance with conditions, methods, and procedures established by law.

Sec. 4504. (1) The bonds shall be issued in 1 or more series, each series to be in such principal amount, to be dated, to have such maturities which may be either serial, term, or term and serial, to bear interest at a rate or rates not to exceed 6% per annum if issued before September 19, 1982 and not to exceed 18% per annum if issued on or after September 19, 1982, to be subject or not subject to prior redemption and, if subject to prior redemption with such call premiums, to be payable at such place or places, to have or not have such provisions for registration as to principal only or as to both principal and interest, and to be in such form and to be executed in such manner as determined by resolution to be adopted by the administrative board. The administrative board may in the resolution provide for the investment and reinvestment of bond sales proceeds and such other details for the bonds and the security of the bonds as may be considered to be necessary and advisable. The bonds or any series of the bonds shall be sold for not less than the par value of the bonds and may be sold, as authorized by the state administrative board, either at a public sale or at a publicly negotiated sale. Unless an exception from prior approval is available pursuant to subsection (2), the bonds prior to their issuance shall be approved by the department of treasury, but, except as provided by subsection (2), 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.

(2) The requirement of subsection (1) for obtaining the prior approval of the department of treasury before issuing bonds under this part shall be subject to sections 10 and 11 of chapter III of Act No. 202 of the Public Acts of 1943, being sections 133.10 and 133.11 of the Michigan Compiled Laws, and the department of treasury has the same authority

as provided by section 11 of chapter III of Act No. 202 of the Public Acts of 1943 to issue an order providing or denying an exception from the prior approval required by subsection (1) for bonds authorized by this part.

Sec. 4505. The proceeds of sale of the bonds or any series of the bonds and any premium and accrued interest received on the delivery of the bonds shall be deposited in the treasury in a separate account and shall be disbursed from the separate account only for the purposes for which the bonds have been authorized and for the expense of issuing the bonds. Proceeds of sale of the bonds or any series of the bonds shall be expended for the purposes set forth in this part in the manner provided by law.

Sec. 4506. Bonds issued under this part are 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, and the bonds and the interest on the bonds are exempt from all taxation by the state or any of its political subdivisions.

Sec. 4507. Bonds issued under former Act No. 76 of the Public Acts of 1968 or this part are securities in which all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies, 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 any funds, including capital, belonging to them or within their control.

Sec. 4508. The question of borrowing the sum of $335,000,000.00 and issuing bonds of the state for the purpose 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 general November election to be held on November 5, 1968. The question submitted shall be substantially as follows:

"Shall the state of Michigan borrow the sum of $335,000,000.00 and issue general obligation bonds of the state therefor pledging the full faith and credit of the state for the payment of principal and interest thereon for the purpose of planning, acquiring and constructing facilities for the prevention and abatement of water pollution and for the making of grants, loans and advances to municipalities, political subdivisions and agencies of the state for such purposes, the method of repayment of said bonds to be from the general fund of the state?

Yes [ ]

No [ ]".

Sec. 4509. The secretary of state shall take such steps and perform all acts as are necessary to properly submit the question to the electors of the state qualified to vote on the question at the general November election to be held on November 5, 1968.

Sec. 4510. After the issuance of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part, or any series of the bonds, the legislature shall each year make appropriations fully sufficient to pay promptly when due the principal of and interest on all outstanding bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part and all costs incidental to the payment of that principal and interest.

Sec. 4511. Bonds shall not be issued under this part unless the question set forth in section 4508 is approved by a majority vote of the qualified electors voting on the question at the general November election to be held on November 5, 1968.

PART 59 AIR POLLUTION CONTROL FACILITY; TAX EXEMPTION

Sec. 5901. As used in this part, "facility" means machinery, equipment, structures, or any part or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of controlling or disposing of air pollution that if released would render the air harmful or inimical to the public health or to property within this state. Facility includes an incinerator equipped with a pollution abatement device in effective operation. Facility does not include an air conditioner, dust collector, fan, or other similar facility for the benefit of personnel or of a business. Facility also means the following, if the installation was completed on or after July 23, 1965:

(a) Conversion or modification of a fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(b) Installation of a new fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(c) A process change involving production equipment made to satisfy the requirements of part 55 and rules promulgated under that part. The maximum cost allowed shall be 25% of the cost of the new process unit but shall not exceed the cost of the conventional control equipment applied on the basis of the new process production rate on the preexisting process.

Sec. 5902. (1) An application for a pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any air pollution control facility as defined in this part.

Sec. 5903. If the department finds that the facility is designed and operated primarily for the control, capture, and removal of pollutants from the air, and is suitable, reasonably adequate, and meets the intent and purposes of part 55 and rules promulgated under that part, the department shall notify the state tax commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

Sec. 5904. (1) For the period subsequent to the effective date of the certificate and continuing as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed 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.

(2) Tangible personal property purchased and installed as a component part of the facility is exempt from both of the following:

(a) Sales taxes imposed under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(b) Use taxes imposed under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(3) The certificate shall state the total acquisition cost of the facility entitled to exemption.

Sec. 5905. The state tax commission shall send an air pollution control tax exemption certificate, when issued, by certified mail to the applicant, and certified copies by certified mail to the assessor of the taxing unit in which any property to which the certificate relates is located or to be located and to the department of treasury, which copies shall be filed of record in their offices. Notice of the state tax commission's refusal to issue a certificate shall be sent by certified mail to the applicant, to the department of treasury, and to the assessor.

Sec. 5906. (1) The state tax commission, on notice by certified mail to the applicant and opportunity for a hearing, shall, on its own initiative or on complaint of the department, the department of treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, modify or revoke the certificate if any of the following appear:

(a) The certificate was obtained by fraud or misrepresentation.

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate.

(c) The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose.

(d) Substantial noncompliance with part 55 or any rule promulgated under that part.

(2) On the mailing by certified mail to the certificate holder, the department of treasury, and the local assessor of notice of the action of the state tax commission modifying or revoking a certificate, the certificate shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable if a certificate had not been issued are immediately due and payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

Sec. 5907. A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the finding and order of the state tax commission in the manner and form and within the time provided by 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.

Sec. 5908. The state tax commission may adopt rules as it considers necessary for the administration of this part. These rules shall not abridge the authority of the department to determine whether or not air pollution control exists within the meaning of this part.

PART 61 EMISSIONS FROM VESSELS

Sec. 6101. A marine vessel while navigating in the waters of this state within 1 mile of land shall not blow flues unless necessary under an emergency condition for the safe navigation of the vessel or to alleviate or extinguish a flash fire in the boiler up-takes or during departure-arrival operations.

Sec. 6102. A person who is convicted of violating this part is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00. Each occurrence is a separate offense.

PART 63 MOTOR VEHICLE EMISSIONS TESTING FOR WEST MICHIGAN

Sec. 6301. For the purposes of this part, the words and phrases contained in sections 6302 to 6304 have the meanings ascribed to them in those sections.

Sec. 6302. (1) "Alternative fuel" means the following fuel sources used to propel a motor vehicle:

(a) Compressed natural gas.

(b) Diesel fuel.

(c) Electric power.

(d) Propane.

(e) Any other source as defined by rule promulgated by the department.

(2) "Certificate of compliance" means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part. The department shall consult with the department of natural resources when appropriate to determine that rules and standards will comply with federal requirements and sound environmental considerations.

(3) "Certificate of waiver" means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to this part.

(4) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(5) "Consumer protection" means protecting the public from unfair or deceptive practices.

(6) "Contractor" means a person who enters into a contract with the department to operate public motor vehicle inspection stations under this part.

(7) "Cut point" means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(8) "Department" means the state transportation department.

Sec. 6303. (1) "Emission control device" means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

(2) "Initial inspection" means an inspection performed on a motor vehicle for the first time in a test cycle.

(3) "Inspection" means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(4) "Maintenance" means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(5) "Motor vehicle" or "vehicle" means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, of 10,000 pounds or less gross vehicle weight, which is required to be registered for use upon the public streets and highways of this state 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. For purposes of this part, motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(6) "National ambient air quality standards" means the air quality standards for outside air as established in the clean air act.

Sec. 6304. (1) "Pollutants" means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) "Public inspection station" means a facility for motor vehicle inspection operated under contract with the department as provided in this part.

(3) "Tamper with" means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(4) "Test-only network" means a network of inspection stations that perform official vehicle emissions inspections and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services.

Sec. 6305. (1) There is established a motor vehicle emissions inspection and maintenance program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for vehicle emissions inspections under this part shall be deposited in the state treasury to the credit of the motor vehicle emissions inspection and maintenance program fund.

(2) The vehicle emissions inspection account is created in the motor vehicle emissions inspection and maintenance program fund. Money in the vehicle emissions inspection account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs required to implement requirements of the motor vehicle emissions inspection and maintenance program under this part, administration and oversight by the department, enforcement of the motor vehicle emissions inspection and maintenance program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions inspection and maintenance program.

(3) Funds remaining in the motor vehicle emissions inspection and maintenance program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions inspection and maintenance program fund for appropriation in the following year.

Sec. 6306. (1) Each motor vehicle subject to this part shall be inspected for emissions as provided in this part. A person shall not operate a motor vehicle subject to this part whose certificate of compliance has expired or who has not received a time extension or waiver and whose vehicle fails to meet emission cut points established by the department or other emission control requirements established by the department in this part. If a vehicle subject to testing under this part has not been tested within the previous 12 months, the prospective seller of the vehicle shall have the vehicle tested and complete necessary repairs before offering the vehicle for sale.

(2) To enforce this section, the department shall implement and administer a motor vehicle emissions inspection and maintenance program designed to meet the performance standards for a motor vehicle emissions inspection and maintenance program as established by the United States environmental protection agency in 40 C.F.R. 51.351. The motor vehicle emissions inspection and maintenance program shall include the following test procedures and components:

(a) Biennial testing.

(b) Test-only network.

(c) Transient mass-emission evaporative system, purge, and pressure testing on 1981 and later model year vehicles using the IM240 driving cycle.

(d) Two-speed idle testing, antitampering, and pressure test on 1975 to 1980 vehicles in accordance with the following:

(*i*) Visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(*ii*) Pressure test of the evaporative system for light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(e) On-board diagnostic check for vehicles so equipped.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this part.

(4) Equipment and test procedures shall meet the requirements of appendices A through E to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

(5) Vehicles shall be subject to inspection according to the following:

(a) The first initial inspection under this part for each even numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an even numbered calendar year.

(b) The first initial inspection under this part for each odd numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an odd numbered calendar year.

(6) The motor vehicle emissions inspection and maintenance program shall be implemented by January 1, 1995 in the counties of Kent, Ottawa, and Muskegon. However, those counties containing areas that would be in attainment of the national ambient air quality standards for ozone, given baseline emissions for that county, but for emissions emanating from outside of the state are excluded if the United States environmental protection agency determines, based on a study of formation and transport of ozone, that the control of emissions in those areas would not significantly contribute to the attainment of the national ambient air quality standards for ozone as promulgated under the clean air act.

(7) The department, in consultation with the department of state and the department of natural resources, may promulgate rules for the administration of the motor vehicle emissions inspection and maintenance program, including, but not limited to, all of the following:

(a) Standards for public inspection station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(*i*) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(*ii*) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(8) The department may promulgate rules to require the inspection of motor vehicles through the use of remote sensing devices. These rules may provide for use of remote sensing devices for research purposes, but shall not provide for any checklanes or other measures by which motorists will be stopped on highways or other areas open to the general public.

(9) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this part and the rules promulgated under this part and for which the required certificate of compliance has not been obtained.

(10) The department of natural resources shall submit an application requesting redesignation of the Grand Rapids ozone nonattainment area consisting of the counties of Kent and Ottawa and the Muskegon ozone nonattainment area consisting of the county of Muskegon to the United States environmental protection agency not later than November 14, 1993. If the application for redesignation is approved by the United States environmental protection agency, implementation of the motor vehicle emissions inspection and maintenance program authorized by this part is suspended and shall only be reimplemented if required as a contingency measure included in a maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period.

(11) Implementation of a motor vehicle emissions inspection and maintenance program authorized by this part shall be suspended if the classification of the Grand Rapids and Muskegon ozone nonattainment areas is adjusted from moderate ozone nonattainment areas to transitional or marginal nonattainment areas by the United States environmental protection agency pursuant to its authority under section 181 of the clean air act, 42 U.S.C. 7511, or if the United States environmental protection agency determines that a motor vehicle emissions inspection and maintenance program is not applicable or is not necessary for either of these areas to meet the requirements of the clean air act.

Sec. 6307. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 2 years.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a motor vehicle emissions inspection and maintenance program without a valid certificate of compliance or certificate of waiver.

Sec. 6308. Any area in this state subject to this part that is redesignated by the United States environmental protection agency as being in attainment with the national ambient air quality standards for ozone and has demonstrated maintenance of the standards without a motor vehicle emissions inspection and maintenance program is exempt from the requirements of this part. However, if the maintenance plan for any such redesignated area as approved by the United States environmental protection agency includes an inspection and maintenance program as part of its contingency plan, the department, in consultation with the department of natural resources, shall implement the required inspection and maintenance program.

Sec. 6309. The state should pursue judicial relief, either alone or in cooperation with other states, from the requirements or penalties imposed by the clean air act.

