

HOUSE BILL No. 4835

September 21, 1999, Introduced by Reps. Jellema, Byl, DeHart, Toy, Caul, Kuipers, LaSata, Garcia, Pappageorge, Richner and Birkholz and referred to the Committee on Regulatory Reform.

A bill to amend 1972 PA 230, entitled "State construction code act of 1972," by amending the title and sections 2, 3, 5, 14, 15, 24, and 30 (MCL 125.1502, 125.1503, 125.1505, 125.1514, 125.1515, 125.1524, and 125.1530), the title as amended by 1995 PA 270, section 2 as amended by 1998 PA 42, section 3 as amended by 1984 PA 189, and section 24 as amended by 1980 PA 371.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to create a construction code commission and pre-

3

scribe its functions; to authorize the commission to promulgate

4

rules with recommendations from each affected board relating to

5

the construction, alteration, demolition, occupancy, MAINTENANCE,

6

and use of buildings and structures; to prescribe energy

7

conservation standards for the construction of certain buildings;

1 to provide for statewide approval of premanufactured units; to
2 provide for the testing of new devices, materials, and techniques
3 for the construction of buildings and structures; to define the
4 classes of buildings and structures affected by the act; to pro-
5 vide that governmental subdivisions may with exceptions elect not
6 to be subject to certain parts of the act; to provide for admin-
7 istration and enforcement of the act; to create a state construc-
8 tion code fund; to prohibit certain conduct; to establish reme-
9 dies and sanctions for violations of the act; to repeal acts and
10 parts of acts; and to provide an appropriation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (m) "Construction regulation" means a law, act, rule, reso-
10 lution, regulation, ordinance, or code, general or special, or
11 compilation ~~thereof, heretofore or hereafter~~ OF 1 OR MORE OF
12 THESE PREVIOUSLY OR SUBSEQUENTLY enacted or adopted, by this
13 state or a county, city, village, or township including a depart-
14 ment, board, bureau, commission, or other agency ~~thereof~~ OF 1
15 OF THESE, relating to the design, construction, or use of build-
16 ings and structures and the installation of equipment in the
17 building or structure. Construction regulation does not include
18 a zoning ordinance or rule issued pursuant to a zoning ordinance
19 and related to zoning.

20 (n) "Department" means the department of ~~labor~~ CONSUMER
21 AND INDUSTRY SERVICES.

22 (o) "Director" means the director of ~~labor~~ CONSUMER AND
23 INDUSTRY SERVICES or an authorized representative of the
24 director.

25 (p) "Energy conservation" means the efficient use of energy
26 by providing building envelopes with high thermal resistance and
27 low air leakage, and the selection of energy efficient

1 mechanical, electrical service, and illumination systems,
2 equipment, devices, or apparatus.

3 (q) "Enforcing agency" means the enforcing agency, in
4 accordance with section 8 or 9, ~~which~~ THAT is responsible for
5 administration and enforcement of a nationally recognized model
6 code or this act and the code within a governmental subdivision,
7 except for the purposes of section 19 enforcing agency means the
8 agency in a governmental unit principally responsible for the
9 administration and enforcement of applicable construction
10 regulations.

11 (r) "Equipment" means plumbing, heating, electrical, venti-
12 lating, air conditioning, and refrigerating equipment.

13 (s) "Executive director" means the EXECUTIVE director of the
14 ~~bureau of construction codes~~ COMMISSION as set forth under sec-
15 tion 7.

16 (t) "Governmental subdivision" means a county, city, vil-
17 lage, or township which in accordance with section 8 or 9 has
18 assumed responsibility for the administration and enforcement of
19 a nationally recognized model code or this act and the code
20 within its jurisdiction.

21 (u) "Mobile home" means a vehicular, portable structure
22 built on a chassis and designed to be used without a permanent
23 foundation as a dwelling when connected to required utilities and
24 ~~which~~ THAT is, or is intended to be, attached to the ground, to
25 another structure, or to a utility system on the same premises
26 for more than 30 consecutive days.

