MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

April 19, 2014
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, Thomas F. Sweeney, called the meeting to order at 10:27 a.m.

II. Attendance

A. The following officers and members of the Council were in attendance:

<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imami, Shaheen I.</td>
<td>Kerr, J. David</td>
</tr>
<tr>
<td>Sweeney, Thomas F.</td>
<td>Lentz, Marguerite M</td>
</tr>
</tbody>
</table>
| Morrissey, Amy N.   | Marquardt, Michele C.
| Steward, James B.   | Murkowski, Hon. David M. |
| Teahan, Marlaine C. | New, Lorraine F.    |
| Allan, Susan M.     | Ouellette, Patricia M. |
| Ard, W. Josh        | Skidmore, David L   |
| Bearup, George F.   | Taylor, Robert M.   |
| Brigman, Constance L| Vernon, Geoffrey R.  |
| Clark-Kreuer, Rhonda M. | Welber, Nancy H |

A total of 20 council members and officers were present representing a quorum.

B. The following officers and members of the Council were absent with excuse:

<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballard, Christopher A.</td>
<td>Spica, James P.</td>
</tr>
<tr>
<td>Lucas, David P.</td>
<td></td>
</tr>
</tbody>
</table>

C. The following officers and members were absent without excuse:

None.

D. The following ex-officio members of the Council were in attendance:

<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gregory, George W.</td>
<td>Harder, Mark K.</td>
</tr>
</tbody>
</table>
Harter, Hon. Phillip E.  
McClory, Michael S.  
Mielock, Douglas A.  

E. Others in attendance:  
Rebecca Schnelz  
Kathleen M. Goetsch  
Paul S. Vaidya  
Katie Lynwood  
Raymond A. Harris  
Joe Vivieno  
Nazneen H. Syed  
Jeanne Murphy  
Neal Nusholtz  
Buzz Leach  
Rick Mills  
Michael Lichterman  
Amy Peterman  

III. Minutes of the March 15, 2014, Meeting of the Council  

The minutes of the March 15, 2014, Meeting of the Council were included with the meeting materials posted on the Section’s web page prior to the meeting. One correction was noted. Motion by Amy N. Morrissey, second by Marlaine C. Teahan to approve the minutes as corrected. The motion was approved on a voice-vote with no nays or abstentions.  

IV. Treasurer’s Report  

Marlaine C. Teahan presented the Treasurer's report (see Attachment A). In addition to the matters covered in that report, Ms. Teahan also reported that our Hearts & Flowers fund holds $1,937 at present. Disbursements from that fund since the last meeting are: $200 to Kay Lasante clinic in Haiti in memory of Jude Huetteman, and $250 to Cherry Capital Cycling Club for the cycling event that is held during the annual Institute.  

V. Chairperson’s Report – Thomas F. Sweeney  

Chairperson, Thomas F. Sweeney, presented the Chairperson’s report:  

- Marlene C. Teahan, the prior chairperson of our Court Rules, Procedures and Forms Committee, has also served for several years as our SCAO Liaison to the Michigan Court forms work group; Michele C. Marquardt has agreed to serve in her place.  

- As part of the State Court Administrator’s Office initiative titled: “Courts working smarter for a better Michigan,” the SCAO sent a letter to the Section asking for 3 nominees to serve on a work group to review certain probate court contested cases to look at ways to improve court service and efficiency; 2 of those nominated will be selected. Those interested in serving should contact Chairperson Sweeney prior to our next meeting.  

- Mr. Sweeney discussed the process we use to produce the Probate & Estate Planning Journal with Nancy Little and Jeanne Murphy to quantify the likely cost savings of changing to an electronic only Journal. At present, we utilize 3 steps: our State Bar and
Section Journals Committee collects and edits the articles; ICLE sets up the format; and E.P. Horak Company prints the Journal and sends out the paper version, which currently costs about $5,000 per issue for the printing and mailing of the paper copies to only about 17% of our membership; the State Bar handles the electronic distribution. If we go to an all-electronic version, the first two steps would not change, but the step handled by E.P. Horak Company would be eliminated. At that point, the only way to obtain access to the Journal would be “on line”. Announcements would be primarily electronic, which we now doing for the most part anyway. The State Bar Journal will still be printed on paper (for now). Saving the mailing & printing expense would allow us to support a broader range of programs for our members.

VI. Report of the Committee on Special Projects – Marguerite M. Lentz

Marguerite M. Lentz presented the following report for CSP:

- CSP discussed Geoffrey R. Vernon’s memo to the Insurance Committee (see Attachment B) regarding “Consideration of a Statute Relieving ILIT Trustees From Compliance With the Prudent Investor Rules,” and the related materials included with the CSP agenda. Mr. Vernon asked that CSP review and discuss this issue to determine whether there was support for continuing with this project. After discussion of several of the issues that apply to this concept, the consensus at CSP was to continue with the project.

- CSP discussed the proposal from the Probate Judges Association to eliminate the Probate inventory fee for decedent’s estates and replace it with increased filing fees. CSP also discussed the report on this issue submitted by our Court Rules, Procedures and Forms Committee (see Attachment C). Under the Probate Judges proposal, the belief is that the inventory fee on decedent estates would be eliminated without a loss of revenue to the probate courts (or possibly an increase in revenue), simply by increasing the filing fee on decedent estates and small estates. Such an action would enhance the privacy goals of EPIC and reduce the cost of administration for decedent estates. It would also make it easier to avoid public disclosure of the extent of an estate’s assets. Our Court Rules Committee agrees that the proposed change could achieve those objectives, but also has concerns, including:
  
  - chilling effect on filing of small estates,
  - chilling effect on PR who has to personally pay the filing fee when cash is not available in the probate estate
  - reduce the likelihood that inventories will be prepared
  - reduce likelihood that inventories will be provided to heirs/devisees,

CSP recommends we support the proposal. Motion by Ms. Lentz to accept the recommendation of CSP that we support the concept of the Probate Judges Association proposal to eliminate the inventory fee and replace it with increased filing fees, subject to review of the actual wording of the final bills and/or rules revisions. The motion was approved on a Council vote of 20-0, with no nays and no abstentions.
VII.  **Standing Committee Reports**

A. **Internal Governance**

1. **Budget – James B. Steward**
   
   No report.

2. **Bylaws – Nancy H. Welber**
   
   Ms. Welber reported that the committee expects to have the final draft of proposed revisions to our current Bylaws, as approved by Council in prior meetings, to the State Bar within the next few weeks.

3. **Awards – Douglas A. Mielock**
   
   No report.

4. **Planning – Amy N. Morrissey**
   
   No report.

5. **Nominating – Douglas G. Chalgian**
   
   No report.

6. **Annual Meeting – Amy N. Morrissey**
   
   No report.