Sec. 6310. (1) The department, in consultation with the department of state, may establish an inspection fee not to exceed $24.00 adjusted annually by the percentage increase or decrease in the Detroit consumer price index rounded to the nearest whole dollar. In establishing the fee or other funding sources, the department shall include the direct and indirect costs of the vehicle emissions inspection, estimated start-up costs, estimated cost for a public information program, administration and oversight by the department, and enforcement costs by the department of state. The fee, if established, shall be paid by the motor vehicle owner to the operator of the inspection station at the time of an initial vehicle emissions inspection.

(2) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each biennial inspection period at a time set by the department.

(3) The owner of a motor vehicle subject to this part that has failed an initial vehicle emissions inspection is entitled to 1 free reinspection after the completion of necessary repairs designed to bring the vehicle into compliance with clean air act standards.

(4) By the fifteenth day of each month, each inspection station shall remit the amount of the inspection fee required for administration and oversight under the contractual agreement entered into with the department to the department of treasury for deposit in the motor vehicle emissions inspection and maintenance program fund.

Sec. 6311. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) Vehicles that are licensed as historic vehicles under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(d) A motor vehicle that has as its only fuel source an alternative fuel.

(e) A motorcycle.

(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the year of the next biennial inspection for the vehicle model year according to section 6306(5).

Sec. 6312. (1) The department shall contract with a private entity or entities for the design, construction, equipment, establishment, maintenance, and operation of public inspection stations to conduct vehicle emissions inspections as required by this part.

(2) The department shall seek to obtain the highest quality service for the lowest cost through a competitive evaluation process for contractors.

(3) The department shall provide adequate public notice of the requests for proposals by advertising in a newspaper of general circulation in the state not later than November 13, 1993. The department shall award the contract with reasonable promptness by written notice to the responsible offeror whose proposal has been evaluated and is

determined to be the most advantageous to the state, taking into consideration the requirements of this part and rules promulgated under this part, or as otherwise required by the department of management and budget.

(4) In addition to the other requirements of this part, the director of the department shall give balanced consideration during the contractor evaluation process to all of the following factors:

(a) The public convenience of the inspection station, including the provisions for average mileage to an inspection station and the waiting time at a station.

(b) The unit cost per inspection.

(c) The degree of technical content of the proposal, including test-accuracy specifications and quality of testing services, and the data and methodology used to prepare the network design, and other technological aspects of the proposal.

(d) The experience of the contractor and the probability of a successful performance by the contractor, including an evaluation of the capacity, resources, and technical and management skills to adequately construct, equip, operate, and maintain a sufficient number of public inspection stations to meet the demand.

(e) The financial stability of the contractor. The department may make reasonable inquiries to determine the financial stability of an offeror. The failure of an offeror to promptly supply information in connection with such an inquiry is grounds for a determination of nonresponsibility with respect to that offeror.

Sec. 6313. In addition to any other provisions of this part, the contract authorized by section 6312 shall contain all of the following provisions:

(a) The minimum requirements for adequate staff, equipment, management, and hours of operation of inspection stations.

(b) The submission of reports and documentation concerning the operation of official inspection stations as required by this part.

(c) Surveillance to ensure compliance with vehicular emissions standards, procedures, rules, regulations, and laws.

Sec. 6314. (1) The number and locations of the public inspection stations shall provide convenient service for motorists and shall be consistent with all of the following:

(a) The network of stations shall be sufficient to assure short driving distances and to assure that waiting times to get a vehicle inspected do not exceed 15 minutes more than 4 times a month.

(b) When there are more than 4 vehicles in a queue waiting to be tested, spare lanes shall be opened and additional staff employed to reduce wait times.

(c) A person shall not be required to make an appointment for a vehicle inspection.

(d) There shall be adequate queuing space for each inspection lane at each inspection station to accommodate on the station property all motor vehicles waiting for inspection.

(e) There shall be at least 2 inspection stations located within each county subject to the motor vehicle emissions inspection and maintenance program under this part.

(2) Public inspection stations shall inspect and reinspect motor vehicles in accordance with this part.

(3) A public inspection station shall inspect and reinspect motor vehicles in accordance with the rules promulgated under this part by the department. The inspection station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under section 6305. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection and, if appropriate, the repairs needed or likely to be needed to bring the vehicle into compliance with the standards and criteria.

(4) Stations shall provide a process by which vehicles being reinspected shall be accommodated before vehicles waiting for an initial inspection.

Sec. 6315. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air act standards in accordance with the inspection report is at least $300.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index rounded to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Owners of vehicles subject to a transient IM240 emission test may apply to the department for a certificate of waiver after failing an initial inspection and a subsequent reinspection even though the dollar limit stated in subsection (1) for the cost of maintenance already performed has not been met. The department shall perform a complete,

documented physical and functional diagnosis and inspection. If the diagnosis and inspection shows that no additional emission-related repairs are needed or that the vehicle presents prohibitive inspection problems or is inappropriate for inspection, the department may issue a certificate of waiver.

(4) Issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

(5) A temporary certificate of waiver, valid for not more than 15 days, may be issued to a motor vehicle to allow time for necessary maintenance and reinspection. A temporary certificate of waiver may be issued not more than twice for the same motor vehicle.

Sec. 6316. (1) The department, directly or by contract, shall implement continuing education programs to begin 6 months before the commencement of the public inspection program in a county. A continuing education program shall consist of a component designed to educate the general public about the motor vehicle emissions inspection and maintenance program and a component to inform those who will perform maintenance requirements under this part.

(2) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. This shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty-covered repairs for eligible vehicles that fail a test.

(3) The department shall evaluate, inspect, and provide quality assurance for the inspection and maintenance program established under this part to ensure proper and accurate emission inspection results. The department shall be responsible for issuance of certificates of waiver and time extensions.

(4) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R. 51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

Sec. 6317. A contractor shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

Sec. 6318. (1) An employee, owner, or operator of a public inspection station shall not furnish information about the name or other description of a repair facility or other place where maintenance may be obtained. The department shall develop guidelines for provision of this information in cooperation with the department of state, and shall provide the house and senate standing committees dealing with transportation matters with those guidelines before January 1, 1995.

(2) Each public inspection station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice which states the following:

"A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.".

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6315.

Sec. 6319. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by employees of the department for purposes of monitoring and enforcement of this part.

Sec. 6320. A person shall not provide false information to a public inspection station or the department about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

Sec. 6321. (1) A person who violates section 6317, forges, counterfeits, or alters an inspection certificate, or knowingly possesses an unauthorized inspection certificate is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6318, 6319, or 6320 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

PART 65 MOTOR VEHICLE EMISSIONS TESTING FOR SOUTHEAST MICHIGAN

Sec. 6501. For the purposes of this part, the words and phrases contained in sections 6502 to 6504 have the meanings ascribed to them in those sections.

Sec. 6502. (1) "Certificate of compliance" means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part.

(2) "Certificate of waiver" means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to the requirements of this part.

(3) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(4) "Consumer protection" means protecting the public from unfair or deceptive practices.

(5) "Cut point" means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(6) "Department" means the state transportation department.

Sec. 6503. (1) "Emission control device" means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

(2) "Fleet testing station" means a testing station that is authorized to conduct inspections on 10 or more vehicles owned or leased by 1 person.

(3) "Initial inspection" means an annual inspection performed on a motor vehicle for the first time in a test cycle.

(4) "Inspection" means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(5) "Maintenance" means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(6) "Motor vehicle" means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, that has a gross vehicle weight rating of 10,000 pounds or less and which is required to be registered for use upon the public streets and highways of this state under Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws. For purposes of this part, motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(7) "National ambient air quality standards" means the air quality standards for outside air as established in the clean air act.

Sec. 6504. (1) "Pollutants" means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) "Tamper with" means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(3) "Test cycle" means a 12-month period corresponding with the expiration date for registration of the vehicle.

(4) "Testing station" means a facility for motor vehicle inspection as provided in this part.

Sec. 6505. (1) Access to records of the department and the department of state shall be in accordance 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.

(2) Requests for access to records shall be in writing and shall identify the specific record.

(3) There shall be a reasonable charge for the reproduction and mailing of identifiable records.

Sec. 6506. Not later than January 1, 1996, the department shall implement and administer a decentralized motor vehicle emissions inspection test and repair program in compliance with former section 172(b)(11)(B) of the clean air act

in effect before November 15, 1990 in the counties of Wayne, Oakland, and Macomb. The inspection and maintenance program shall be implemented by licensed testing stations as authorized by the department.

Sec. 6507. (1) The department may implement and administer only under 1 of the conditions set forth in subsection (2) a decentralized motor vehicle emissions inspection test and repair program designed to meet the performance standards for a motor vehicle emissions testing program as established by the United States environmental protection agency in 40 C.F.R. 51.352 in the counties of Wayne, Oakland, and Macomb, using bar 90 testing equipment, including a visual antitampering check, or an equivalent system approved by the United States environmental protection agency. This inspection and maintenance program, if implemented, shall be carried out by licensed testing stations as authorized by the department. The visual antitampering check described in this subsection includes visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light duty gas vehicles and light duty gas trucks with a gross vehicle weight rating of 10,000 pounds or less.

(2) The decentralized test and repair program described in subsection (1) shall only be implemented under 1 of the following conditions:

(a) As a contingency measure included in the maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The contingency measure shall include authority to expand the program to Washtenaw county in addition to the counties described in subsection (1) if other measures are not sufficient to meet the maintenance plan. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period.

(b) An application for redesignation as an ozone attainment area is approved by the United States environmental protection agency but a condition of that approval requires implementing the motor vehicle emissions testing program described in subsection (1) in order to comply with section 107(d)(3)(E) and section 182(b)(4) of the clean air act, 42 U.S.C. 7407 and 7511a.

(c) An application for redesignation as an ozone attainment area is not approved by the United States environmental protection agency and the program described in subsection (1) is required to meet the requirements of section 182(b) of the clean air act, 42 U.S.C. 7511a. The program described in subsection (1) may be expanded to include Washtenaw county, and, if necessary to meet the basic emissions inspection and maintenance program requirements of the clean air act, the department may expand the program to include St. Clair, Livingston, and Monroe counties in addition to the counties described in subsection (1) if other measures are not sufficient to meet the requirements of section 182(b) of the clean air act.

(d) The department may only exercise the contingency set forth in subdivision (c) if:

(*i*) The department notifies the legislature that the event set forth in subdivision (c) has occurred and that the contingency will be implemented after a period of 45 days.

(*ii*) The legislature fails to adopt any amendments to this part that alter the requirements of this section within the 45-day period.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this section.

(4) Equipment and test procedures for the program described in subsection (1) shall meet the requirements of appendices A through D to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

(5) The department, in consultation with the department of state and the department of natural resources, may promulgate rules for the administration of the inspection and maintenance program under this section or section 6506, including, but not limited to:

(a) Standards for testing station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(*i*) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(*ii*) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for

vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(6) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this section or section 6506 and the rules promulgated under this section or section 6506 and for which the required certificate of compliance has not been obtained.

Sec. 6508. (1) There is established a motor vehicle emissions testing program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for motor vehicle emissions inspections and for delinquency charges under this part and from any other source shall be deposited in the state treasury to the credit of the motor vehicle emissions testing program fund.

(2) The motor vehicle emissions inspection account is created in the motor vehicle emissions testing program fund. Money in this account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs required to implement requirements of the motor vehicle emissions testing program under this part, administration and oversight by the department and the independent third-party organization, enforcement of the motor vehicle emissions testing program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions testing program.

(3) Funds remaining in the motor vehicle emissions testing program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions testing program fund for appropriation in the following year.

(4) If any of the funds collected from the fee in section 6511(1) for administration and oversight including reimbursement of independent third-party organizations are appropriated or expended for any purposes other than those specifically listed in subsection (2), section 6520(2), and section 6532, the authority to collect fees granted under section 6511(1) shall be suspended until the funds appropriated or expended for purposes other than those specifically listed in subsection (2), section 6520(2), and section 6532 are returned to the fund established in subsection (1).

Sec. 6509. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 1 test cycle.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a vehicle emission and maintenance program without a valid certificate of compliance or certificate of waiver.

Sec. 6510. (1) A testing station shall not falsely represent that the motor vehicle has passed or failed an inspection or reinspection.

(2) A testing station shall not falsely represent repairs or falsely estimate the price for repairs that are necessary to allow a person to obtain a certificate of compliance or a certificate of waiver.

Sec. 6511. (1) A testing station may charge a person a fee of not more than $13.00. This part or the rules promulgated under this part do not prohibit a testing station from providing inspections for a fee of less than $13.00. However, the fee charged shall not be less than $3.00. Three dollars from the fee charged under this subsection shall be remitted by the testing station to the department of treasury as provided in subsection (7) and shall be used by the department for administration and oversight. One dollar from the $3.00 shall be used by the department to reimburse the independent third-party organization pursuant to section 6520. A testing station shall not make a separate charge for issuing a certificate of compliance, notice of failure, or certificate of waiver.

(2) A testing station shall provide 1 free reinspection of a motor vehicle if the motor vehicle failed a previous inspection performed by the testing station and if the motor vehicle is presented for reinspection within 90 days of the previous inspection, except that a testing station is not obligated to perform a free reinspection if the person presenting the motor vehicle for reinspection does not present the notice of failure previously issued by the testing station.

(3) A testing station that has performed repairs to bring into compliance a motor vehicle that has failed an inspection at another testing station within the previous 90 days, as evidenced by the notice of failure, shall provide to the person presenting the motor vehicle a free reinspection and shall provide a certificate of compliance for the motor vehicle if it passes the reinspection.

(4) A testing station shall not charge a fee to issue a certificate of compliance for a motor vehicle that has qualified for and received a low emission tune-up if the testing station performed the low emission tune-up on the motor vehicle.