1 (v) "Other laws and ordinances" means other laws and
2 ordinances, whether enacted by this state or by a county, city,
3 village, or township and the rules issued thereunder.

4 (w) "Owner" means the owner of the freehold of the premises
5 or lesser estate in the premises, a mortgagee or vendee in pos-
6 session, an assignee of rents, receiver, executor, trustee,
7 lessee, or ~~any~~ other person, sole proprietorship, partnership,
8 association, or corporation directly or indirectly in control of
9 a building, structure, or real property or his or her duly autho-
10 rized agent.

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

15 (y) "Premanufactured unit" means an assembly of materials or
16 products intended to comprise all or part of a building or struc-
17 ture, and ~~which~~ THAT is assembled at other than the final loca-
18 tion of the unit of the building or structures by a repetitive
19 process under circumstances intended to insure uniformity of
20 quality and material content. Premanufactured unit includes a
21 mobile home.

22 (Z) "PROPERTY MAINTENANCE CODE" MEANS THE PROPERTY MAINTENANCE
23 CODE ADOPTED UNDER SECTION 5.

24 (AA) ~~(z)~~ "Structure" means that which is built or con-
25 structed, an edifice or building of any kind, or a piece of work
26 artificially built up or composed of parts joined together in
27 some definite manner. Structure does not include a structure

1 incident to the use for agricultural purposes of the land on
2 which the structure is located and does not include works of
3 heavy civil construction including without limitation, a highway,
4 bridge, dam, reservoir, lock, mine, harbor, dockside port facili-
5 ty, an airport landing facility and facilities for the generation
6 or transmission, or distribution of electricity. Structure shall
7 be construed as though followed by the words "or part or parts of
8 the structure and all equipment in the structure" unless the con-
9 text clearly indicates otherwise.

10 (2) Unless the context clearly indicates otherwise, refer-
11 ences to this act, or to this act and the code, shall refer to
12 this act and rules promulgated pursuant to this act including the
13 code.

14 Sec. 3. (1) The state construction code commission is cre-
15 ated and consists of the state fire marshal or the state fire
16 marshal's designee and the chairpersons of the barrier free
17 design board, the electrical administrative board, the state
18 plumbing board, and the board of mechanical rules, who shall be
19 permanent members, and 12 residents of the state to be appointed
20 by the governor with the advice and consent of the senate.
21 Appointed members of the commission shall include 1 person from
22 each of the fields of industrial management, architecture, pro-
23 fessional engineering, building contracting, organized labor,
24 premanufactured building, and 3 members representing municipal
25 building inspection, 1 of whom enforces this act and the code, 1
26 of whom enforces the building officials and code administrators
27 building code, and 1 of whom enforces the international

1 conference of building officials building code; 2 persons from
2 the general public; and a licensed residential builder. A member
3 of the commission shall be appointed for a term of 2 years,
4 except that a vacancy shall be filled for the unexpired portion
5 of the term. IN MATTERS INVOLVING THE PROPERTY MAINTENANCE CODE,
6 THE DIRECTOR SHALL CAUSE TO BE APPOINTED AN ADVISORY COMMITTEE
7 THAT SHALL ADVISE THE COMMISSION. THE ADVISORY COMMITTEE SHALL
8 CONSIST OF A SANITARIAN, A RENTAL PROPERTY OWNER WITH 4 OR FEWER
9 UNITS, A RENTAL PROPERTY OWNER WITH 5 OR MORE UNITS, 2 INDIVIDU-
10 ALS REPRESENTING TENANTS, 1 HOUSING INSPECTOR FROM A TOWNSHIP,
11 AND 1 HOUSING INSPECTOR FROM A CITY. A MEMBER OF THE ADVISORY
12 COMMITTEE SHALL BE APPOINTED FOR A TERM OF 2 YEARS, EXCEPT THAT A
13 VACANCY SHALL BE FILLED FOR THE UNEXPIRED PORTION OF THE TERM. A
14 member of the commission may be removed from office by the gover-
15 nor for inefficiency, neglect of duty, or misconduct or malfea-
16 sance in office. A member of the commission who has a pecuniary
17 interest in a matter before the commission shall disclose the
18 interest before the commission takes action in the matter, which
19 disclosures shall be made a matter of record in its official
20 proceedings. Each member of the commission, except the state
21 fire marshal or the state fire marshal's designee, shall receive
22 compensation and actual expenses incurred by the member in the
23 performance of the duties as a member of the commission. The per
24 diem compensation of the members and the schedule for reimburse-
25 ment of expenses shall be established annually by the
26 legislature. An appointed member of the commission shall not
27 serve more than 3 consecutive terms.