B. **Education and Advocacy Services for Section Members**

1. **Amicus Curiae – David L. Skidmore**
   
   Mr. Skidmore reported that the Court of Appeals has issued its decision in the Ducharme case. The Court of Appeals followed the position we advocated in our Amicus brief. As stated by the Court of Appeals (at page 3 of the opinion):

   “. . . By alleging a breach of duty to the trust beneficiaries, plaintiff necessarily alleged a breach of trust. Count V alleged fraud and misrepresentation. A trustee must administer the trust in the interests of the trust beneficiaries; misevaluating trust property and inappropriately taking trust property would be a violation of this duty.

   “Plaintiff’s allegations clearly involve claims that defendant breached her duty as trustee in her administration of the trust. Indeed, plaintiff’s standing relies upon his
interest in the trust as a trust beneficiary. Thus, plaintiff alleged in each count a "violation by a trustee of a duty the trustee owes to a trust beneficiary." MCL 700.7901(1)."

As stated at footnote 1 of the opinion (on page 3):

“Both the breach of trust statute and the breach of fiduciary duty statutes seek to protect beneficiaries from misdeeds by their trustees. Because the breach of trust statute specifically applies to the trust context, it and its statute of limitations applies in the specific application.”

2. Probate Institute – Shaheen I. Imami

Mr. Imami reported that the pre-registrations for the Annual Probate Institute are at about 440 registrants; which is about 30 behind last year. There are 42 registered for the pre-seminar so far. There are still several new lawyer registrations available; if you know of anyone in that category, be sure to encourage them to attend. The invitations for the Speakers Dinner have been sent out. This year the format for the dinner will be a little different – a tasting menu including liberal use of around morel mushrooms paired with different wines.

3. State Bar and Section Journals – Amy N. Morrissey

Ms. Morrissey reported that the May Bar Association Journal is nearly final and will be coming out shortly.

4. Citizens Outreach – Constance L. Brigman

Ms. Brigman reported that the committee has been reviewing our brochures, and the Committee has identified some issues for Council to consider:

- What is the focus of our brochures: are these for direct public information or for attorneys to disseminate, or both? The State bar pays the printing costs, and the brochures are on-line so they can be printed out from the pdf version. If our goal is for these to primarily be of service to the public, perhaps we should make these more available at the web site level. Or, do we want to make the brochures only available to attorneys to give out in connection with the attorney’s discussions with clients (would this be for Section members only, or all Michigan attorneys?).

- If we want the brochures to be directly available to the public, how should we set that up? That is, how will they be disseminated. On line only? At the State Bar public info web page? But, most of the general public are probably not going to the State Bar site for this information; they are likely going to other sites. So, should we include links on the web pages to other resources?
• Some probate courts have our brochures out for people to pick up; some probate courts have their own. Perhaps we should focus our brochures at informing the public regarding certain specific legal issues, such as: “what is the legal meaning and effect of signing a power of attorney?” If something of that nature is to be the focus, should content then be different than what we put out now? Should we simplify the wording to make them more “use friendly”?

• Another issue is keeping the brochures up to date. This would be particularly important if these will be actively publicized as available directly to the public.

5. **Electronic Communications – William J. Ard**

Mr. Ard reported for the Council’s information that there have been reports of spam coming through on the Probate list serve; not sure why this is happening.

C. **Legislation and Lobbying**

1. **Legislation – Christopher A. Ballard**

As reported in the Taxation Section Liaison report (see Attachment D, there will likely be some changes to the pending legislation relating to tax appeals, so we will need to keep watching to see what happens.

2. **Updating Michigan Law – Marguerite Munson Lentz**

Ms. Lentz reported that representatives of our Committee have met with Representative Cotter and he seems receptive to our Digital Assets legislation proposal. However, there has been no further communication at this point.

3. **Insurance Committee – Geoffrey R. Vernon**

No report.

4. **Artificial Reproductive Technology – Nancy H. Welber**

Ms. Welber reported that the Committee is continuing to work on a proposed bill. They had an expert from the University of Michigan provide more information regarding these issues. There are many potential issues to address, and as result it will some time before the Committee has an actual proposed statute to present to Council.

D. **Ethics and Professional Standards**

1. **Ethics – J. David Kerr**

No report.

2. **Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor**
Mr. Taylor provided an update on the "Who should I Trust" program which will be presented August 6, 2014, at various locations around Michigan. They expect to have matched the volunteer presenters to the Senior Centers by May 15th, and 3350 folders being printed. They have decided not to provide additional brochures at the seminar, in part because they will not have time to review all of them ahead of time.

3. Specialization and Certification – James B. Steward

No report.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Michele C. Marquardt

- Ms. Marquardt circulated copies of the rewritten PC 666 "What You Need to Know Before Filing a Petition to Appoint a Guardian for an Incapacitated Adult" proposed for publication (see Attachment E). Comments are due by June 30th. This has been rewritten to reflect the current statutory requirements and uses about 9th grade level wording. After review and discussion, motion by Thomas F. Sweeney, second by Michele C. Marquardt to approve the rewritten PC 666 as attached and recommend its adoption. The motion was approved on a Council vote of 20-0, with no nays and no abstentions.

- Ms. Marquardt also circulated copies of ADM File No. 2013-29 (see Attachment F). The Committee has some questions about possible redundancy between MCR 5.125(C)(6)(I) and (h) (see page 3 of that attachment). Marlaine Teahan reviewed her prior notes regarding the listing of “claimant” as an interested party for certain proceedings; the reason “claimant” was specifically included was because otherwise it might not be clear that unpaid claimants must be notified – that is why it is in (h); no one recalls at present why in (i) also. One possible way to address this question would be to rewrite (i) to move the word “claimant” to an earlier position in that paragraph and delete (h). However, Mr. Imani noted that MCR 5.125(B)(1) provides: “Only a claimant who has properly presented a claim and whose claim has not been disallowed and remains unpaid need be notified of specific proceedings under subrule (C)” Would that be sufficient without mentioning “claimant” in either (C)(6)(h) or (i)? Chairperson Sweeney directed the Committee to review these comments and prepare a rewrite of the proposed rule to address these issues.

2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No report.
F. **Areas of Practice**

1. **Real Estate – George F. Bearup**

   Mr. Bearup reported that on March 27, 2014 David Fry of this subcommittee contacted Matt Blakely, Representative Pettalia’s legislative aide, who intends to sponsor the proposed technical correction legislation *(see Attachment G)*. Representative Pettalia seems to want to re-write his prior statute to cover more than just first degree relatives. In this regard, the Committee believes that the real estate uncapping provisions should at least mirror the EPIC provisions that treat half siblings same as whole blood, but there are other issues as well; see Committee report for details. There have been no new discussions regarding distributions from trusts or estates.

2. **Transfer Tax Committee – Lorraine F. New**

   Ms. New reported that Treasury continues to express concerns about the use of Crummey powers, and has proposed a significant change for annual gift exclusions. The proposal provides for a new category of non-present interest gifts, and gives each taxpayer a $50,000 annual transfer that will qualify for an annual exclusion. Gifts above that amount will be taxable. Gifts in this category do not qualify for the now $14,000 annual exclusion so if the amount exceeds $50,000, it is taxable even if the amount to each individual does not exceed $14,000. The proposal does not contain (at present) a grandfather provision for existing trusts. *(See Attachment H, for further details).*

3. **Charitable and Exempt Organization – Christopher A. Ballard**

   In the absence of Chris Ballard, George Gregory reported that work has begun on a charitable trust bill drafting project.