(5) A testing station shall provide 1 free reinspection of a motor vehicle if a fee was charged by the testing station for an initial inspection of the motor vehicle that was not completed under any condition described in the rules.

(6) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each annual inspection test cycle at a time set by the department.

(7) By the fifteenth day of each month, each testing station shall remit the amount of the fee required for administration and oversight under subsection (1) to the department of treasury for deposit in the motor vehicle emissions testing program fund.

Sec. 6512. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) A motor vehicle that has as its only fuel source compressed natural gas, diesel fuel, propane, electric power, or any other source as defined by rule promulgated by the department.

(d) A vehicle that is licensed as a historic vehicle under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(e) A motorcycle.

(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the next annual inspection for the vehicle model year.

Sec. 6513. (1) The motor vehicles subject to this part and the rules promulgated under this part include the following:

(a) Each registered motor vehicle for the model years 1975 and later that is owned by a person whose permanent place of residence is in a county subject to this part.

(b) All motor vehicles for the model years 1975 and later that belong to a fleet and that are predominately garaged, operated, or maintained in a county subject to this part.

(2) A motor vehicle that is otherwise subject to this part and the rules promulgated under this part under subsection (1) is not subject to this part and the rules promulgated under this part if its registration is being renewed and it will not be subject to this part and the rules promulgated under this part because of its model year when its currently valid registration expires.

(3) A vehicle identified on a certificate of title issued by the department of state as an assembled vehicle is not subject to this part and the rules promulgated under this part.

(4) A motor vehicle is not subject to this part and the rules promulgated under this part if its application for registration renewal is accompanied by both a memorandum of federal clean air act exemption issued pursuant to federal regulation and a certification by the applicant identifying the vehicle, and if the application for registration is filed with the department.

Sec. 6514. Any 1 of the following shall be accepted by the department of state as evidence that a motor vehicle was purchased as a new motor vehicle within the previous 12 months:

(a) A registration or certificate of title indicating the motor vehicle is of a model year which has been offered for sale in this state for not more than 12 months.

(b) A record of the department of state indicating that the motor vehicle was purchased as new within the previous 12 months.

(c) A seller's statement to the buyer that indicates that the motor vehicle being sold is a new motor vehicle and that is dated within the previous 12 months.

(d) A manufacturer's statement of origin showing the first retail sale as being within the previous 12 months.

(e) A bill of sale from a manufacturer or a dealer franchised to sell new motor vehicles of that particular make that indicates that the motor vehicle being sold is new and that is dated within the previous 12 months.

Sec. 6515. An application for a motor vehicle registration shall be accepted by the department of state as evidence of a motor vehicle owner's permanent place of residence.

Sec. 6516. (1) A person shall not engage in the business of inspecting motor vehicles under this part unless the person is a motor vehicle repair facility registered pursuant to section 14 of the motor vehicle service and repair act, Act No. 300 of the Public Acts of 1974, being section 257.1314 of the Michigan Compiled Laws, and has received a license to operate a testing station from the department.

(2) A person shall not be licensed to operate a testing station unless the person has an established place of business where inspections are to be performed during regular business hours, where records required by this part and the rules promulgated under this part are to be maintained, and that is equipped with an instrument or instruments of a type that comply with and are capable of performing inspections of motor vehicles under this part.

(3) A person licensed as a testing station shall perform inspections under this part at the established place of business for which the person is licensed. A person shall inform the department immediately of a change in the address of an established place of business at which the person is licensed as a testing station.

(4) A person shall obtain a separate license and pay a separate fee for each established place of business at which a testing station is to be operated.

(5) A testing station may establish and operate mobile or temporary testing station locations if they meet all of the following conditions:

(a) The instrument used at the mobile or temporary location is capable of meeting the performance specifications for instruments set forth in rules promulgated under this part while operating in the mobile or temporary station environment.

(b) The owner of a motor vehicle inspected at the mobile or temporary location shall be provided with a free reinspection of the motor vehicle, at the established place of business of the testing station or at any mobile or temporary testing station location operated by the testing station.

(c) Personnel at the licensed established place of business location shall, at all times, know the location and hours of operation of the mobile or temporary testing station or stations.

(d) The records required by this part and the rules promulgated under this part relating to inspections performed and the instrument or instruments used at a mobile or temporary testing station shall be maintained at a single established place of business that is licensed as a testing station.

(e) The documents printed as required by the rules by an instrument used at a mobile or temporary testing station location shall contain the testing station number and the name, address, and telephone number of the testing station's established place of business.

(6) A testing station may use remote sensing devices as a complement to testing otherwise required by this part.

(7) A testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(8) A testing station shall display a valid testing station license issued by the department in a place and manner conspicuous to its customers.

Sec. 6517. (1) Application for original and replacement testing station licenses shall be submitted on forms provided by the department.

(2) An applicant for a testing station license shall submit to the department a description of the business to be licensed, which shall include, in addition to other information required by this part and the rules promulgated under this part, all of the following:

(a) The repair facility registration number issued to the applicant pursuant to the motor vehicle service and repair act, Act No. 300 of the Public Acts of 1974, being sections 257.1301 to 257.1340 of the Michigan Compiled Laws.

(b) The name of the business and the address of the business location for which a testing station license is being sought.

(c) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(d) The name and identification number issued by the department of each emission inspector employed by the applicant.

(e) A description, including the model and serial number, of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part and the date the instrument was purchased by the applicant.

(f) The estimated capacity of the applicant to perform inspections.

(3) The fee for a testing station license is $50.00 and shall accompany the application for a license submitted to the department.

(4) A testing station license shall take effect on the date it is approved by the department and shall remain in effect until this part expires, the license is surrendered by the station, revoked or suspended by the department, or until the motor vehicle repair facility registration of the business has been revoked or suspended by the department of state, surrendered by the facility, or has expired without timely renewal.

(5) If a testing station license has expired by reason of surrender, revocation, or expiration of repair facility registration, the business shall not resume operation as a testing station until the repair facility registration has been reinstated and a new, original application for a testing station license has been received and approved by the department and a new license fee paid.

(6) When the repair facility registration has been suspended, the testing station may resume operation without a new application when the repair facility registration suspension has ended.

Sec. 6518. (1) If the ownership of a testing station changes, a new original license and payment of a new license fee is required, and the station shall not operate until its application is approved by the department. For the purposes of this section, "change of ownership" means a change in the ownership of a station which is either a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of a change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

Sec. 6519. (1) A testing station shall display at the established place of business an information sign that bears an identifying symbol developed by the department and is worded as follows: "OFFICIAL EMISSION TESTING STATION".

(2) The sign shall be displayed on the outside premises of the testing station so that it is clearly and readily visible and readable to persons in motor vehicles as they enter the testing station property.

(3) A testing station shall also conspicuously display the price charged by the station for an inspection preceded by a dollar sign and printed in Arabic numerals.

(4) A testing station shall maintain posted business hours during which time representatives of the independent third party required to make certifications of the equipment used by the testing station and the emission inspectors used by the testing station may conduct inspections of the station, instruments and records required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the testing station.

(5) A testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

Sec. 6520. (1) A testing station shall submit annually to the department evidence of certification of its testing equipment and emission inspectors by an independent third-party organization. The certification shall provide that the testing equipment and emission inspectors meet the requirements of this part and the rules promulgated under this part and the requirements of the clean air act. If deficiencies are noted by the third-party certifying organization, the testing station shall submit a written explanation of corrective action accepted by the third-party organization with the certification.

(2) The department shall contract with the third-party organization to establish a random inspection system for testing stations. Funds from the fee imposed pursuant to section 6511 shall be used for this purpose.

Sec. 6521. (1) A fleet owner or lessee shall not perform inspections under this part or the rules promulgated under this part unless the fleet owner or lessee has received from the department a permit to operate a fleet testing station.

(2) A person shall not receive a permit to operate a fleet testing station unless the person has an established location where inspections are to be performed, where records required by this part and the rules promulgated under this part are to be maintained, that is equipped with an instrument or instruments of a type that comply with this part or the rules promulgated under this part, and that is capable of performing inspections of motor vehicles under this part and the rules promulgated under this part.

(3) A person with a permit to operate a fleet testing station shall perform inspections under this part and the rules promulgated under this part only at the established location for which the person has the permit. A person shall inform the department immediately of a change in the address of the established location for which the person has a permit to operate a fleet testing station.

(4) A fleet testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(5) Applications for original and replacement fleet testing station permits shall be submitted on forms provided by the department.

(6) An applicant for a fleet testing station shall submit to the department a description of the operation to be licensed, which shall include, in addition to other information required by this part and the rules promulgated under this part, all of the following:

(a) The name of the business and the address of the location for which a fleet testing station permit is being sought.

(b) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(c) The name and identification number issued by the department of each emission inspector employed by the applicant.

(d) A description, including the model and serial number of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part, and the date the equipment was purchased by the applicant.

(e) A description of the fleet to be inspected, including the number and types of motor vehicles.

(f) A statement signed by the applicant certifying that the applicant maintains and repairs, on a regular basis, the fleet vehicles owned by the applicant.

(7) A fleet testing station permit shall take effect on the date it is approved by the department and shall expire 1 year from that date. A fleet testing station permit shall be renewed automatically, unless the fleet testing station informs the department not to renew it or unless the department has revoked the permit.

(8) A person shall obtain a separate permit for each location at which fleet inspections are performed.

(9) By the fifteenth day of each month, each fleet testing station shall remit $1.00 for each vehicle inspected during the preceding month to the department of treasury for deposit in the motor vehicle emissions testing program fund.

Sec. 6522. (1) If the ownership of a fleet testing station changes, a new permit is required, and the fleet testing station shall not operate until its application for a new permit is approved by the department. For purposes of this section, "change of ownership" means a change in the ownership of a station that is a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of any change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

Sec. 6523. A fleet testing station shall perform inspections under this part and the rules promulgated under this part only upon its own fleet motor vehicles, unless separately licensed as a testing station.

Sec. 6524. (1) A fleet testing station, its records, equipment required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the fleet testing station shall be open to inspection by an independent third party as otherwise required by this part.

(2) A fleet testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

Sec. 6525. A fleet testing station shall not falsely represent that a motor vehicle has passed or failed an inspection or reinspection.

Sec. 6526. A fleet testing station shall issue a certificate of compliance for a vehicle that has passed an inspection or reinspection or received a low emission tune-up.

Sec. 6527. (1) A person shall not be required to make an appointment for a vehicle inspection.

(2) A testing station shall inspect and reinspect motor vehicles in accordance with this part and the rules promulgated under this part by the department. The station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under this part. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection.

Sec. 6528. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air standards in accordance with the inspection report is at least $200.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index and rounded off to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Except for the program described in section 6506, issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

(4) A temporary certificate of waiver, valid for not more than 14 days, may be issued to the owner of a motor vehicle by the secretary of state to allow time for necessary maintenance and reinspection. The secretary of state may charge the fee permitted for a temporary registration under section 802(5) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.802 of the Michigan Compiled Laws.

Sec. 6529. (1) A person shall not perform inspections under this part or the rules promulgated under this part unless the person receives approval from the department as an emission inspector.

(2) Before a person is approved as an emission inspector, the person shall have passed an examination approved by the department that is designed to test the person's competency to perform inspections.

(3) A person who fails an examination to obtain approval as an emission inspector may retake the examination when it is next offered.

(4) A person's approval by the department as an emission inspector shall take effect on the date it is issued by the department and shall expire upon surrender by the person or upon revocation by the department.

(5) The department, after notice and opportunity for a hearing, may deny, suspend, or revoke a person's approval as an emission inspector if the department finds that an applicant or an emission inspector does any of the following:

(a) Commits fraud, misrepresentation, trickery, or deceit in connection with the inspection or repair of a motor vehicle under this part or a rule promulgated under this part.

(b) Violates this part or a rule promulgated under this part.

(c) Improperly performs an instrument maintenance, recordkeeping, or inspection procedure required by the rules promulgated under this part.

(d) Incompetently performs an inspection.

(e) Is denied certification by the independent third party responsible for certifications under this part.

(6) Instead of proceeding under subsection (5), or as a means of settling a matter pursuant under subsection (5), the department may do any of the following:

(a) Enter into an assurance of discontinuance with an applicant or an emission inspector.

(b) Enter into a probation agreement with an applicant or an emission inspector.

(c) Enter into a suspension, revocation, or denial agreement with an applicant or an emission inspector.

(d) Require an applicant or an emission inspector to take training or an examination, or both.

Sec. 6530. Unless the person is licensed as a fleet testing station, a person who owns a motor vehicle required to be inspected under this part and the rules promulgated under this part shall have the motor vehicle inspected and shall obtain a certificate of compliance or a waiver only at a testing station licensed under this part and the rules promulgated under this part.

Sec. 6531. The department may issue a certificate of compliance for a motor vehicle when the department makes a determination that the motor vehicle complies with the requirements of this part and the rules promulgated under this part. The department shall establish a system for selecting which motor vehicles qualify for the department's determination as to compliance.

Sec. 6532. (1) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. These procedures and mechanisms shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test.

(2) The department shall provide quality assurance for the inspection and maintenance program established under this part through certification of competency by a third party to ensure proper and accurate emission inspection results. The third party each year shall certify the testing equipment and the emission inspectors employed by a testing station.

(3) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R. 51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

Sec. 6533. A testing station or a fleet testing station shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

Sec. 6534. (1) An employee, owner, or operator of a public inspection station shall not furnish information, except information provided by the state or otherwise required by this part, about the name or other description of a repair facility or other place where maintenance may be obtained.