1 (2) Nine members of the commission constitute a quorum.
2 Except as otherwise provided in the commission's bylaws, action
3 may be taken by the commission by vote of a majority of the mem-
4 bers present at a meeting. Meetings of the commission may be
5 called by the chairperson or by 3 members on 10 days' written
6 notice. Not less than 1 meeting shall be held each calendar
7 quarter. A meeting of the commission may be held anywhere in
8 this state.

9 (3) The commission shall elect 1 member as chairperson,
10 another as vice-chairperson, and other officers as it determines
11 appropriate, for the terms and with the duties and powers as the
12 commission determines. The chairperson and vice-chairperson of
13 the commission shall be elected from those members appointed to
14 the commission by the governor.

15 (4) The commission shall be within the department of ~~labor~~
16 CONSUMER AND INDUSTRY SERVICES, but it shall exercise its statu-
17 tory functions independently of the head of the department,
18 except that budgeting, personnel, and procurement functions of
19 the commission shall be performed under the direction and super-
20 vision of the director of ~~labor~~ CONSUMER AND INDUSTRY
21 SERVICES.

22 (5) The business ~~which~~ THAT the commission may perform
23 shall be conducted at a public meeting of the commission held in
24 compliance with the open meetings act, ~~Act No. 267 of the Public~~
25 ~~Acts of 1976, as amended, being sections 15.261 to 15.275 of the~~
26 ~~Michigan Compiled Laws~~ 1976 PA 267, MCL 15.261 TO 15.275.
27 Public notice of the time, date, and place of the meeting shall

1 be given in the manner required by ~~Act No. 267 of the Public~~
2 ~~Acts of 1976, as amended~~ THE OPEN MEETINGS ACT, 1976 PA 267, MCL
3 15.261 TO 15.275.

4 (6) A writing prepared, owned, used, in the possession of,
5 or retained by the commission in the performance of an official
6 function shall be made available to the public in compliance with
7 the freedom of information act, ~~Act No. 442 of the Public Acts~~
8 ~~of 1976, as amended, being sections 15.231 to 15.246 of the~~
9 ~~Michigan Compiled Laws~~ 1976 PA 442, MCL 15.231 TO 15.246.

10 Sec. 5. (1) The commission has all powers necessary or con-
11 venient to carry out and effectuate the purposes and provisions
12 of this act, including, without limitation, the powers hereinaf-
13 ter set forth.

14 (2) The commission may sue and be sued; have a seal and
15 alter it; make and execute contracts and other instruments; and
16 adopt, amend, and rescind bylaws for its organization and inter-
17 nal management.

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

24 (4) The commission may encourage, support, or conduct,
25 either by itself or in cooperation with enforcing agencies, asso-
26 ciations of building code officials, or ~~any~~ other persons,

1 educational and training programs for employees, agents, and
2 inspectors of enforcing agencies.

3 (5) The commission may study the effect of the code, THE
4 PROPERTY MAINTENANCE CODE, and other related laws, to ascertain
5 their effect on the cost of building construction and mainte-
6 nance, and the effectiveness of their provisions for ~~insuring~~
7 ENSURING the health, safety, and welfare of the people of this
8 state.