4. **Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer**

   At last month’s meeting, Council resolved the final wording issue outstanding for the latest draft of the proposed Patient's Guide to Health Care Decision Making, but authorized this Committee to decide on the appropriate location within the document for placement of the last sentence of the paragraph approved by Council at that meeting *(see March 2014 meeting minutes for details)*. Ms. Clark-Kreuer reported that the Committee has reviewed this issue and has determined that there should be no further changes. Therefore, that sentence will remain where it is shown in the minutes for the March 2014 meeting.

G. **Liaisons**

1. **Alternative Dispute Resolution Section Liaison –**

   No report.

2. **Business Law Section Liaison – John R. Dresser**
3. Elder Law Section Liaison – Amy R. Tripp

No report.

4. Family Law Section Liaison – Patricia M. Ouellette

Ms. Ouellette reported that the Family Law Section has proposed a statutory requirement which will void all real estate conveyances (including mortgages) made by a married person, unless the spouse also signs the conveyance. This is in response to the proposal to eliminate a wife’s dower interest. Basically, the Family Law Section wants to prevent one spouse from making a real estate conveyance without the other spouse knowing about it. However, this would not apply to non-real estate property (such as brokerage accounts, etc). The consensus of the Council is that dower should be eliminated without this sort of requirement. The Family Law Section, Real Estate Law Section, and others are continuing to discuss these issues, and as other proposals are developed, they will be brought to Council for additional discussion.

5. ICLE Liaison – Jeanne Murphy

No report.

6. Law Schools Liaison – William J. Ard

No report.

7. Michigan Bankers Association Liaison – Susan Allan

No report.


No report, other than the inventory fee issue discussed at CSP. See above.

9. Probate Registers Liaison – Rebecca A. Schnelz

No report.

10. SCAO Liaisons – Marlaine C. Teahan, Constance L. Brigman, Rebecca A. Schnelz

No report.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz

No report.

12. State Bar Liaison – Richard Siriani
No report.

13. Taxation Section Liaison – George W. Gregory

Mr. Gregory reported that the Taxation Section has filed an amicus brief in Ford Motor Company v. Department of Treasury, State of Michigan, Supreme Court, No. 141332. The Taxation Section position is that absent clear legislative or administrative guidance, a taxpayer must be treated as having filed a claim for refund when the taxpayer provides notice that it believes it has overpaid a tax and the nature of the overpayment. (See Attachment D for more detail.)

There is also a pending case which deals with powers of attorney. Michigan Treasury takes the position that a power of attorney gives them permission to divulge information to the agent, but does not require them to mail notices to the power of attorney agent. The Taxation Section position is that the agent under a power of attorney should receive the same notices as the taxpayer – which is the federal rule. (See Attachment D for complete report.)

VIII. Other Business

None.

IX. Hot Topics

David Kerr mentioned that the appeals court has stayed operation of the case which determined that the Michigan constitutional amendment which outlawed same sex marriages was void because it violated the federal constitution. If the decision is upheld, it will likely affect several of our legal rules that pertain to married couples, including dower.

X. Adjournment

Meeting adjourned by Thomas F. Sweeney at 11:48 a.m.
ATTACHMENT A
Probate and Estate Planning Council  
Treasurer’s Report  
April 19, 2014

**Income/Expense Reports**

An unaudited report through March 31, 2014 is attached. This month's spreadsheet covers from January, 2014 to March, 2014.

New items in the attached spreadsheet to highlight:

- There is a new line items called Seminars. This reflects the Council's vote in March, 2014 month to approve $4,000 support for an ICLE program for Fall, 2014 called the Experts in Estate Planning Series. The Budget for 2013-04 was amended at the March 2014 meeting and that change is reflected in the attached unaudited report.
- In March we received the final annual installment of the $325 payment for the publishing agreement with ICLE regarding the EPIC Reporter's Commentary.
- We have expended 40% of our expected disbursements.

Old items from last month's report that still appear in the attached unaudited report:

- We have received 100% of our expected revenue.
- February's expenses are much higher than the prior two months. The following items account for this increase: Publication of the Journal, submission of several months of travel expenses by some council members, and the support for the Annual Institute.

**Remember -- New Mileage Reimbursement Rate Effective 1/1/2014**

The IRS business mileage reimbursement rate for 2014 is $0.56 per mile. If you are eligible for reimbursement of your mileage for Probate Council business, please use this rate on your SBM expense reimbursement forms. The SBM forms have been updated. The form and instructions are attached.

**Expense Reimbursement Requests**

- Email forms to mteahan@frasierlawfirm.com or provide paper copies in person or by mail.

Marlaine C. Teahan, Treasurer  
Probate and Estate Planning Section
## Probate and Estate Planning Section
### Treasurer's Report as of March 31, 2014

<table>
<thead>
<tr>
<th>Beginning General Fund</th>
<th>$267,313.09</th>
<th>$266,186.64</th>
<th>$250,817.88</th>
<th>$180,511.60</th>
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</thead>
<tbody>
<tr>
<td>Beginning Amicus Fund</td>
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<td>$25,785.00</td>
<td>$25,785.00</td>
<td>$25,785.00</td>
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<tr>
<td>Beginning Total Fund Balance</td>
<td>$293,098.09</td>
<td>$291,971.64</td>
<td>$276,602.88</td>
<td>$206,296.60</td>
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<tr>
<td>Use of Amicus Fund overage</td>
<td>- (361.50)</td>
<td>- (361.50)</td>
<td>- (361.50)</td>
<td>- (361.50)</td>
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</table>

<table>
<thead>
<tr>
<th>Revenue</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>FY to Date</th>
<th>Budget 2013-14</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership Dues</td>
<td>3,045.00</td>
<td>1,260.00</td>
<td>105.00</td>
<td>115,080.00</td>
<td>115,000.00</td>
<td>80.00</td>
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<tr>
<td>Publishing Agreements</td>
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<td>-</td>
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<td>650.00</td>
<td>650.00</td>
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<td>100%</td>
</tr>
<tr>
<td>Other</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>35.00</td>
<td>350.00</td>
<td>(315.00)</td>
<td>10%</td>
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<tr>
<td>Total Receipts</td>
<td>3,370.00</td>
<td>1,260.00</td>
<td>430.00</td>
<td>115,765.00</td>
<td>116,000.00</td>
<td>(235.00)</td>
<td>100%</td>
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</table>