(2) Each testing station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice that states the following:

"A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.".

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6528.

Sec. 6535. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by employees of the department for purposes of monitoring and enforcement of this part.

Sec. 6536. A person shall not provide false information to a public inspection station or the department about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

Sec. 6537. (1) A person who violates section 6533 or forges, counterfeits, or alters an inspection certificate or who knowingly possesses an unauthorized inspection certificate, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6534, 6535, or 6536 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

Sec. 6538. Funds remaining in the vehicle emissions inspection and maintenance fund created by former Act No. 83 of the Public Acts of 1980 shall be transferred on January 1, 1996 to the motor vehicle emissions testing program fund created in this part. These funds shall be available for appropriation to the department for start-up costs to implement the motor vehicle emissions testing program in this part, to conduct a public information program to educate the general public about requirements of this part, and for other activities related to the motor vehicle emissions testing program.

Sec. 6539. Act No. 83 of the Public Acts of 1980, being sections 257.1051 to 257.1076 of the Michigan Compiled Laws, is repealed January 1, 1996.

PART 85 FERTILIZERS

Sec. 8501. As used in this part:

(a) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(b) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of nitrogen fertilizers into that aquifer.

(c) "Aquifer sensitivity region" means an area in which aquifer sensitivity estimations are sufficiently uniform to warrant their classification as a unit.

(d) "Brand or product name" means a term, design, or trademark used in connection with 1 or more grades of fertilizer.

(e) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(f) "Custom mixed fertilizer" means a mixed fertilizer formulated according to individual specifications furnished by the consumer before mixing.

(g) "Department" means the department of agriculture.

(h) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(i) "Fertilizer" means a substance containing 1 or more recognized plant nutrients, which substance is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempted by rules promulgated under this part.

(j) "Fertilizer material" means any substance containing any recognized plant nutrient, which is used as a fertilizer or for compounding mixed fertilizers.

(k) "Grade" means the percentage guarantee of total nitrogen, available phosphorus, or available phosphoric acid, P_2O_5, and soluble potassium, or soluble potash, K_2O, of a fertilizer and shall be stated in the same order as listed in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(*l*) "Groundwater" means underground water within the zone of saturation.

(m) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(n) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(o) "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(p) "Labeling" means all labels and other written, printed, or graphic matter upon or accompanying fertilizer at any time, and includes advertising or sales literature.

(q) "Manufacture" means to process, granulate, compound, produce, mix, blend, or alter the composition of fertilizer or fertilizer materials.

(r) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, and the regulations promulgated under that act.

(s) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth, including mixtures of fertilizer and pesticide.

(t) "Nitrogen fertilizer" means a fertilizer that contains nitrogen as a component.

(u) "Official sample" means a sample of fertilizer taken by a representative of the department of agriculture in accordance with acceptable methods.

(v) "Package" or "packaged" means any type of product regulated by this part that is distributed in individual containers with a capacity not exceeding 55 gallons for liquids and not exceeding 200 pounds for solids.

(w) "Percent" and "percentage" mean the percentage by weight.

(x) "Soil conditioner" means a substance that is used or intended for use solely for the improvement of the physical nature of soil and for which no claims are made for plant nutrients content. Soil conditioner does not include guaranteed plant nutrients, hormones, bacterial inoculants, and products used in directly influencing or controlling plant growth.

(y) "Specialty fertilizer" means any fertilizer distributed primarily for nonfarm use, such as use in connection with home, gardens, lawns, shrubbery, flowers, golf courses, parks, and cemeteries, and may include fertilizers used for research or experimental purposes.

(z) "Ton" means a net ton of 2,000 pounds avoirdupois.

(aa) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a fertilizer.

Sec. 8502. (1) A packaged fertilizer distributed in this state, including packaged custom mixed fertilizer and soil conditioner, shall have placed on or affixed to the package or container a label setting forth in clearly legible and conspicuous form all of the following:

(a) The net weight of the contents of the package, except that peat or peat moss shall be designated by volume.

(b) Brand or product name.

(c) Name and address of the licensed manufacturer or distributor.

(d) Grade. This subdivision does not apply to peat or peat moss or material sold as a soil conditioner.

(e) Guaranteed analysis. This subdivision does not apply to peat or peat moss or material sold as a soil conditioner.

(2) A fertilizer distributed in this state in bulk shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form all of the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Brand or product name.

(e) Grade.

(f) Guaranteed analysis.

(g) Net weight.

(3) Fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name and address of the licensed manufacturer or distributor and the name and grade of the product.

Sec. 8503. (1) The guaranteed analysis for the primary nutrients of nitrogen, available phosphoric acid, P_2O_5, and soluble potash, K_2O, shall be expressed as whole numbers on the label in the following order and form:

Total nitrogen, N. _____%

Available phosphoric acid, P_2O_5. _____%

Soluble potash, K_2O. _____%

(2) A mixed fertilizer may not be sold if the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble potash totals less than 20%, except specialty fertilizers permitted to be sold by product registration issued by the department.

(3) If elemental guarantees are required by rules, as authorized by section 8516, the guaranteed analysis shall be expressed in terms of percentage of available phosphorus, P, and soluble potassium, K.

(4) Additional plant nutrients, other than nitrogen, phosphorus, and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis, at levels not less than those established by rules. The materials shall be approved by the director of the department, by and with the advice of the director of the Michigan agricultural experiment station.

Sec. 8504. (1) A person shall not manufacture or distribute fertilizer in this state, except specialty fertilizer and soil conditioners, until the appropriate groundwater protection fee provided in section 8715 has been submitted, and a license to manufacture or distribute has been obtained by the manufacturer or distributor from the department upon payment of a fee of $100.00:

(a) For each fixed location at which fertilizer is manufactured in this state.

(b) For each mobile unit used to manufacture fertilizer in this state.

(c) For each location out of the state that applies labeling showing out-of-state origin of fertilizer distributed in this state to nonlicensees.

(2) An application for a license to manufacture or distribute fertilizer shall include:

(a) The name and address of the applicant.

(b) The name and address of each bulk distribution point in the state not licensed for fertilizer manufacture or distribution. The name and address shown on the license shall be shown on all labels, pertinent invoices, and bulk storage for fertilizers distributed by the licensee in this state.

(3) The licensee shall inform the director in writing of additional distribution points established during the period of the license.

(4) A distributor shall not be required to obtain a license if the distributor is selling fertilizer of a distributor or a manufacturer licensed under this part.

(5) All licenses to manufacture or distribute fertilizer expire on December 31 of each year.

Sec. 8505. A person shall not distribute a specialty fertilizer or soil conditioner until it is registered by the manufacturer or distributor with the department and the appropriate groundwater protection fees provided for in section 8715 have been submitted. An application in duplicate listing each brand and product name of each grade of specialty fertilizer or soil conditioner shall be made on a form furnished by the director and shall be accompanied with a fee of $25.00 for each brand and product name of each grade. Labels for each brand and product name of each grade shall accompany the application. Upon approval of an application by the director, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year.

Sec. 8506. (1) An inspection fee of 10 cents per ton shall be paid to the department for all fertilizers or soil conditioners sold or distributed in this state. For peat or peat moss, the inspection fee shall be 2 cents per cubic yard. This fee shall not apply to registered specialty fertilizers or soil conditioners sold or distributed only in packages of 10 pounds or less.

(2) Payment of the inspection fee shall be made on the basis of tonnage reports setting forth the number of tons of each grade of fertilizer and soil conditioner and the number of cubic yards of peat or peat moss sold or distributed in this state. The reports shall cover the periods of the year and be made in a manner specified by the director of the department in rules, and shall be filed with the department not later than 30 days after the close of each period. The

time may be extended for cause for an additional 15 days only on written request to, and approval by, the department. Remittance to cover the inspection fee shall accompany each tonnage report. Payments due of less than $1.00, or refunds resulting from overpayment of less than $1.00, are waived. A penalty of 10% of the amount due, with a minimum of $10.00, shall be assessed against the licensee for all amounts not paid when due. Unpaid fees and penalties constitute a debt and become the basis of a judgment against the licensee. Records upon which the statement of tonnage is based are subject to department audit.

(3) When more than 1 person is involved in the distribution of fertilizer or soil conditioners, the last person who is licensed or has the fertilizer or soil conditioner registered and who distributes to a nonlicensee is responsible for reporting the tonnage and paying the inspection fee.

Sec. 8507. (1) Each licensee shall maintain for a period of 3 years a record of quantities and grades of fertilizer and soil conditioner sold or distributed by the licensee and shall make the records available for inspection and audit on request of the department. Each vendor of fertilizer and soil conditioner shall maintain for a period of 3 years shipping data such as invoices and freight bills pertaining to fertilizer and soil conditioner that establish date and origin of the shipment, and shall make the records available for inspection and audit on request of the department.

(2) Tonnage payments, tonnage reports, or other information furnished or obtained under this part shall not be disclosed in a way that will divulge the business operations of any one person.

Sec. 8508. (1) This part does not require the payment of inspection fees for sales or exchanges of fertilizers or soil conditioners between manufacturers who mix fertilizer or soil conditioner materials for sale, or prevent the free and unrestricted shipment of fertilizers or soil conditioners for further processing to manufacturers licensed under this part.

(2) This part does not apply to a carrier in respect to a fertilizer or soil conditioner delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

Sec. 8509. A person shall not do any of the following:

(a) Sell or distribute fertilizer or soil conditioner in violation of the requirements of this part or the rules promulgated under this part.

(b) Make a guarantee, claim, or representation in connection with the sale of fertilizer or soil conditioner, or in their labeling, which is false, deceptive, or misleading.

(c) Manufacture or distribute a fertilizer or soil conditioner without a license as required by this part or distribute a specialty fertilizer or soil conditioner unless registered as required by this part.

(d) Make a false or misleading statement in an application for a license or in an inspection fee or statistical report or in any other statement or report filed with the department pursuant to this part.

(e) Attach or cause to be attached an analysis stating that a fertilizer contains a higher percentage of a plant nutrient than it in fact contains.

Sec. 8510. (1) The department shall inspect, sample, and analyze fertilizers and soil conditioners distributed within this state at a time and place and to the extent necessary to determine compliance with this part.

(2) Department representatives and inspectors shall have free access during regular business hours to all premises where fertilizers or soil conditioners are manufactured, sold, or stored, and to all trucks or other vehicles and vessels used in the transportation of a fertilizer or soil conditioner in this state, to determine compliance with this part. Department representatives and inspectors may stop any conveyance transporting fertilizer or soil conditioner for the purpose of inspecting and sampling the products and examining their labeling.

(3) A manufacturer or distributor of fertilizer or soil conditioner shall submit to the department, upon request, product samples, copies of labeling, or any other data or information that the department may request concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by the manufacturer or distributor within this state.

(4) The director may, upon reasonable notice, require a person to furnish any information relating to the identification, nature, and quantity of fertilizers that are or have been used on a particular site and to current or past practices that may have affected groundwater quality. Information required under this subsection is confidential business information and is not 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.

Sec. 8511. The director of the department, by a duly authorized agent, may select from any package or bulk lot of commercial fertilizer or soil conditioner exposed for sale in this state a sample to be used for the purposes of an official analysis for comparison with the label affixed to the package or bulk lot on sale. The director of the department, his or her deputy, or an authorized agent of the director of the department, may at any time seize or stop the sale of a fertilizer

or soil conditioner that is misbranded, fails to meet a guarantee, is being manufactured or distributed by an unlicensed person, or otherwise fails to comply with this part.

Sec. 8512. (1) Upon confirming the presence of nitrate in groundwater in concentration exceeding 50% of the maximum contaminant level for nitrates in 20% of drinking water wells associated with an aquifer sensitivity region or fertilizer use activity, the director of the department shall provide educational materials to fertilizer users within that region and may do 1 or more of the following:

(a) Establish a regional stewardship team to assist in the coordination of local activities designed to prevent further contamination of groundwater and to identify all probable sources of nitrate.

(b) Conduct further monitoring to determine the concentration and spatial distribution of nitrates in the aquifer.

(c) Perform an evaluation of activities in the monitoring region to determine the sources of nitrate that may have contributed to the contamination.

(d) Implement a stewardship program in the aquifer sensitivity region pursuant to part 87.

(e) Assist the regional stewardship team in designing a regional plan to prevent further contamination of groundwater by fertilizer use activities, which plan must include an assessment of all probable sources of nitrates.

(f) Establish a program that provides incentives for users to increase nitrogen use efficiency.

(2) Upon approval of a regional plan by the director of the department, the regional stewardship team is eligible to receive grants from the freshwater protection fund established by part 87.

(3) The director of the department may, upon written request, authorize persons to land-apply materials containing fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

Sec. 8513. The department may promulgate rules regarding the bulk storage of fertilizers.

Sec. 8514. A person who violates this part is guilty of a misdemeanor. A person who violates this part is liable for all damages sustained by a purchaser of a product sold in violation of this part. In an enforcement action, a court, in addition to other penalties provided by law, may order restitution to a party injured by the purchase of a product sold in violation of this part.

Sec. 8515. The director of the department may revoke the license of a manufacturer or distributor or the registration of a fertilizer product or soil conditioner, or may refuse to license a manufacturer or distributor or to register a fertilizer product or soil conditioner, upon satisfactory evidence that the licensee has engaged in fraudulent or deceptive practices or has evaded or attempted to evade this part or the rules promulgated under this part. A license or registration shall not be revoked or refused until the licensee or applicant has been given the opportunity by the director of the department to appear for a hearing.