9 (6) The commission may determine after testing and evalu-
10 ation whether a material, product, method of manufacture, or
11 method of construction or installation is acceptable under the
12 code; issue certificates of such acceptability; and establish
13 procedures for the testing of such devices, materials, fixtures,
14 methods, systems, or processes, including contracting with an
15 existing testing laboratory for such testing.

16 (7) The commission may take testimony and hold hearings
17 relating to ~~any~~ AN aspect or matter relative to the administra-
18 tion or enforcement of this act. In the enforcement of this act,
19 it may issue subpoenas to compel the attendance of witnesses and
20 the production of evidence. The commission may designate 1 or
21 more ~~or~~ OF its members or employees to hold public hearings and
22 report thereon to the commission.

23 (8) THE COMMISSION SHALL ADOPT AS A PROPERTY MAINTENANCE
24 CODE THOSE PROVISIONS OF THE 1998 INTERNATIONAL PROPERTY MAINTE-
25 NANCE CODE, PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, AS IT
26 DETERMINES APPROPRIATE. THE ADOPTION SHALL BE BY RULES
27 PROMULGATED UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969

1 PA 306, MCL 24.201 TO 24.328. THE COMMISSION SHALL CONSIDER
2 UPDATING THE PROPERTY MAINTENANCE CODE AS CYCLICAL CHANGES OCCUR
3 TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE OR OTHER INDUSTRY
4 PROMULGATED PROPERTY MAINTENANCE CODES.

5 Sec. 14. (1) A construction board of appeals for each gov-
6 ernmental subdivision enforcing the code, THE PROPERTY MAINTENANCE
7 NANCE CODE, OR BOTH, shall be created consisting of not less than
8 3 nor more than 7 members, as determined by the governing body of
9 the governmental subdivision. Unless otherwise provided by local
10 law or ordinance, the members of the board of appeals shall be
11 appointed for 2-year terms by the chief executive officer of a
12 city, village, or township and the chairperson of the county
13 board of commissioners of a county. A member of the board of
14 appeals shall be qualified by experience or training to perform
15 the duties of members of the board of appeals. A person may
16 serve on the board of appeals of more than 1 governmental
17 subdivision.

18 (2) If an enforcing agency refuses to grant an application
19 for a building permit, or if the enforcing agency makes any other
20 decision pursuant or related to this act, THE PROPERTY MAINTENANCE
21 NANCE CODE, or the code, an interested person, or the person's
22 authorized agent, may appeal in writing to the board of appeals.
23 The board of appeals shall hear the appeal and render and file
24 its decision with a statement of reasons for the decision with
25 the enforcing agency from whom the appeal was taken not more than
26 30 days after submission of the appeal. Failure by the board of
27 appeals to hear an appeal and file a decision within the time

1 limit is a denial of the appeal for purposes of authorizing the
2 institution of an appeal to the commission. A copy of the deci-
3 sion and statement of the reasons for the decision shall be
4 delivered or mailed, before filing, to the party taking the
5 appeal. IN ADDITION TO THE PROHIBITED EXEMPTIONS LISTED IN SEC-
6 TION 8(7) AND (10), IN ENFORCING A PROPERTY MAINTENANCE CODE, A
7 GOVERNMENTAL SUBDIVISION CANNOT EXEMPT ITSELF FROM THE
8 COMMISSION'S REVIEW UNDER SECTION 16 OF A DECISION RENDERED BY
9 THE GOVERNMENTAL SUBDIVISION'S BOARD OF APPEALS.

10 (3) THIS SECTION SHALL BE CONSTRUED TO BE CONSISTENT WITH
11 THE LANGUAGE IN SECTION 8(3) OF THE HOUSING MAINTENANCE LAW OF
12 1917, 1917 PA 167, MCL 125.408, IN PROVIDING STATEWIDE APPLICA-
13 TION OF THE PROPERTY MAINTENANCE CODE ADOPTED UNDER SECTION 5. A
14 GOVERNMENTAL SUBDIVISION MAY NOT ELECT TO ENFORCE LESS STRINGENT
15 STANDARDS THAN THOSE CONTAINED IN THE PROPERTY MAINTENANCE CODE
16 ADOPTED UNDER SECTION 5.