<table>
<thead>
<tr>
<th>Disbursements</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>FY to Date</th>
<th>Budget 2013-14</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
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<tbody>
<tr>
<td>Journal</td>
<td>-</td>
<td>5,083.28</td>
<td>-</td>
<td>5,083.28</td>
<td>25,000.00</td>
<td>(19,916.72)</td>
<td>20%</td>
</tr>
<tr>
<td>Chairperson's Dinner*</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5,457.20</td>
<td>6,500.00</td>
<td>(1,042.80)</td>
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<td>Travel</td>
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<td>2,465.63</td>
<td>2,067.85</td>
<td>10,589.80</td>
<td>18,500.00</td>
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<td>Lobbying</td>
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<td>2,500.00</td>
<td>2,500.00</td>
<td>17,500.00</td>
<td>30,000.00</td>
<td>(12,500.00)</td>
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<td>Meetings</td>
<td>977.04</td>
<td>1,137.02</td>
<td>914.40</td>
<td>6,197.86</td>
<td>14,000.00</td>
<td>(7,802.14)</td>
<td>44%</td>
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<tr>
<td>Long-range Planning</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1,000.00</td>
<td>1,000.00</td>
<td>-</td>
<td>0%</td>
</tr>
<tr>
<td>Support for Annual Institute</td>
<td>-</td>
<td>5,000.00</td>
<td>-</td>
<td>5,000.00</td>
<td>14,000.00</td>
<td>(9,000.00)</td>
<td>36%</td>
</tr>
<tr>
<td>Amicus Briefs</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10,000.00</td>
<td>(10,000.00)</td>
<td>0%</td>
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</tr>
<tr>
<td>ListServ**</td>
<td>75.00</td>
<td>75.00</td>
<td>150.00</td>
<td>450.00</td>
<td>1,400.00</td>
<td>(950.00)</td>
<td>32%</td>
</tr>
<tr>
<td>Postage</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>100.00</td>
<td>(100.00)</td>
<td>0%</td>
</tr>
<tr>
<td>Telephone</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>250.00</td>
<td>(250.00)</td>
<td>0%</td>
</tr>
<tr>
<td>Seminars</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4,000.00</td>
<td>(4,000.00)</td>
<td>0%</td>
</tr>
<tr>
<td>Other***</td>
<td>15.00</td>
<td>6.33</td>
<td>-</td>
<td>21.33</td>
<td>1,000.00</td>
<td>(978.67)</td>
<td>2%</td>
</tr>
<tr>
<td>Total Disbursements</td>
<td>4,496.45</td>
<td>16,267.26</td>
<td>5,632.25</td>
<td>50,660.97</td>
<td>125,750.00</td>
<td>(75,450.53)</td>
<td>40%</td>
</tr>
</tbody>
</table>

Net Increase (Decrease) | (1,126.45) | (15,368.76) | (5,202.25) | 65,104.03 | (9,750.00) | 75,215.53 |

Ending Fund Balance ***** | **291,971.64** | **276,602.88** | **282,665.13** | **271,400.63** |

**Additional Information**
*Includes plaques for outgoing Chair and 2 Council Members
**Includes ListServ, e-blast & other electronic communications to members
***Includes copying costs; budget for this line increased to $1,000 & now includes $750 for Young Lawyers' Summit
****Includes $25,000 allocated to "Amicus Fund" for extra amicus brief expenses in excess of current budget amount
ATTACHMENT B
MEMORANDUM

TO: Insurance Committee
Probate and Estate Planning Council
FROM: Geoffrey R. Vernon
RE: Consideration of a Statute Relieving ILIT Trustees From Compliance With the Prudent Investor Rules
DATE: 3/12/14

INTRODUCTION

Fifteen states have enacted statutes providing various forms of protection to trustees of trusts that acquire and/or retain life insurance policies. There are two public policy reasons cited in support of such laws. First, many grantors of irrevocable life insurance trusts ("ILITs") do not expect or intend to burden the trustee of the ILIT they created (who are frequently family members or friends rather than professional trustees) with the fiduciary duties of administering a trust that is intended to simply own a life insurance policy. Second, trustee protection laws may make a state a more attractive situs for businesses that provide trustee services.

The initial question that this committee and our council needs to address is whether an ILIT trustee protection statute is sound public policy that we should support. We obviously need to weigh the advantages of relieving ILIT trustees from certain fiduciary duties (or simply exculpating them from damages caused by breaching them) against the possible harm to trust beneficiaries. Additionally, however, we should determine the likelihood that an ILIT trustee exculpation statute will be drafted by groups other than our council, the probability of it becoming law, and the potential ramifications of a poorly drafted or ill considered statute.

If it is decided that we should proceed to draft the law, the next question is how to best tailor the statute in order to create sound public policy that protects beneficiaries from improper trustee action or inaction. The several considerations that must be scrutinized when deciding the extent of the protection to be provided to ILIT trustees are discussed below.

1 There appears to be some question as to whether an irrevocable life insurance trust that holds assets other than life insurance should be considered an "ILIT" and whether the trustees of trusts owning additional assets should be held to a higher standard than those holding only life insurance. Neither the ILIT trustee exculpation statutes passed by other states nor this memo makes any such distinction.
PUBLIC POLICY CONCERNS AND CURRENT MICHIGAN LAW

As indicated above, a purported problem to be alleviated through the enactment of a trustee protection statute is that many grantors who establish ILITs do not want the trustees to be subject to onerous duties when the intent of the trust is simply to hold life insurance on the grantor’s life. Grantors of ILITs often wish to name a trusted family member or friend to simply pay the premiums when they come due (often with money that must be given to the trust by the grantor on an annual basis) or do nothing except serve as the owner of the policy.

Further, trustees of ILITs are often constrained by the fact that the grantor selects the policy and pays the premiums through gifts to the trust (or even makes the premium payment directly). It is frequently the case that an ILIT grantor and trustee do not know whether the life insurance policy owned by the trust is a sound investment. Further, the grantor rarely expects the trustee to have such knowledge or take any action with respect to the policy. Unfortunately, the terms of many insurance trust instruments are not consistent with the parties’ intentions that the trustee’s fiduciary duties be limited.

It is important to note that, except for specific circumstances, the trustees’ duties and liabilities are determined by the terms of the trust instruments. The Michigan Trust Code (“MTC”) provides that Michigan trustees are bound by the terms of the trust instrument and, in the absence of trust provisions to the contrary, the prudent investor rules of Estates and Protected Individuals Code (“EPIC”). Michigan’s prudent investor rules do not contain provisions that are specific to acquiring and retaining life insurance. Inasmuch, a trustee’s duties with respect to insurance policies are determined by analyzing the same factors as are considered with respect to any other type of investment. The Michigan prudent investor rule provides that a trustee’s investment and management decisions must "be evaluated as a part of an overall investment strategy having risk and return objectives reasonably suited to the fiduciary estate."

Circumstances that must be considered by a trustee include:

(1) General economic conditions.  