Sec. 8516. The director of the department shall enforce this part and may promulgate rules.

PART 91 SOIL EROSION AND SEDIMENTATION CONTROL

Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

(2) "Authorized public agency" means a state, local, or county agency designated pursuant to section 9110 to enforce soil erosion and sedimentation control requirements with regard to land uses undertaken by it.

(3) "County agency" means an officer, board, commission, department, or other entity of county government.

(4) "County enforcing agency" means an agency designated by a county board of commissioners pursuant to section 9105.

(5) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

(6) "Land use" means a use of land that may result in an earth change, including but not limited to subdivision, residential, commercial, industrial, recreational or other development, private and public highway, road and street construction, and drainage construction.

(7) "Local agency" means a county, city, village, or charter township.

(8) "Local enforcing agency" means an agency designated by a city, village, or charter township in accordance with section 9106.

(9) "Public agency" means a general law township, a school board, or any other local or regional public body, authority, board, or commission that is not a state, local, or county agency.

(10) "Rules" means the rules promulgated pursuant to section 9104.

Sec. 9102. (1) "Sediment" means solid particulate matter, mineral or organic, that has been deposited in water, is in suspension in water, is being transported, or has been removed from its site of origin by the processes of soil erosion.

(2) "Soil conservation district" means a soil conservation district authorized by section 9305.

(3) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.

(4) "State agency" means a principal state department.

Sec. 9103. (1) The department of agriculture, with the assistance of the soil conservation districts and in consultation with appropriate state and local agencies, shall prepare and submit to the department for the department's approval a unified statewide soil erosion and sedimentation control program. The program shall identify land uses which may be governed by this part and shall include recommendations, guidelines, and specifications for the control of soil erosion for the identified land uses to prevent sedimentation of the waters of this state. The program shall also set forth the means by which agricultural practices shall be in compliance with the guidelines and specifications as set forth in this part.

(2) The department shall make available to the department of agriculture:

(a) Information on the effects of sediments on water quality and the damages of water resources that may be attributed to those effects.

(b) The location of those waters of this state that are degraded or have potential for being degraded by sedimentation.

(c) Water quality standards that shall be included in the program to protect the designated uses of the waters of this state.

Sec. 9104. The department, with the assistance of the department of agriculture, shall promulgate rules for a unified soil erosion and sedimentation control program, including provisions for the review and approval of site plans, land use plans, or permits relating to erosion control and sedimentation control. The department shall notify and make copies of proposed rules available to state, local, county, and public agencies affected by this part for review and comment before promulgation.

Sec. 9105. (1) A county is responsible for the administration and enforcement of the rules throughout the county except within a city, village, or charter township that has in effect an ordinance conforming to this section and except with regard to land uses of authorized public agencies approved by the department pursuant to section 9110.

(2) The county board of commissioners, by resolution, shall designate a county agency, or a soil conservation district upon the concurrence of the soil conservation district, as the county enforcing agency responsible for administration and enforcement in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of this part and the rules. A copy of the resolution and all subsequent amendments to the resolution shall be forwarded to the department.

(3) Two or more counties may provide for joint enforcement and administration by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws.

Sec. 9106. (1) A city, village, or charter township by ordinance may provide for soil erosion and sedimentation control on public and private land uses within its boundaries except that a charter township ordinance shall not be applicable within a village that has in effect an ordinance providing soil erosion and sedimentation control. An ordinance may be more restrictive than, but may not make lawful that which is unlawful under, this part and the rules. The ordinance may adopt all or part of the rules by reference, shall designate a local enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public land uses within the city, village, or charter township except land uses of an authorized public agency designated pursuant to section 9110. The city, village, or charter township may consult with a soil conservation district for assistance or advice in the preparation of the ordinance.

(2) On July 1, 1975, an ordinance that is not approved by the department as conforming to the minimum requirements of this part and the rules has no force or effect. With regard to a city, village, or charter township ordinance in effect prior to July 1, 1974, a copy of the ordinance shall be submitted to the department before September 1, 1974. With regard to an ordinance or an amendment proposed to be adopted on or after July 1, 1974, a copy of the proposed ordinance or proposed amendment shall be submitted to the department for approval before

adoption. The department shall forward a copy to the appropriate soil conservation district for review and comment. Within 90 days after it receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the city, village, or charter township of its approval or disapproval along with recommendations for revision to the extent that the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this part or the rules. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment shall be considered to have been approved by the department.

Sec. 9107. A county or local enforcing agency shall notify the department of all violations of this part or the rules or violations of the ordinance, including violations attributable to a land use by an authorized public agency.

Sec. 9108. As a condition for the issuance of a permit, the county or local enforcing agency may require the applicant to deposit with the clerk of the local agency in the form of cash, a certified check, or an irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the legislative body of the local agency, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the county or local enforcing agency.

Sec. 9109. (1) An authorized public agency or a county or local enforcing agency may enter into an agreement with a soil conservation district for assistance and advice in overseeing and reviewing compliance with adequate soil erosion and sedimentation control procedures and in reviewing existing or proposed land uses, land use plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control. In addition to or in the absence of such agreements, soil conservation districts may perform periodic reviews and evaluations of the agency's operation procedures pursuant to standards and specifications developed in cooperation with the respective districts and as approved by the department. Such reviews and evaluations shall be submitted to the administering agency of the department for appropriate action.

(2) A person engaged in agricultural practices may enter into agreement with the appropriate soil conservation district to pursue agricultural practices in accordance with and subject to the rules promulgated by the department pursuant to section 9104. If a person enters into an agreement with a soil conservation district, the district shall notify the county or local enforcement agency or the department of the agreement. Upon formal agreement and in compliance with this part as provided in this subsection, a person is not subject to any site plans, land use plans, or permits required pursuant to this part, but is subject to enforcement as provided by sections 9112 and 9113 after January 1, 1979.

Sec. 9110. (1) A state, local, or county agency may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all land uses normally undertaken by the agency. If the applicant is a local or county agency, the department shall submit the procedures to the appropriate soil conservation district for review, and the soil conservation district shall submit its comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.

(2) If the department finds that a local agency's soil erosion and sedimentation control procedures are adequate, the department may delegate to that local agency authority to approve local or county agency soil erosion and sedimentation control procedures and designate the local or county agency as an authorized public agency.

(3) After approval of the procedures and designation as an authorized public agency pursuant to subsection (1) or (2), all affected land uses maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized agency, the department may grant a variance from the provisions of this subsection.

Sec. 9111. (1) After June 30, 1974, a person who makes and submits a preliminary plat pursuant to sections 111 to 118 of the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being sections 560.111 to 560.118 of the Michigan Compiled Laws, shall attach a statement that he or she will comply with this part and the rules or an applicable local ordinance.

(2) After June 30, 1974, in addition to the statements in the proprietor's certificate on a final plat as required by section 144 of the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being section 560.144 of the Michigan Compiled Laws, the proprietor's certificate shall include a certificate that he or she has obtained a permit from the appropriate county or local enforcing agency and will conform to the requirements of this part and the rules or an applicable local ordinance.

Sec. 9112. (1) A person shall not maintain or undertake a land use or earth change governed by this part or the rules or governed by an applicable local ordinance, except in accordance with this part and the rules or with the applicable local ordinance and pursuant to a permit approved by the appropriate county or local enforcing agency. A person who violates this subsection is guilty of a misdemeanor.

(2) If in the opinion of the department a person or a state, local, county, or public agency violates this part, the rules, or an applicable local ordinance, or an appropriate local agency fails to enforce this part, the rules, or an applicable local ordinance, the department may notify the alleged offender of its determination. The notice shall contain, in addition to a statement of the specific violation that the department believes to exist, a proposed form of order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation, and the notice shall set a date for a hearing not less than 4 nor more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person or a state, local, county, or public agency that has been served with a notice of determination may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the charges and proposed requirements of the department to assure correction of the violation. If a person or a state, local, county, or public agency served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent order without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with 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, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person or the state, local, county, or public agency of the final order of determination.

Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, except as provided in section 9109, the department or any local or county enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent violations of this part, the rules, or an applicable local ordinance.

(2) The department or any agent duly appointed by it or any county or local enforcement agency may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part, the rules, or an applicable local ordinance.

Sec. 9114. In order to carry out their functions under this part, the department and the department of agriculture may promulgate rules in addition to those otherwise authorized in this part.

Sec. 9115. This part does not apply to land on which a person is engaged in the industry generally referred to as logging, the industry generally referred to as mining, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

Sec. 9116. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.

Sec. 9117. If the county or local enforcing agency that is responsible for enforcing this part determines that soil erosion and sedimentation of the waters of this state has or will reasonably occur from a parcel of land in violation of this part, it may seek to enforce this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of specific soil and sedimentation control measures that, if implemented by the landowner, would bring the landowner into compliance with this part and would prevent soil erosion and sedimentation of the waters of this state.

Sec. 9118. A person who owns land subject to this part shall implement and maintain soil erosion and sedimentation control measures in conformance with this part within 10 days after the notice of violation of this part is given under section 9117.

Sec. 9119. Except as otherwise provided in this section, no sooner than 10 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county or local enforcing agency, may result in or contribute to soil erosion and sedimentation of the waters of this state, and if soil erosion and sedimentation control measures in conformance with this part are not in place, the county or local enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part. However, the enforcing agency shall not expend more than $500.00 for the cost of the work, materials, or labor without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than $500.00 may be made. If more than $500.00 is to be expended under this section, then the work shall not begin until at least 20 days after the notice of violation has been mailed.

Sec. 9120. (1) All expenses incurred by the county or local enforcing agency under section 9119 to construct, implement, and maintain soil erosion and sedimentation control measures to bring the land in conformance with this part shall be reimbursed to the county or local enforcing agency by the person who owns the land.

(2) The county or local enforcing agency shall have a lien for the expenses incurred under section 9119 of bringing the land into conformance with this part. However, with respect to single-family or multi-family residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens 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.

Sec. 9121. (1) A person who owns land that is not in compliance with this part and who, after notice, refuses to implement and maintain soil erosion and sedimentation control measures in conformance with this part is subject to a civil fine of not more than $500.00. A fine collected under this section shall be paid to the enforcing agency responsible for the enforcement of this part in the city, township, or village where the land is located.

(2) A default in the payment of a civil fine, costs ordered under this part, or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

Sec. 9122. If any provision of this part is declared by a court to be invalid, the invalid provision shall not affect the remaining provisions of the part that can be given effect without the invalid provision. The validity of the part as a whole or in part shall not be affected, other than the provision invalidated.

Sec. 9123. Each individual who is responsible for administering former Act No. 347 of the Public Acts of 1972 on June 15, 1988 shall complete the soil erosion and sedimentation control training program sponsored by the department within 2 years, unless the individual has completed the training program prior to June 15, 1988. Individuals who undertake responsibilities for administering this part or former Act No. 347 of the Public Acts of 1972 after June 15, 1988 shall complete this training program within 2 years after the date on which they begin administering this part or former Act No. 347 of the Public Acts of 1972.

PART 93 SOIL CONSERVATION DISTRICTS

Sec. 9301. As used in this part:

(a) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(b) "Committee" or "state soil conservation committee" means the advisory body created within the department of agriculture in section 9304.

(c) "Department" means the department of agriculture.

(d) "Director" means 1 of the members of the governing body of a district, elected or appointed in accordance with this part.

(e) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this part, for the purposes, with the powers, and subject to the restrictions set forth in this part.

(f) "Due notice" means notice published at least twice, with an interval of at least 7 days between the 2 publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if no publication of general circulation is available, notice posted at a reasonable number of conspicuous places within the appropriate area, such posting to include, if possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

(g) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(h) "Land occupier" or "occupier of land" includes any person who holds title to, or is in possession of, any land 3 acres or more in extent lying within a district organized under this part or former Act No. 297 of the Public Acts of 1937, whether as owner, lessee, renter, tenant, or otherwise. An individual shall be of legal age to qualify as an occupier of land.

(i) "Landowner" includes any person who holds title to or has contracted to purchase any land lying within a district organized under this part or former Act No. 297 of the Public Acts of 1937.

(j) "Nominating petition" means a petition filed under section 9306 to nominate candidates for the office of director of a soil conservation district.

(k) "Person" means an individual, partnership, or corporation.

(*l*) "Petition" means a petition filed under section 9305(1) for the creation of a district.

(m) "State" means this state.

(n) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

Sec. 9302. It is the policy of the legislature to provide for the conservation of the soil and water resources of this state and for the control and prevention of soil erosion, and thereby to conserve the natural resources of this state, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

Sec. 9303. (1) The business that the soil conservation committee or the board of directors of a soil conservation district or consolidated district may perform shall be conducted at a public meeting of the committee or 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 meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, in addition to any other notice prescribed in this part.

(2) A writing prepared, owned, used, in the possession of, or retained by the soil conservation committee or the board of directors of a soil conservation district or consolidated district 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. 9304. (1) There is established, to serve as an advisory body and to perform the functions conferred upon it by the director of the department of agriculture, the state soil conservation committee. The committee shall consist of 7 members. The following shall serve as members of the committee: the dean of agriculture and natural resources of Michigan state university; the director of the department of agriculture; the director of the department of natural resources; and 4 practical farmers, who shall be appointed by the governor from among the directors of the several districts, for terms of 4 years, to begin July 1 of the odd year. The department may invite the United States secretary of agriculture to appoint 1 person to serve with the other members as a member of the committee. The department shall keep a record of the committee's official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform acts, hold public hearings, and promulgate rules as may be necessary for the execution of its functions under this part.