17 (4) ~~(2)~~ This act does not prevent a governmental subdivi-
18 sion from granting its board of appeals additional powers or
19 duties not inconsistent with this act, or from establishing pro-
20 cedures to be followed by its board of appeals insofar as the
21 procedures do not conflict with this act. Except as otherwise
22 provided by this act, or by other laws or ordinances, a board of
23 appeals may by rules establish its own procedures.

24 (5) ~~(3)~~ The business ~~which~~ THAT the board of appeals may
25 perform shall be conducted at a public meeting of the board of
26 appeals held in compliance with ~~Act No. 267 of the Public Acts~~
27 ~~of 1976~~ THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO

1 15.275. Public notice of the time, date, and place of the
2 meeting shall be given in the manner required by ~~Act No. 267 of~~
3 ~~the Public Acts of 1976~~ THE OPEN MEETINGS ACT, 1976 PA 267, MCL
4 15.261 TO 15.275.

5 (6) ~~(4)~~ A record of decisions made by the board of
6 appeals, properly indexed, and any other writing prepared, owned,
7 used, in the possession of, or retained by the board of appeals
8 in the performance of an official function shall be made avail-
9 able to the public in compliance with ~~Act No. 442 of the Public~~
10 ~~Acts of 1976~~ THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
11 15.231 TO 15.246.

12 Sec. 15. (1) After a public hearing a board of appeals may
13 grant a specific variance to a substantive requirement of the
14 code OR THE PROPERTY MAINTENANCE CODE if the literal application
15 of the substantive requirement would result in an exceptional,
16 practical difficulty to the applicant, and if both of the follow-
17 ing requirements are satisfied:

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

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

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

10 Sec. 24. Until 6 months after promulgation of the code OR
11 THE PROPERTY MAINTENANCE CODE, construction regulations hereto-
12 fore or hereafter adopted by a governmental subdivision continue
13 in effect unless repealed by local law or ordinance. Six months
14 after the promulgation of the code OR THE PROPERTY MAINTENANCE
15 CODE and thereafter, construction regulations adopted by a gov-
16 ernmental subdivision shall be considered repealed and invalid,
17 except as provided in section 8. A building permit validly
18 issued under local construction regulations within 6 months
19 before promulgation of the code OR THE PROPERTY MAINTENANCE CODE
20 is valid, and the construction of a building or structure may be
21 completed pursuant to that building permit. The construction of
22 a building or structure started before promulgation of the code
23 OR THE PROPERTY MAINTENANCE CODE in an area of the state that did
24 not as of the date of beginning of construction require a build-
25 ing permit may be completed without a building permit. Except as
26 provided in section 28, construction regulations incorporated in
27 ~~any~~ AN act of this state in effect or validly promulgated by

1 ~~any~~ A board, department, commission, or agency continue in
2 effect until promulgation of the code OR THE PROPERTY MAINTENANCE
3 CODE at which time they shall be considered to be superseded.

4 Sec. 30. Proceedings pending and rights and liabilities
5 existing, acquired, or incurred under existing construction regu-
6 lations as long as they remain in effect are saved. The proceed-
7 ings may be consummated according to the law in force when the
8 proceedings were commenced. ~~Neither this act nor~~ THIS ACT, THE
9 PROPERTY MAINTENANCE CODE, AND the code shall NOT be construed to
10 alter, affect, or abate a pending prosecution, or prevent prose-
11 cution hereafter instituted under such repealed construction regu-
12 lations for offenses committed as long as the construction regu-
13 lations remain in effect. Prosecutions instituted after the
14 repeal of existing construction regulations for offenses commit-
15 ted before the effective date of the repeal may be continued or
16 instituted in accordance with construction regulations in effect
17 at the time of the commission of the offenses.

18 Enacting section 1. This amendatory act does not take
19 effect unless Senate Bill No. _____ or House Bill No. _____
20 (request no. 00238'99 **) of the 90th Legislature is enacted into
21 law.