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2 See MCL 700.7105. See also MCL 700.7803.
3 MCL 700.1502, the Michigan prudent investor rule, provides: “(1) A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution. (2) The Michigan prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.”
4 MCL 700.1501 defines "portfolio" as "all property of every kind and character held by a fiduciary on behalf of a fiduciary estate."
5 MCL 700.1503(1).
6 MCL 700.1503(2)(a).
(2) The possible effect of inflation or deflation.\(^7\)

(3) The expected tax consequences of an investment decision or strategy.\(^8\)

(4) The expected total return from income and the appreciation of capital.\(^9\)

(5) The need for liquidity, regularity of income, and preservation or appreciation of capital.\(^10\)

Following are several commonly referenced obligations imposed upon a trustee dealing with life insurance policies:

(A) Determining the suitability of the insurance policy at trust inception.

(B) Monitoring policy performance and the financial condition of the underwriting carrier.

(C) Evaluating the merits and liabilities of trustee actions concerning exercise of various policy options including the suspension or discontinuance of premium payments, policy surrender or replacement, entering loan transactions, etc.

(D) Inquiring as to the health and financial condition of the insured.\(^11\)

While these standards are not statutory duties, they will likely be considered when determining a trustee’s standard of care in dealing with life insurance policies. It seems evident that many trustees of insurance trusts are not aware of or following the above obligations on a regular basis, if at all. The frequency at which a trustee must make these determinations is uncertain but may be as often as annually.\(^12\)

With regard to the public policy issue, we generally must decide whether we want the default rule to stay as is (which potentially provides greater duties and liabilities than what many grantors and trustees desire and anticipate) or whether the default rule should be changed to specifically limit trustee liability (which might limit the claims

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\(^7\) MCL 700.1503(2)(b).

\(^8\) MCL 700.1503(2)(c).

\(^9\) MCL 700.1503(2)(e).

\(^10\) MCL 700.1503(2)(g).


\(^12\) See Office of the Comptroller of the Currency regulations requiring annual review of fiduciary accounts at 12 CFR 9.6(c).
available to trust beneficiaries for shoddy trust administration). Knowing, in either case, that the trust instrument can be drafted to place on the trustee nearly any duties and liabilities the grantor chooses.

**DRAFTING DECISIONS**

Assuming we are satisfied that public policy considerations can be adequately addressed, there are many drafting issues that must be considered. These issues are best analyzed through a review of legislation passed by other states. In this regard, attached as Exhibit A is a summary of the laws of the states that have passed laws exonerating trustees of ILITs (which is followed by printed copies of the state statutes). Also attached, as Exhibit B, is a chart prepared by Trent S. Kiziah which provides a breakdown of the components of such states' laws.13

Following is a short summary of the various considerations that should be addressed during the drafting process:14

1. **Acquisition and Retention of Life Insurance**
   
   A primary consideration is whether a trustee should be exculpated for actions taken (or not taken) with regard to a life insurance policy that the trustee had an active role in acquiring as opposed to only those policies which are transferred to the trust by the grantor and retained by the trustee.

2. **Default Law or Election by Notice to Beneficiaries**
   
   It must be decided whether the exonerating statute applies to all trustees as a default rule or whether a trustee must “opt-in” by providing notice to the beneficiaries.15 The details of the notice requirement should also be addressed if it is determined that the opt-in method is preferable.

3. **Relieving Trustee from Fiduciary Duties and/or Damages**
   
   Another issue is whether to relieve the ILIT trustee of the fiduciary duties related to the insurance policy or simply provide that the trustee is not liable for damages caused by a breach of the enumerated duties. All the states that have passed ILIT trustee protection statutes have exculpated the trustees but a few have not relieved them of their fiduciary duties (perhaps unintentionally). A possible reason for not eliminating the duty is that a breach may still be grounds for trustee removal despite the trustee being relieved from liability for the loss.

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13 The chart omits two states that have passed similar legislation, Maryland and West Virginia.


15 Note that while South Dakota requires notice to the settlor, such notice seems illogical since the trustee owes duties to the beneficiaries.
4. Limitations as to Identity of the Insured

An additional concern is whether the trust owned policy must insure only the life of the grantor as opposed to also permitting exculpation with respect to policies insuring the grantor’s spouse, other relatives, and/or any other person.

5. Identity of Duties Waived

The following duties have been waived in the other states’ exculpation statutes:

A. Determine whether the contract is a proper investment.
B. Investigate the financial strength of the insurance company.
C. Exercise nonforfeiture provisions under the policy.
D. Diversify the contract.
E. Determine whether to exercise any policy option (Maryland makes specific reference to borrowing the cash value or reserve, acquiring a paid-up policy, or converting to a different policy).
F. Pay premiums (unless there is sufficient cash or other marketable assets available to pay the premium).
G. Inquire about changes in the health or financial condition of the insured.

6. Other Issues

A. Exculpating attorneys

Ohio has a specific provision exonerating the "attorney who drafted a trust, or any person who was consulted with regard to the creation of a trust" with respect to any loss "arising from the absence of" the stated duties.

B. Omitting certain trustees from protection

Florida does not provide protection to trustees who are affiliated with the life insurance company or who are paid a commission for the sale of the policy.

C. Prohibiting payment to a trustee for services related to insurance

Florida’s statute prohibits compensation of a "trustee who performs fiduciary or advisory services related" to the policy for performing services for which they would not be held liable under the statute.
CONCLUSION

I would like to present this issue to the Committee on Special Projects for consideration and discussion. Please let me know your thoughts on the above as soon as convenient.
EXHIBIT A

SUMMARY OF EXCULPATION STATUTES

Alabama - Exculpation for failure to diversify.

Arizona - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) investigate financial strength of insurance company, (iii) exercise nonforfeiture provisions, and (iv) diversify the contract.

Delaware - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) investigate financial strength of insurance company, (iii) exercise nonforfeiture provisions, (iv) diversify the contract, and (v) inquire about health or financial condition of insured.

Florida - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) investigate financial strength of insurance company, (iii) exercise nonforfeiture provisions, (iv) diversify the contract, and (v) inquire about health or financial condition of insured. Specific reference to exculpation statute must be in trust agreement and notice must be provided to beneficiaries (and no objections received from beneficiaries). Restrictions on trustees affiliated with life insurance companies and payment for services that are related to dealing with life insurance policies.

Maryland - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) diversify the investment, and (iii) exercise any policy options.

North Carolina - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) exercise any policy options, and (iii) diversify the investment.

North Dakota - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) exercise any policy options, and (iii) diversify the investment. Exculpation only applies to policies transferred to the trust or "acquired by the trustee of a trust which before the acquisition of the policy had never owned any such life insurance policy."

Ohio - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) diversify the investment, (iii) exercise any policy options, (iv) investigate financial strength of insurance company, and (v) inquire about health or financial condition of insured. Attorney who drafted trust is not liable for the absence of the duties (absent fraud).

Pennsylvania - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) investigate financial strength of insurance company, (iii) exercise nonforfeiture provisions, and (iv) diversify the contract.
South Carolina - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) exercise any policy options, and (iii) diversify the contract.

South Dakota - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) investigate financial strength of insurance company, (iii) determine whether to exercise any policy options, (iv) diversify the contract, and (v) inquire about health or financial condition of insured. Notice must be provided to settlor and settlor must not object.