(2) The department may employ an administrative officer, technical experts, and other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications and duties. The department may call upon the attorney general of the state for legal services as it may require. The committee shall be supplied with necessary supplies and equipment. Upon request of the department for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, to the extent possible under available appropriations and having due regard to the needs of the agency or institution of learning to which the request is directed, assign or detail to the department members of the staff or personnel of the agency or institution of learning and make such special reports, surveys, or studies as the committee may request.

(3) The committee shall designate its chairperson annually. The 4 farmer members shall hold office for 4 years or until a successor is appointed and qualified. The nonfarmer members shall hold office as long as they retain the office by virtue of which they serve on the committee. A majority of the committee constitutes a quorum, and the concurrence of a majority in any matter within their duties is required for its determination. The farmer members of the committee shall receive compensation for their services when attending committee meetings and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The nonfarmer members shall not receive compensation for their services on the committee. The department shall provide for the keeping of a full and accurate record of all proceedings of the committee and of all resolutions and recommendations issued or adopted by the committee. The department shall provide for an annual audit of the accounts of receipts and disbursements of the committee.

(4) In addition to the duties and powers conferred upon the department under this part, the department has the following duties and powers:

(a) To offer such assistance as may be appropriate to the directors of soil conservation districts, organized as provided in this part, in implementing any of their powers and programs.

(b) To keep the directors of each of the districts organized under this part informed of the activities and experience of all other districts organized under this part, and to facilitate an interchange of advice and experience between the districts and cooperation between them.

(c) To approve and coordinate the programs of all soil conservation districts organized under this part.

(d) To secure the cooperation and assistance of the United States and any of its agencies, and the state and any of its agencies, in the work of the districts, and to formulate policies and procedures as the department considers necessary for the extension of aid in any form from federal or state agencies to the districts.

(e) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized under this part, and to encourage the formation of districts in areas where their organization is desirable.

(5) Members of the committee shall not accept any position created by the committee for which a salary is paid or engage in any business that is promoted by the committee as part of or that contributes to the soil conservation program.

Sec. 9305. (1) Any 25 occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the department asking that a soil conservation district be organized to function in the territory described in the petition. The petition shall set forth:

(a) The proposed name of the district.

(b) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.

(c) A description of the territory proposed to be organized as a district. The description is not required to be given by metes and bounds or by legal subdivisions, but is sufficient if generally accurate.

(d) A request that the department define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in the territory; and that the department determine that a district be created. If more than 1 petition is filed covering parts of the same territory, the department may consolidate all or any of the petitions.

(2) Within 30 days after a petition has been filed with the department, the department shall give notice of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this part; and upon all questions relevant to those issues. All occupiers of land within the limits of the territory described in the petition, and of land within a territory considered for addition to the described territory, and all other interested parties, have the right to attend the hearings and to be heard. If it appears at the hearing that it may be desirable to include within the proposed district territory outside of the area within which notice of the hearing has been given, the hearing shall be adjourned, notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and a further hearing shall be held. After the hearing, if the department determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record its determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district. In making the determination and in defining the boundaries, the department shall give due weight and consideration to the topography of the area considered, the composition of soils, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits the lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and to other soil conservation districts already organized or proposed for organization under this part, and other relevant physical, geographical, and economic factors. The territory to be included within the boundaries need not be contiguous. If the department determines after the hearing and after due consideration of the relevant facts that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record its determination and deny the petition. After 6 months have expired from the date of the denial of any petition, subsequent petitions covering the same or substantially the same territory may be filed and new hearings held and determinations made based on those hearings.

(3) After the department has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries of the district, it shall consider whether the operation of a district within those boundaries with the powers conferred upon soil conservation districts in this part is administratively practicable and feasible. To assist the department in the determination of administrative practicability and feasibility, the department, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, shall hold a referendum within the proposed district upon the proposition of the creation of the district and shall give notice of the referendum. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county of ..... and ....." and "Against creation of a soil conservation district of the lands below described and lying in the county of ..... and ....." shall be printed or mimeographed with a square before each proposition and a direction to insert an X mark in the square before 1 or the other of the propositions as the voter may favor or oppose creation of the district. The ballot shall set forth the

boundaries of the proposed district as determined by the department. All occupiers of lands lying within the boundaries of the territory, as determined by the department, shall be eligible to vote in the referendum.

(4) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. The department shall issue appropriate rules governing the conduct of the hearings and referenda and providing for the registration of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum. Informalities in the conduct of the referendum or in any matters relating to the referendum shall not invalidate the referendum or the result of the referendum if notice has been given substantially as provided in this section and the referendum was fairly conducted.

(5) The department shall publish the result of the referendum and thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the department determines that the operation of the district is not administratively practicable and feasible, it shall record its determination and deny the petition. If the department determines that the operation of the district is administratively practicable and feasible, it shall record its determination and proceed with the organization of the district. In making its determination, the department shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in the referendum who have voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the probable expense of conducting erosion-control operations within the district, and other economic and social factors that are relevant to the determination. The department shall not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district were cast in favor of the creation of the district.

(6) If the department determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint 2 directors to act, with the 3 directors elected as provided in section 9306, as the governing body of the district. The district shall be a governmental subdivision of this state and a public body corporate and politic, after the following requirements have been met:

(a) The directors shall present to the secretary of state an application signed by them that sets forth the following:

(*i*) That a petition for the creation of the district was filed with the department pursuant to this part, and that the proceedings specified in this part were taken pursuant to the petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic; and that they are the directors.

(*ii*) The name and official residence of each of the directors, together with a certification evidencing their right to office.

(*iii*) The term of office of each of the directors.

(*iv*) The name that is proposed for the district.

(*v*) The location of the principal office of the directors of the district.

(b) The application described in subdivision (a) shall be subscribed and sworn to by each of the directors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he or she personally knows the directors and knows them to be the officers as affirmed in the application, and that each has subscribed to the application in the officer's presence. The application shall be accompanied by a statement by the department that certifies all of the following:

(*i*) That a petition was filed, notice issued, and hearing held.

(*ii*) That the department did determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries of the district.

(*iii*) That notice was given and a referendum held on the question of the creation of the district.

(*iv*) That the result of the referendum showed a majority of the votes cast to be in favor of the creation of the district.

(*v*) That the department did determine that the operation of the proposed district is administratively practicable and feasible.

(*vi*) The boundaries of the district as they have been defined by the department.

(c) The secretary of state shall examine the application and statement and, if the secretary of state finds that the name proposed for the district is not identical with that of any other soil conservation district or so nearly similar as to lead to confusion or uncertainty, he or she shall receive and file the application and statement and record them in an appropriate book of record in his or her office. If the secretary of state finds that the name proposed for the district is identical with that of any other soil conservation district or so nearly similar as to lead to confusion or uncertainty, that fact shall be certified to the department, which shall submit to the secretary of state a new name for the district that is not subject to those defects. Upon receipt of the new name, free of defects, the secretary of state shall record the application and statement, with the modified name, in an appropriate book of record in his or her office. When the

application and statement have been made, filed, and recorded, the district constitutes a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall issue to the directors a certificate, under the seal of the state, of the due organization of the district, and shall record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the department but shall not include any area included within the boundaries of another soil conservation district organized under this part or former Act No. 297 of the Public Acts of 1937.

(7) After 6 months have expired from the date of entry of a determination by the department that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to that determination, subsequent petitions may be filed and action taken in accordance with this part.

(8) Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in the case of petitions to organize a district shall be observed in the case of petitions for inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as possible in the form prescribed for petitions to organize a district. If the total number of land occupiers in the area proposed for inclusion is less than 25, the petition may be filed when signed by a majority of the land occupiers of the area, in which case a referendum need not be held. In a referendum upon a petition for inclusion, all occupiers of land lying within the proposed additional area are eligible to vote.

(9) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this part upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate certified by the secretary of state is admissible in evidence in any action or proceeding and is proof of the filing and contents of the certificate.

(10) Petitions signed by a majority of the members of each of the governing bodies of adjoining soil conservation districts may be filed with the department asking that the boundary line between the districts be changed. The department shall prescribe the form of the petitions, which shall set out the existing boundary line between the districts and the proposed new boundary. Within 30 days after a petition has been filed with the department, it shall give notice of a public hearing upon the question of the proposed change of boundary. All occupiers of land lying within the districts and all other interested persons may attend the hearings and be heard. After the hearing, the department shall determine, upon the facts presented at the hearing and upon other available facts and information, whether the operation of the districts within the proposed new boundaries would be administratively practicable and feasible. In making its determination, the department shall give consideration to the declaration of policy and to the standards provided in this section, relative to the organization of districts. If after the hearing the department determines that the operation of the districts within the proposed new boundaries will be administratively practicable and feasible, it shall record its determination and notify the chairpersons of the governing bodies of the districts of its determination. The chairpersons shall present to the secretary of state an application, signed by them, for a certificate evidencing the change of boundary. The application shall be accompanied by a statement by the department certifying that the boundary between the districts has been changed in accordance with the procedures prescribed in this subsection and setting forth the new boundary line. When the application and statement have been filed with the secretary of state, the change of boundary shall be effective, and the secretary of state shall issue to the directors of each of the districts a certificate evidencing the change of boundary.

(11) Boundaries of soil conservation districts that exclude cities and incorporated villages are extended to include these municipalities. Landowners and land occupiers of cities and incorporated villages have the same rights and privileges as accorded other landowners and land occupiers under this part.

(12) The board of directors of a soil conservation district may petition the department to change the district's name. The petition form shall be provided by the department. The department shall give due consideration to the petition and, if the request is determined to be needed and practical, shall approve the change in name and request the secretary of state to enter the new name in the secretary of state's official records of the district.

Sec. 9306. Nominating petitions shall be filed with the department to nominate candidates for directors of a district at the time of the hearing. The department may extend the time within which nominating petitions may be filed. A nominating petition shall not be accepted by the department unless it is signed by 25 or more occupiers of land lying within the boundaries of the district. Land occupiers may sign more than 1 nominating petition to nominate more than 1 candidate for director. The department shall give due notice of an election to be held, at the time of the referendum, of 3 directors for the district. The names of all nominees on whose behalf nominating petitions have been filed within the time designated in this section shall be printed and arranged upon ballots in the alphabetical order of the nominees' surnames, with a square before each name and a direction to insert an X mark in the square before any 3 names to indicate the voter's preference. All occupiers of land lying within the district shall be eligible to vote in the election. The 3 candidates who receive the largest number, respectively, of the votes cast in the election shall be the elected directors for the district. Directors shall only assume office if there is a favorable vote for the creation of the district and if the district is determined to be practicable and feasible by the department. The department shall pay all the expenses of

the election, shall supervise the conduct of the election, shall prescribe regulations governing the conduct of the election and the determination of the eligibility of voters in the election, and shall publish the results of the election.

Sec. 9307. (1) The first governing body of the district shall consist of 5 directors, elected or appointed as provided in this part. The 2 directors appointed by the department shall be persons who are by training and experience qualified to perform the specialized skilled services that will be required of them in the performance of their duties under this part. The directors shall designate a chairperson annually.

(2) The term of office of each director shall be 3 years, except that the director first appointed shall serve for 2 years, the second director appointed shall serve for 1 year, and the directors first elected at the time of the referendum shall serve as follows: the director receiving the highest number of votes shall serve for 3 years, the director receiving the second highest number of votes shall serve for 2 years, and the director receiving the third highest number of votes shall serve for 1 year. Thereafter, all directors shall be elected at an annual meeting of the land occupiers of the district. The annual meeting shall be held within 30 days following the close of the fiscal year of the district. The fiscal year of the district shall be determined by the board of directors of the district. A director shall hold office until a successor has been elected and qualified. Vacancies shall be filled by appointment by the board of directors until the next annual meeting, at which time a director shall be elected to fill the unexpired or full term. The department shall promulgate rules governing the conduct of elections at annual meetings.

(3) A majority of the directors constitutes a quorum, and the concurrence of a majority in any matter within their duties is required for its determination. A director is entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his or her duties.

(4) The directors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The directors may call upon the attorney general of the state for legal services as they may require. The directors may delegate to their chairperson, to 1 or more directors, or to 1 or more agents or employees any powers and duties that they consider proper. The directors shall furnish to the department, upon request, copies of ordinances, rules, regulations, orders, contracts, forms, and other documents that they adopt or employ, and any other information concerning their activities that the department may require in the performance of its duties under this part.

(5) The directors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; shall provide for an annual audit of the accounts of receipts and disbursements; and shall maintain accurate financial records of receipts and disbursements of state funds, which records shall be made available to the department. Any director may be removed by the department upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(6) The directors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the directors of the district on all questions of program and policy that may affect the property, water supply, or other interests of the municipality or county.

Sec. 9308. (1) A soil conservation district organized under this part constitutes a governmental subdivision of this state and a public body corporate and politic, exercising public powers, and a soil conservation district and the directors of a district have all of the following powers, in addition to powers otherwise granted in this part:

(a) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of the surveys, investigations, or research, and to disseminate information concerning these preventive and control measures. In order to avoid duplication of research activities, a district shall not initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

(b) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the owner of the lands or the necessary rights or interest in the lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled.

(c) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other measures to achieve purposes listed in declaration of policy, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the owner of the lands or the necessary rights or interests in the lands.

(d) To cooperate or enter into agreements with and, within the limits of appropriations made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any landowner of land within the district or his or her designated representative, in the conducting of erosion-control and prevention operations within the district, subject to conditions as the directors consider necessary to advance the purposes of this part.