Tennessee - Exculpation for failure to (i) determine whether policy is or remains a proper investment (as to type, quality, or otherwise), (ii) diversify the investment, and (iii) exercise any policy options.

Virginia - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) diversify the contract, and (ii) exercise any policy options, and (iii) diversify the contract. Exculpation applies to “policy of life insurance acquired by gift or pursuant to express permission or direction in the governing instrument.”

West Virginia - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) diversify the contract.

Wyoming - Exculpation for failure to (i) determine whether policy is a proper investment, (ii) investigate financial strength of insurance company, (iii) determine whether to exercise any policy options, (iv) diversify the contract, and (v) inquire about health or financial condition of insured.
§ 19-3B-818. Life insurance policies held by trustee.

Alabama Statutes

Title 19. FIDUCIARIES AND TRUSTS

Chapter 3B. ALABAMA UNIFORM TRUST CODE

Current through Act 6, 2014 Legislative Session

§ 19-3B-818. Life insurance policies held by trustee

A trustee may retain any life insurance policy contributed to a trust by a settlor, or purchased by the trustee upon the request of the settlor, as an asset of the trust without regard to any lack of diversification caused thereby and without regard to the terms and conditions of the life insurance policy. The trustee shall not be liable for lack of diversification to any beneficiary of a trust for the trustee’s retention of the life insurance policy.

Cite as ALA. CODE § 19-3B-818 (1975)

§ 14-10908. Life insurance on settlor; liability of trustee.

Arizona Statutes
Title 14. Trusts, Estates and Protective Proceedings
Chapter 11. ARIZONA TRUST CODE
Article 9. Prudent Investor Rule
Current through L. 2014, ch. 5

§ 14-10908. Life insurance on settlor; liability of trustee
A trustee may acquire or retain a contract of life insurance on the life of the settlor or the settlor's spouse, or both, without liability for a loss arising from the trustee's failure to:

1. Determine whether the contract is or remains a proper investment.
2. Investigate the financial strength of the life insurance company.
3. Exercise nonforfeiture provisions available under the contract.
4. Diversify the contract.

Cite as A.R.S. § 14-10908
§ 3302. Degree of care; authorized investments.

Delaware Statutes
Title 12. Decedents’ Estates and Fiduciary Relations
Chapter 33. ADMINISTRATIVE PROVISIONS
Current through 2013 Legislative Session, Act Chapter 185

§ 3302. Degree of care; authorized investments

(a) When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. In making investment decisions, a fiduciary may consider the general economic conditions, the anticipated tax consequences of the investment and the anticipated duration of the account and the needs of its beneficiaries.

(b) Within the limitations of the foregoing standard and considering individual investments as part of an overall investment strategy, a fiduciary is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, wherever located, whether within or without the United States, including, but not by way of limitation, bonds, debentures and other corporate obligations, stocks, preferred or common, shares or interests in common funds or common trust funds, securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), options, futures, warrants, limited partnership interests and life insurance. No investment made by a fiduciary shall be deemed imprudent solely because the investment is not specifically mentioned in this subsection.

(c) The propriety of an investment decision is to be determined by what the fiduciary knew or should have known at the time of the decision about:

(1) The inherent nature and expected performance of the investment portfolio;

(2) The limitations of the standard set forth in subsection (a) of this section; and

(3) The nature and extent of other investments and resources, whether held in trust or otherwise, available to the beneficiaries as they existed at the time of the decision; provided however, that the fiduciary shall have no duty to inquire as to the nature and extent of any such other investments and resources not held by the fiduciary or held by the fiduciary in a trust or trust account subject to the direction of an adviser authorized to direct the fiduciary with respect to investment decisions, within the meaning of subsection (d) of section 3313 of this title, concerning the assets held in the trust or trust account. Any determination of liability for investment performance shall consider the performance of the entire portfolio and such other factors as the fiduciary considered when the investment decision was made.
(d) Notwithstanding the foregoing provisions of this section, a trustee who discloses the application of this subsection and the limitation of the trustee's duties thereunder either in the governing instrument or in a separate writing delivered to each insured at the inception of a contract of life insurance or thereafter if prior to an event giving rise to a claim thereunder, may acquire or retain a contract of life insurance upon the life of the trustor or the trustor's spouse, or both, without liability for a loss arising from the trustee's failure to:

(1) Determine whether the contract is or remains a proper investment;

(2) Investigate the financial strength or changes in the financial strength of the life insurance company;

(3) Make a determination of whether to exercise any policy option available under the contract;

(4) Make a determination of whether to diversify such contracts relative to 1 another or to other assets, if any, administered by the trustee; or

(5) Inquire about changes in the health or financial condition of the insured or insureds relative to any such contract.

(e) Any fiduciary acting under a governing instrument shall not be liable to anyone whose interests arise from that instrument for breach of fiduciary duty for the fiduciary's good faith reliance on the express provisions of such instrument. The standards set forth in this section may be expanded, restricted or eliminated by express provisions in a governing instrument.

(f) Where a bank or trust company acting in a fiduciary capacity invests trust funds in, or otherwise acquires an interest in, a common trust fund which it or 1 of its affiliates manages, as defined in § 23A of the Federal Reserve Act (12 U.S.C. § 371c), the plan for such common trust fund shall be filed and recorded in the office of the Register in Chancery of the county in which is located the main office in Delaware of the bank or trust company which is the fiduciary for such trust funds.

(g) Fees may be charged for making an investment through a computerized or automated process, such as sweeping otherwise uninvested cash into a cash management vehicle, provided that the amount of such fees is disclosed on a continuing basis as a separate item on the regular periodic statements furnished to the beneficiaries of the account.

(h) A fiduciary is authorized, in the absence of an express provision to the contrary, whenever a law, regulation, governing instrument or order directs, requires, authorizes or permits investment in United States government obligations, to invest in those obligations, either directly or in the form of securities of, or other interests in, any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (54 Stat. 847, 15 U.S.C. § 80a-1 et seq.), if the portfolio of that investment company or investment trust is limited to United States government obligations
and to repurchase agreements fully collateralized by United States government obligations, which collateral shall be delivered to or held by the investment company or investment trust, either directly or through an authorized custodian.

(i) Except in the case of United States government obligations, which are treated in subsection (h) of this section above, the authority to invest in specified types of investments includes authorization to invest in any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (54 Stat. 847, 15 U.S.C. § 80a-1 et seq.), or in any common or collective trust fund established and maintained by a corporate fiduciary, if the portfolio of the investment company or investment trust, or of the common or collective trust fund, consists substantially of the specified types of investments and is otherwise in conformity with the laws of the State.

Cite as 12 Del. C. § 3302

History. Amended by Laws 2013, ch. 172, s 2, eff. 8/6/2013.
§ 736.0902. Nonapplication of prudent investor rule.

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 736. FLORIDA TRUST CODE
Part IX. TRUST INVESTMENTS
Current through 2013 Legislative Session

§ 736.0902. Nonapplication of prudent investor rule

(1) Notwithstanding the provisions of s. 518.11 or s. 736.0804, with respect to any contract for life insurance acquired or retained on the life of a qualified person, a trustee has no duty to:

(a) Determine whether the contract of life insurance is or was procured or effected in compliance with s. 627.404;

(b) Determine whether any contract of life insurance is, or remains, a proper investment;

(c) Investigate the financial strength of the life insurance company;

(d) Determine whether to exercise any policy option available under the contract for life insurance;

(e) Diversify any such contract for life insurance or the assets of the trust with respect to the contract for life insurance; or

(f) Inquire about or investigate the health or financial condition of any insureds.

(2) For purposes of this section, a "qualified person" is a person who is insured or a proposed insured, or the spouse of that person, who has provided the trustee with the funds used to acquire or pay premiums with respect to a policy of insurance on the life of that person or the spouse of that person, or on the lives of that person and the spouse of that person.

(3) The trustee is not liable to the beneficiaries of the trust or any other person for any loss sustained with respect to a contract for life insurance to which this section applies.

(4) Unless otherwise provided in the trust instrument, paragraph (1)(a) applies to any contract for life insurance on the life of a qualified person.

(5) Unless otherwise provided in the trust instrument, paragraphs (1)(b)-(f) apply if:

(a) The trust instrument, by reference to this section, makes this section applicable to contracts for life insurance held by the trust; or

(b) The trustee gives notice that this section applies to a contract for life insurance held by the trust.

1. The notice of the application of this section shall be given to the qualified beneficiaries and shall contain a copy or restatement of this section.
2. Notice given pursuant to any of the provisions of part III of this chapter to a person who represents the interests of any of the persons set forth in subparagraph 1. shall be treated as notice to the person so represented.

3. Notice shall be given in the manner provided in s. 736.0109.

4. If any person notified pursuant to this paragraph delivers a written objection to the application of this section to the trustee within 30 days after the date on which the objector received such notice, paragraphs (1)(b)-(f) shall not apply until the objection is withdrawn.

5. There shall exist a rebuttable presumption that any notice sent by United States mail is received 3 days after depositing the notice in the United States mail system with proper postage prepaid.

(6) This section does not apply to any contract for life insurance purchased from any affiliate of the trustee, or with respect to which the trustee or any affiliate of the trustee receives any commission unless the duties have been delegated to another person in accordance with s. 518.112. For purposes of this subsection, an "affiliate" is any person who controls, is controlled by, or is under common control with the trustee.

(7) Paragraph (1)(a) does not apply if the trustee applied for or accepted ownership of a contract of life insurance and the trustee had knowledge that:

(a) The benefits were not payable to a person specified in s. 627.404 when the contract of life insurance was issued; or

(b) The contract of life insurance is or was purchased with resources or guarantees directly or indirectly provided by a person who, at the time of the inception of such contract, did not have an insurable interest in the insured as defined by s. 627.404, and, at the time of the inception of such contract, there is a verbal or written arrangement, agreement, or plan with a third party to transfer ownership of the policy or policy benefits in a manner that would be in violation of state law.

(8) A trustee who performs fiduciary or advisory services related to a policy of life insurance to which subsection (1) applies shall not be compensated for performing the applicable service to which subsection (1) applies.

Cite as Fla. Stat. s 736.0902

History. s.1, ch. 2010-172.

Maryland Statutes

ESTATES AND TRUSTS

Title 15. FIDUCIARIES

Subtitle 1. GENERAL PROVISIONS

Current through 2014 Legislative Session, Ch.1

§ 15-116. Contract of insurance on life of grantor

Notwithstanding any other provision of law, and except as otherwise provided in the governing instrument, the duties of a trustee regarding the acquisition, retention, or ownership of a contract of insurance on the life of the grantor of the trust, or on the lives of the grantor and the grantor's spouse, children, or grandchildren, include a duty of loyalty and fair dealing, but do not include a duty to:

(1) Determine whether any contract of life insurance in the trust is or remains a proper investment;

(2) Diversify the investment; or

(3) Exercise any policy options, rights, or privileges available under any contract of life insurance in the trust, including any right to borrow the cash value or reserve of the policy, acquire a paid-up policy, or convert to a different policy.

Cite as Md. Code, ET § 15-116
§ 36C-9-903.1. Duties as to life insurance.

North Carolina Statutes

Chapter 36C. North Carolina Uniform Trust Code

Article 9. Uniform Prudent Investor Act

Current through S.L. 2013-418

§ 36C-9-903.1. Duties as to life insurance

(a) Notwithstanding the provisions of this Article, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options, including investment options, available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply.

Cite as N.C. Gen. Stat. § 36C-9-903.1

§ 26.1-33-44. Life insurance policy ownership or retention by trust - Duties of trustee.

North Dakota Statutes

Title 26.1. Insurance

Chapter 26.1-33. Life Insurance

Current through 2013 Legislative Session

§ 26.1-33-44. Life insurance policy ownership or retention by trust - Duties of trustee

Notwithstanding any other provision of law, the duties of a trustee regarding the acquisition, retention, or ownership of a life insurance policy upon the life of any one or more of the grantor of the trust, the grantor's spouse, children, grandchildren, or parents include a duty of loyalty and fair dealing, but, except as provided below, do not include a duty to:

1. Determine whether any life insurance policy in the trust is or remains a proper investment;

2. Exercise a policy option, right, or privilege available under a life insurance policy; or

3. Diversify the investment.

A trustee is not liable to the beneficiaries under the trust instrument or to any other person for a loss that is claimed to result from the absence of these duties, except if a trustee acquires a replacement policy for the trust which replaces an existing policy owned by the trust or previously owned by the trust. The trustee's exoneration from duty provided in this section does not apply to the replacement policy and only applies to a policy transferred to a trust by the grantor or some other party other than the trustee or acquired by the trustee of a trust which before the acquisition of the policy had never owned any such life insurance policy.

Cite as N.D.C.C. § 26.1-33-44
§ 5809.031. Duties of a trustee with respect to the acquisition, retention, or ownership of a life insurance policy.

Ohio Statutes
Title 58. TRUSTS
Chapter 5809. OHIO UNIFORM PRUDENT INVESTOR ACT
Includes all legislation filed with the Secretary of State's Office through 7/15/2013
§ 5809.031. Duties of a trustee with respect to the acquisition, retention, or ownership of a life insurance policy

(A) Notwithstanding any other provision of the Ohio Uniform Prudent Investor Act, unless otherwise provided by the terms of the trust, the duties of a trustee with respect to the acquisition, retention, or ownership of a life insurance policy as a trust asset do not include any of the following duties:

(1) To determine whether the policy is or remains a proper investment;

(2) To diversify the investment in the policy relative to any other life insurance policies or to any other trust assets;

(3) To exercise or not to exercise any option, right, or privilege available under the policy, including the payment of premiums unless there is sufficient cash or there are other readily marketable trust assets from which to pay the premiums or there are other trust assets that were designated by the settlor or any other person transferring those assets to the trust to be used for that purpose, regardless of whether that exercise or nonexercise results in the lapse or termination of the policy;

(4) To investigate the financial strength or changes in the financial strength of the life insurance company maintaining the policy;

(5) To inquire about changes in the health or financial condition of the insured or insureds under the policy.