(e) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in that property; to maintain, administer, and improve any properties acquired, to receive income from the properties, and to expend income in carrying out the purposes and provisions of this part; and to sell, lease, or otherwise dispose of any of its property or interests in property in furtherance of the purposes and provisions of this part.

(f) To make available, on the terms it prescribes, to landowners or their designated representatives within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and other material or equipment as will assist the landowners or their designated representatives to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion.

(g) To construct, improve, and maintain structures as may be necessary or convenient for the performance of any of the operations authorized in this part.

(h) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district. The plans shall specify, in such detail as is possible, the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish the plans and information described in this subdivision and bring them to the attention of occupiers of lands within the district.

(i) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-control, or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies or from this state or any of its agencies, and to use or expend the money, services, materials, or other contributions in carrying on its operations subject to the policies and procedures adopted by the state soil conservation committee; and to accept money, gifts, and donations from any other source not specified in this subdivision.

(j) To sue and be sued in the name of the district; to have a seal that is judicially noticed; to have perpetual succession unless terminated as provided in this part; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, and from time to time amend and repeal, rules and regulations in a manner that is not inconsistent with this part to carry into effect its purposes and powers.

(k) As a condition to the extension of any benefit under this part to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials, or otherwise to any operation conferring the benefits, and may require land occupiers to enter into and perform agreements or covenants as to the permanent use of the lands that will tend to prevent or control erosion on those lands.

(*l*) To act as the enforcing agency for a county if designated under section 9105.

(2) Unless the legislature specifically states otherwise, provisions with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to a district organized under this part.

Sec. 9309. The directors of any 2 or more districts organized under this part may cooperate with one another in the exercise of any or all powers conferred in this part.

Sec. 9310. (1) Agencies of this state that have jurisdiction over, or are charged with the administration of, any state owned lands, and agencies of any county or other governmental subdivision of the state that have jurisdiction over, or are charged with the administration of, any county owned or other publicly owned lands, lying within the boundaries of any district, shall cooperate to the fullest extent with the directors of the districts in the effectuation of programs and operations undertaken by the directors under this part. The directors of the districts shall be given free access to enter and perform work upon such publicly owned lands.

(2) The board of directors of a soil conservation district may cooperate with and enter into agreement with a county, township, municipality, or other subdivision of state government in implementing soil, water, and related land-use projects. A county, township, municipality, or other subdivision of state government through its governing body may cooperate with and enter into agreement with soil conservation districts in carrying out this part and may assist districts by providing them with such materials, equipment, money, personnel, and other services as the governmental unit considers advisable.

Sec. 9311. (1) At any time after 5 years after the organization of a district under this part, any 25 occupiers of land lying within the boundaries of the district may file a petition with the department requesting that the operations of the

district be terminated and that the existence of the district be discontinued. The department may conduct such public meetings and public hearings upon the petition as may be necessary to assist it in the consideration of the petition. Within 60 days after a petition has been received by the department, the department shall give notice of the holding of a referendum, shall supervise the referendum, and shall promulgate appropriate rules governing the conduct of the referendum, the question to be submitted by ballots upon which the words "For terminating the existence of the ..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before 1 or the other of the propositions. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in the referendum. Informalities in the conduct of the referendum or in any matters relating to the referendum shall not invalidate the referendum or the result of the referendum if notice of the referendum was given substantially as provided in this part and if the referendum was fairly conducted.

(2) The department shall publish the result of the referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the department determines that the continued operation of a district is administratively practicable and feasible, it shall record that determination and deny the petition. If the department determines that the continued operation of a district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the directors of the district. In making the determination, the department shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in the referendum who have voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district to the total number of votes cast, the probable expense of conducting erosion-control operations within the district, and other economic and social factors that are relevant to the determination. However, the department shall not determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum were cast in favor of the continuance of the district.

(3) Upon receipt from the department of a certification that the department has determined that the continued operation of the district is not administratively practicable and feasible pursuant to this section, the directors shall immediately proceed to terminate the affairs of the district. The directors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of the sale into the state treasury unless the discontinuance is for the purpose of combining with another district, in which case the assets shall be turned over to the district with which it is to be combined. The directors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with the application the certificate of the department setting forth the determination of the department that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as provided in this section and also set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the directors a certificate of dissolution and record the certificate in an appropriate book of record in the office of the secretary of state.

(4) All contracts previously entered into, to which the district or directors are parties, shall remain in force and effect for the period provided in the contracts. The department shall be substituted for the district or directors as party to the contracts. The department shall be entitled to all benefits and subject to all liabilities under the contracts and shall have the same right and liability to perform, to require performance, to sue and be sued on the contracts, and to modify or terminate the contracts by mutual consent or otherwise, as the directors of the district would have had.

(5) The department shall not entertain petitions for the discontinuance of any district, conduct referenda upon the petitions, or make determinations pursuant to the petitions in accordance with this part more often than once in 2 years.

Sec. 9312. (1) Two or more soil conservation districts organized pursuant to this part may petition the department for consolidation of the districts into a single district. The department shall not take action on the petition unless it is signed by a majority of the directors of each of the districts involved. Within 30 days after receipt of a proper petition, the department shall cause notice of hearing to be given to the occupiers of land in the area proposed to be included in the consolidated district.

(2) The department shall determine if consolidation as petitioned for is desirable. If it finds in the affirmative, the department shall issue an order that states that the districts are to be consolidated at a date specified in the order and includes the name and the boundaries of the consolidated district.

(3) Upon transmission of the order to the secretary of state, a certificate of due organization under seal of the state shall issue to the directors of the district as provided in this part. The consolidated district shall have the same powers, duties, and functions as other districts organized under this part.

(4) The department shall appoint the first board of directors of the consolidated district, 1 of whom shall be appointed for a term of 1 year, 2 for a term of 2 years, and 2 for a term of 3 years. Thereafter, directors shall be elected as provided in section 9307.

(5) All assets, liabilities, records, documents, writings, or other property of whatever kind of the districts of which the consolidated district is composed shall become the property of the consolidated district, and all agreements made by, and obligations of, the former districts shall be binding upon and enforceable by the consolidated district. At the date specified in the department's order, the districts of which the consolidated district is composed shall cease to exist, and their powers and duties shall cease after that date. The consolidated district shall be governed by this part.

Sec. 9313. The necessary expenses of the state soil conservation committee and any soil conservation districts shall be made from appropriations made for those purposes.

PART 119 WASTE MANAGEMENT AND RESOURCE RECOVERY FINANCE

Sec. 11901. As used in this part:

(a) "Costs" means 1 or more of the following costs that may be chargeable to the waste management project as a capital cost under generally acceptable accounting principles:

(*i*) The cost or fair market value of the acquisition or construction of lands, property rights, utility extensions, disposal facilities, buildings, structures, fixtures, machinery, equipment, access roads, easements, and franchises.

(*ii*) Engineering, architectural, accounting, legal, organizational, marketing, financial, and other services.

(*iii*) Permits and licenses.

(*iv*) Interest on the financing of the waste management project during acquisition and construction and before the date of commencement of commercial operation of the waste management project, but for not more than 1 year after that date.

(*v*) Operating expenses of the waste management project before full earnings are achieved, but for not more than 1 year after that date.

(*vi*) A reasonable reserve for payment of principal and interest on an indebtedness to finance the cost of a waste management project.

(b) "Local authority" means an authority created under Act No. 179 of the Public Acts of 1947, being sections 123.301 to 123.310 of the Michigan Compiled Laws.

(c) "Municipality" means a county, city, township, village, or local authority, or a combination thereof.

(d) "Note" means a note issued by a municipality pursuant to this part.

(e) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof, but excluding a municipality, special district having taxing powers, or other political subdivision of this state.

(f) "Revenue" means money or income received by a municipality as a result of activities authorized by this part, including loan repayments and interest on loan repayments; proceeds from the sale of real or personal property; interest payments on investments; rentals and other payments due and owing on account of an instrument, lease, contract, or agreement to which the municipality is a party; and gifts, grants, bestowals, or other moneys or payments to which a municipality is entitled under this part or other law.

(g) "Waste" means a discarded solid or semisolid material, including garbage, refuse, rubbish, ashes, liquid material, and other discarded materials generated by residential, commercial, agricultural, municipal, or industrial activities, including waste from sewage collected and treated in a municipal sewage system.

(h) "Waste management project" means 1 or more parts of a waste collection, transportation, disposal, or resource recovery system, including plants, works, systems, facility or transfer stations planned, designed, or financed under this part. Waste management project includes the extension or provision of utilities, steam generating and conveyance facilities, appurtenant machinery, equipment, and other capital facilities, other than off-site mobile vehicular equipment, if necessary for the operation of a project or portion of a project. Waste management project also includes necessary property rights, easements, interests, permits, and licenses.

Sec. 11902. A municipality may do any of the following:

(a) Acquire by gift, purchase, or lease, construct, improve, remodel, repair, maintain, and operate, individually or jointly with a municipality or person, a waste management project; acquire private or public property by purchase, lease, gift, or exchange; and acquire private property when necessary by condemnation for public purposes pursuant to Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or other applicable law or charter.

(b) Impose rates, charges, and fees, and enter into contracts relative to the rates, charges, and fees with persons using a waste management project; and assign, convey, encumber, mortgage, pledge, or grant a security interest in the rates, charges, and fees or the right to impose rates, charges, and fees to a person or municipality for the purpose of

securing a contract with a person or municipality or for the purpose of providing security or a source of payment for an indebtedness of a person or municipality, including bonds or notes, issued pursuant to the following acts, to finance the cost of a waste management project or in anticipation of revenues from a waste management project:

(*i*) The industrial development revenue bond act of 1963, Act No. 62 of the Public Acts of 1963, being sections 125.1251 to 125.1267 of the Michigan Compiled Laws.

(*ii*) The economic development corporation act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws.

(*iii*) The Derezinski-Geerlings job development authority act, Act No. 301 of the Public Acts of 1975, being sections 125.1701 to 125.1770 of the Michigan Compiled Laws.

Sec. 11903. (1) A municipality may enter into a contract with a person or municipality, providing for the acquisition, construction, financing, and operation of a waste management project or for the use of the services of a project. Notwithstanding the requirements of its municipal charter or ordinances, the municipality, following the receipt from persons of bids or proposals for a contract referred to in this section, may negotiate with 1 or more persons who have submitted the bids or proposals, permit those persons to modify their bids or proposals, and enter into a contract with 1 or more of those persons on the basis of a bid or proposal as modified. A contract executed pursuant to this section, regardless of whether the bidding on the contract occurred before July 12, 1978, shall be valid and binding on the parties. The municipality is authorized, but is not required, to pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract.

(2) To pay its pledged share of the costs of a waste management project or to secure its contract for the use of project services, a contracting municipality may use or pledge 1 or more, or a combination, of the following methods of raising necessary funds:

(a) If the full faith and credit of the municipality is pledged, the levy of a tax on taxable property by a municipality having the power to tax, which tax may be imposed without limitation as to rate or amount and may be imposed in addition to other taxes that the municipality is authorized to levy, but for not more than a rate or amount that is sufficient to pay its share or secure its contract.

(b) The levy and collection of rates or charges to users and beneficiaries of the service furnished by the waste management project.

(c) From money received or to be received from the imposition of taxes by the state and returned to the municipality, unless the use of the money for that purpose is expressly prohibited by the state constitution of 1963.

(d) From any other funds which may be validly used for that purpose.

Sec. 11904. A municipality may do any of the following:

(a) Include in a contract with a municipality or person provisions to the effect that the municipality will require all residential waste subject to its jurisdiction and police power under applicable law or charter and collected within its limits, whether by a municipality or person operating under contract with the municipality, to be disposed of at the waste management project. If so included, the municipality shall enact legislation with appropriate penalties to make the requirement effective. However, a township, by resolution, may disapprove the collection of waste within the township boundaries by a county.

(b) Provide by contract with a municipality or person for the ownership of a waste management project after all indebtedness with respect to the project has been retired.

(c) Provide that rates or charges to users and beneficiaries of the service furnished by the waste management project shall be a lien on the premises for which the services have been provided, and that amounts delinquent for 3 months or more may be certified annually to the proper tax assessing officer or agency of the municipality, to be entered upon the next tax roll against the premises to which the services have been rendered. The charges shall be collected and the lien enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of a lien for unpaid taxes. The time and manner of certification and other details in respect to the collection of the rates and charges and the enforcement of the lien shall be prescribed by the governing body of the municipality. The municipality may authorize a person or municipality to impose, levy, and collect rates or charges against users and beneficiaries of the service furnished by the waste management project. The municipality may agree with a municipality or person that the rates and charges shall be a lien on the premises serviced, and may further agree that the collection of the rates and charges imposed may be collected and the lien enforced in the same manner as provided in this subsection for the collection of rates and charges and the enforcement of a lien by the municipality.

Sec. 11905. A contract by a municipality with a person or municipality may provide for any and all matters relating to the acquisition, construction, financing, and operation of the waste management project as are considered necessary. The contract may provide for appropriate remedies in case of default, including the right of the contracting municipality to authorize the state treasurer or other official charged with the disbursement of unrestricted state funds returnable

to the municipality under the state constitution of 1963 or other laws of this state to withhold and apply sufficient funds from those disbursements to make up a default or deficiency.

Sec. 11906. (1) A municipality desiring to enter into a contract under section 11902 or 11903 shall authorize, by resolution of its governing body, the execution of the contract. After the adoption of the resolution, if the full faith and credit of the municipality is pledged, a notice of the adoption of the resolution shall be published in a newspaper of general circulation in the municipality. The notice shall state all of the following:

(a) That the governing body has adopted a resolution authorizing execution of the contract.

(b) The purpose and the expected cost of the contract to the municipality.

(c) The source of payment for the municipality's contractual obligation.

(d) The right of referendum on the contract.

(e) Other information the governing body determines to be necessary to adequately inform interested electors of the nature of the obligation.

(2) A contract pledging the full faith and credit may be executed and delivered by the municipality upon approval of its governing body without a vote of the electors on the contract, but the contract shall not become effective until the expiration of 45 days after the date of publication of the notice required by subsection (1). If, within the 45-day period, a petition requesting a referendum upon the contract, signed by not less than 5% or 15,000 of the registered electors residing within the limits of the municipality, whichever is less, is filed with the clerk of the municipality, the contract shall not become effective until approved by the vote of a majority of the electors of the municipality qualified to vote and voting at a general or special election.

(3) A special election called for pursuant to subsection (2) shall not be included in statutory or charter limitation as to the number of special elections to be called within a specified period of time. Signatures on the petition shall be verified by an elector under oath as the actual signatures of the electors whose names appear on the petition, and the clerk of the municipality shall have the same power to reject signatures as city clerks under section 25 of the home rule city act, Act No. 279 of the Public Acts of 1909, being section 117.25 of the Michigan Compiled Laws. The number of registered electors in a municipality shall be determined from the municipality's registration books.

Sec. 11907. A municipality may exercise the powers conferred by this part regardless of the requirements, including the competitive bidding requirement, of its municipal charter.

Sec. 11908. This part shall not apply to municipalities having a population of more than 2,000,000.

PART 193 ENVIRONMENTAL PROTECTION BOND AUTHORIZATION

Sec. 19301. The state shall borrow a sum not to exceed $660,000,000.00 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 environmental protection programs that would clean up sites of toxic and other environmental contamination and contribute to a regional Great Lakes protection fund, address solid waste problems, treat sewage and other water quality problems, and reuse industrial sites and preserve open space.

Sec. 19302. Bonds shall be issued in accordance with conditions, methods, and procedures to be established by law.

Sec. 19303. 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 environmental protection bond fund created in part 195 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 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. 19304. The question of borrowing a sum not to exceed $660,000,000.00 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 general election following September 9, 1988, the effective date of former Act No. 326 of the Public Acts of 1988. The question submitted to the electors shall be substantially as follows:

"Shall the state of Michigan borrow a sum not to exceed $660,000,000.00 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 environmental protection programs that would clean up sites of toxic and other environmental contamination and contribute to a regional Great Lakes protection fund, address solid waste problems, treat sewage and other water

quality problems, and reuse industrial sites and preserve open space, the method of repayment of the bonds to be from the general fund of this state?

Yes.....

No..... .".

Sec. 19305. The secretary of state shall perform all acts necessary to properly submit the question prescribed by section 19304 to the electors of this state qualified to vote on the question at the general November election following September 9, 1988, the effective date of former Act No. 326 of the Public Acts of 1988.

Sec. 19306. (1) After the issuance of the bonds authorized by this part or former Act No. 326 of the Public Acts of 1988, 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 or former Act No. 326 of the Public Acts of 1988 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.

PART 195 ENVIRONMENTAL PROTECTION BOND IMPLEMENTATION

Sec. 19501. As used in this part:

(a) "Bonds" means the bonds issued under part 193 or former Act No. 326 of the Public Acts of 1988.

(b) "Fund" means the environmental protection bond fund created in section 19506.

(c) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; an authority or any other public body created by or pursuant to state law; or this state or an agency or department of this state.

(d) "Private entity" means an individual, trust, firm, partnership, corporation, or association, whether profit or nonprofit, that is not a local unit of government.

Sec. 19502. The legislature finds and declares that the environmental protection programs implemented under former Act No. 328 of the Public Acts of 1988 or this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

Sec. 19503. (1) The bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 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 subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to insure the marketability, insurability, or tax exempt status. The state administrative board shall rotate the services of 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, 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 such 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 in accordance with the following schedule, beginning during the first year after the effective date of former Act No. 328 of the Public Acts of 1988:

(a) Not more than 34% shall be sold during the first year.

(b) Not more than 33% shall be sold during the second year.

(c) Not more than 33% shall be sold during the third year.

(d) After the third year, any remaining bonds may 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 either or both of the following occur:

(a) Amendments to the internal revenue code of 1986 would impair the tax-exempt status of the bonds.

(b) The legislature concurs in the declaration of a toxic substance emergency made by the governor pursuant to law.

Sec. 19504. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 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 subdivisions of the state.

Sec. 19505. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 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. 19506. (1) The environmental protection 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 former Act No. 326 of the Public Acts of 1988 or part 193 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 repayment of principal and interest made under a loan program authorized 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. 19507. (1) The total proceeds of all bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be deposited into the fund and allocated as follows:

(a) Except as provided in section 19508(1)(a)(*ii*), not more than $425,000,000.00 shall be used to clean up sites of toxic and other environmental contamination.

(b) Not more than $150,000,000.00 shall be used for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste.

(c) Not more than $60,000,000.00 shall be used to capitalize the state water pollution control revolving fund established pursuant to section 16a of the shared credit rating act, Act No. 227 of the Public Acts of 1985, being section 141.1066a of the Michigan Compiled Laws.

(d) Not more than $25,000,000.00 shall be used to fund this state's participation in a regional Great Lakes protection 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, except for the fiscal years 1992-93 and 1993-94, when any such interest and earnings accrued in those, or prior fiscal years, shall be deposited in the state water pollution control revolving fund established pursuant to section 16a of Act No. 227 of the Public Acts of 1985.

(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.

Sec. 19508. (1) Except as provided in subsection (3), money in the fund that is allocated under section 19507 shall be used for the following purposes:

(a) Money in the fund that is allocated under section 19507(1)(a) shall be used for sites identified through part 201, to be expended and recovered by the state in the same manner as provided in that part. Of the funds allocated under section 19507(1)(a), the following apply:

(*i*) Not more than $35,000,000.00 shall be used to clean up sites of environmental contamination that have been identified under former Act No. 307 of the Public Acts of 1982 or part 201; that will not be funded in the next fiscal year; and that have been approved by the department as having measurable economic benefit. The department, after consultation with the department of commerce, shall promulgate rules that establish the criteria and process by which sites will be selected and determined to qualify as sites having measurable economic benefit.

(*ii*) Not more than $10,000,000.00 may be used to provide grants to eligible communities to investigate and determine whether property within an eligible community is a site of environmental contamination and, if so, to characterize the nature and extent of the contamination. A grant shall only be issued under this subparagraph if all of the following conditions are met:

(A) The characterization of the nature and extent of contamination includes an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identifies future potential limitations on the use of the property based upon current environmental conditions.

(B) The property has demonstrable economic development potential. This provision does not require a specific development proposal to be identified.

(C) The property is located within an eligible community that has received less than $1,000,000.00 in total grants under this subparagraph. However, a grant that has resulted in measurable economic benefits shall not be included in the calculation of the $1,000,000.00.

(b) Money in the fund that is allocated for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste shall be used to fund state projects, to provide grants and loans to local units of government, and to provide grants and loans to private entities for any of the programs identified in part 191, in the amounts appropriated pursuant to subsection (5). Not less than $17,500,000.00 of the money for solid waste projects shall be used to fund the following:

(*i*) To promote and expand markets for recycled materials.

(*ii*) To assist in the recycling of solid wastes, including, but not limited to, plastics, metals, tires, wood, and paper.

(*iii*) To promote research on resource recovery.

(*iv*) To study marketing options for products that use recycled materials.

(c) Money in the fund that is allocated to capitalize the state water pollution control revolving fund created in section 16a of the shared credit rating act, Act No. 227 of the Public Acts of 1985, being section 141.1066a of the Michigan Compiled Laws, shall be used as provided in part 53.

(d) Money in the fund that is allocated to fund this state's participation in a regional Great Lakes protection fund pursuant to part 331.

(2) If, by June 28, 1995, the department determines that money allocated under subsection (1)(a)(*ii*) is unlikely to be expended pursuant to that subparagraph, $5,000,000.00 of the money allocated pursuant to that subparagraph shall be expended pursuant to subsection (1)(a)(*i*).

(3) If money that is expended pursuant to subsection (1)(a)(*ii*) is recovered by an eligible community from a person who may be liable under part 201, through proceeds from the sale of the property, or through any other mechanism, and additional funds for environmental response activities on the property are not necessary, the eligible community may retain those funds for expenditure on projects that the department determines are eligible to receive funding under subsection (1)(a)(*ii*). An accounting of the recovered funds must be provided to the department within 30 days of receipt, and approval and expenditure of the recovered funds shall be in the same manner as funds awarded pursuant to subsection (1)(a)(*ii*). If funds are recovered and not spent on other projects pursuant to this subparagraph within 2 years after they are recovered by the eligible community, the eligible community shall forward the money collected to the state treasurer for deposit into the fund to be used pursuant to subsection (1)(a)(*ii*). When accounting for the use of recovered funds, eligible communities may itemize deductions for site preparation and other costs directly related to the reuse of a site funded under this section.

(4) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds under former Act No. 326 of the Public Acts of 1988 or part 193 and by the department to pay department costs as provided in this subsection. Not more than 6% of the total amount specified in section 19507(1)(a), (b), and (d) shall be available for appropriation to the department to pay department costs directly associated with the completion of a project described in section 19507(1)(a), (b), or (d), for which bonds are issued as provided under this part. Any department costs associated with a project described in section 19507(1)(c) for which bonds are issued under this part shall be paid as provided in the state statute implementing the state water pollution control revolving fund. 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. 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.

(5) Except as provided in subsection (3), the department shall annually submit a list of all projects that are recommended to be funded under this part to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. 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.

(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. Environmental cleanup projects that are eligible for funding under subsection (1)(a), but not including subsection (1)(a)(*i*) and (*ii*), shall be prioritized and approved pursuant to the procedures outlined in part 201. Projects to which loans are provided from the state water pollution control revolving fund shall be approved pursuant to state law implementing that fund. The capitalization of the regional Great Lakes protection fund shall be a 1-time appropriation.

(7) Not later than December 31 of each year, the department shall submit a list of the projects financed under this part to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the committees of the house of representatives and the senate on appropriations for the department. 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.

(8) As used in this section, "eligible community" means any of the following:

(a) A city, village, or township, or a county on behalf of a city, village, or township, that on May 1, 1993 meets the applicable criteria of section 2(d)(*i*) or (*ii*) of the neighborhood enterprise zone act, Act No. 147 of the Public Acts of 1992, being section 207.772 of the Michigan Compiled Laws.

(b) A city that meets any of the following descriptions:

(*i*) Has a population of greater than 10,000 and is located within a county that has a population density of less than 39 residents per square mile.

(*ii*) Has a population of greater than 2,500 and is located within a county that has a population density of less than 39 residents per square mile.

(*iii*) Had an average unemployment rate of 11.5% or more during the most recent calendar year for which data is available from the Michigan employment security commission and meets the criteria of section 2(d)(*i*)(A), (D), and (E) of Act No. 147 of the Public Acts of 1992.

Sec. 19509. (1) The department shall promulgate rules necessary to implement grant and loan programs provided in this part.

(2) The department shall assure maximum participation by local units of government and by private entities 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 such other factors considered important by the department.

(3) 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.

(4) The department shall provide in rules promulgated under this part that loans, where authorized, that are issued by the department to private entities shall include an interest charge of not less than 5% per year.

(5) Neither this section nor section 19510 shall apply to loans from the state water pollution control revolving fund.

Sec. 19510. 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 a determination required by this part.

Sec. 19511. The department shall not make a grant or a loan under section 19508(1)(a) or (b) 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, or the proposed project will result in compliance with state laws and rules.

(b) The applicant demonstrates to the department the capability to carry out 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 future maintenance and operation of the proposed project.

Sec. 19512. (1) A recipient of a grant or a loan made under section 19508(1)(a) or (b) 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. 19513. The department shall promulgate rules as are necessary or required to implement this part.

Sec. 90102. The following acts and parts of acts that are codified in article I, general provisions, and article II, pollution control, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
188	1988	299.251 to 299.257
192	1929	300.11 to 300.18
517	1988	3.871 to 3.880
101	1985	318.501 to 318.516
223	1909	211.461 to 211.462
44	1883	211.481 to 211.483
193	1911	322.481 to 322.485
137	1913	211.471 to 211.473
187	1851	322.151 to 322.157
76	1853	322.161 to 322.162
421	1982	322.611 to 322.617
10	1953	322.651
86	1989	322.461 to 322.469
197	1980	399.251 to 399.257
314	1968	425.171 to 425.173
116	1917	211.581 to 211.582
91	1925	211.491 to 211.493
298	1993	322.141 to 322.146
66	1869	322.231 to 322.233
310	1994	299.31 to 299.36
143	1959	323.251 to 323.258
222	1966	323.351 to 323.358
76	1968	323.371 to 323.382
250	1965	336.1 to 336.8
159	1973	336.91 to 336.92
234	1993	257.2051 to 257.2076
232	1993	257.2001 to 257.2042
198	1975	286.751 to 286.767
347	1972	282.101 to 282.125
297	1937	282.1 to 282.16
345	1978	123.311 to 123.319
326	1988	299.651 to 299.660
328	1988	299.671 to 299.685

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. 4350.

(b) House Bill No. 4348.

(c) House Bill No. 4349.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.