(B) The trustee, the attorney who drafted a trust, or any person who was consulted with regard to the creation of a trust, in the absence of fraud, is not liable to the beneficiaries of the trust or to any other person for any loss arising from the absence of the duties specified in divisions (A)(1) to (5) of this section.

(C) Unless otherwise provided by the terms of the trust, this section applies to a trust established before, on, or after March 22, 2012, and to a life insurance policy acquired, retained, or owned by a trustee before, on, or after March 22, 2012.
§ 7208 Life insurance.

Pennsylvania Statutes

20 Pa.C.S. DECEDEMENTS, ESTATES AND FIDUCIARIES

Chapter 72 PRUDENT INVESTOR RULE

Current through P.A. Acts 2013-11

§ 7208 Life insurance

A trustee may acquire or retain a contract of life insurance upon the life of the settlor or the settlor's spouse, or both, without liability for a loss arising from the trustee's failure to:

(1) determine whether the contract is or remains a proper investment;
(2) investigate the financial strength of the life insurance company;
(3) exercise nonforfeiture provisions available under the contract; or
(4) diversify the contract.

Cite as 20 Pa.C.S. § 7208


South Carolina Statutes

Title 62. South Carolina Probate Code

Article 7. SOUTH CAROLINA TRUST CODE

Part 9. SOUTH CAROLINA UNIFORM PRINCIPAL AND INCOME ACT; SOUTH CAROLINA UNIFORM PRUDENT INVESTOR ACT

Current through 2013 Act No. 122

§ 62-7-933. Uniform Prudent Investor Act

(A) This section may be cited as the South Carolina Uniform Prudent Investor Act, or this act.

(B) (1) Except as otherwise provided in item (2) of this subsection, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule in this act.

(2) The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

(C) (1) A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among other circumstances provided in item (1) of this subsection which a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;
(d) the role that each investment or course of action plays within the overall trust portfolio, including financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset's special relationship or special value to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(5) (a) A trustee may invest in any kind of property or type of investment consistent with the standards of this act.

(b) Nothing in this act prohibits affiliate investments if they otherwise comply with the standards of this act. For these purposes, 'affiliate' means an entity that owns or is owned by the trustee, in whole or in part, or is owned by the same entity that owns the trustee. Affiliate investments include:

(i) investment and reinvestment in the securities of an open-end or closed-end management investment company or of an investment trust registered under the Investment Company Act of 1940, as amended. A bank or trustee, or both of them, may invest in these securities even if the bank or trustee, or an affiliate of the bank or trustee, provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and receives reasonable remuneration for those services;

(ii) retention of the securities into which corporate securities owned by the trustee may be converted or which may be derived as a result of merger, consolidation, stock dividends, splits, liquidations, and similar procedures, and the exercise by purchase or otherwise any rights, warrants, or conversion features attaching to the securities;

(iii) purchase or other acquisition and retention of a security underwritten by a syndicate, even if the trustee or its affiliate participates or has participated as a member of the syndicate, provided the trustee does not purchase the security from itself, its affiliate, or from another
member of the underwriting syndicate, or its affiliate, pursuant to an implied or express reciprocal agreement between the trustee, or its affiliate, and the other member, or its affiliate, to purchase all or part of each other's underwriting participation commitment within the syndicate.

(c) Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank, trust company, or private banker holding securities as a custodian or managing agent, and any bank, trust company, or private banker holding securities as custodian for a fiduciary, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation, as defined in Article 8 of the Uniform Commercial Code. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank, trust company, or private banker acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank, trust company, or private banker so depositing securities pursuant to this section shall be subject to such regulations as in the case of state-chartered institutions, the Board of Financial Institutions, and, in the case of national banking associations, The Comptroller of the Currency may from time to time issue. A bank, trust company, or private banker acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank, trust company, or private banker in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary. This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank, trust company, or private banker holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on April 17, 1973, or who thereafter may act regardless of the date of the agreement, instrument,
or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

(6) RESERVED

(D) A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

(E) Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this act.

(F) RESERVED

(G) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

(H) RESERVED

(I) The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorize any investment or strategy permitted pursuant to this act: 'investments permissible by law for investment of trust funds', 'legal investments', 'authorized investments', 'using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital', 'prudent man rule', 'prudent trustee rule', 'prudent person rule', and 'prudent investor rule'.

(J) (1) Notwithstanding provisions of this act to the contrary, the duties of a trustee with respect to acquiring a contract of insurance upon the life of the trustor or upon the lives of the trustor and the trustor's spouse, children, or parents do not include:

(a) determine whether the contract is or remains a proper investment;

(b) exercise policy options available under the contract; or

(c) diversify the contract.

(2) The trustee is not liable to the beneficiaries of the contract of insurance or to another party for loss arising from this subsection.
Except as specifically provided in the trust instrument, the provisions of this subsection apply to a trust established before or after the effective date of this subsection and to a life insurance policy acquired by the trustee before or after the effective date of this act.

This act applies to 'charitable remainder trusts'. 'Charitable remainder trust' means a trust that provides for a specified distribution at least annually for either life or a term of years to one or more beneficiaries, at least one of which is not a charity with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity.

This act must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the States enacting it.

REPORTER’S COMMENT

Subsection 62-7-933(B):

Subsection 62-7-933(B)(1) of the South Carolina Uniform Prudent Investor Act (SCUPIA) imposes on trustees the obligation of prudence in the conduct of investment functions and identifies further subsections of SCUPIA that specify the attributes of prudent conduct.

Origins. The prudence standard for trust investing traces back to Harvard College v. Amory, 26 Mass. (9 Pick.) 446 (1830). Trustees should "observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested." Id. at 461.

Prior legislation. The Model Prudent Man Rule Statute (1942), sponsored by the American Bankers Association, undertook to codify the language of the Amory case. See Mayo A. Shattuck, The Development of the Prudent Man Rule for Fiduciary Investment in the United States in the Twentieth Century, 12 Ohio State L.J. 491, at 501 (1951); for the text of the model act, which inspired many state statutes, see id. at 508-09. Another prominent codification of the Amory standard is Uniform Probate Code Section 7-302 (1969), which provides that "the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another ...") [Italics added.]

Congress has imposed a comparable prudence standard for the administration of pension and employee benefit trusts in the Employee Retirement Income Security Act (ERISA), enacted in 1974. ERISA Section 404(a)(1)(B), 29 U.S.C. Section 1104(a), provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar
§ 55-5-17. [Effective 7/1/2014] Duties of trustee with respect to life insurance-Notice to settlor.

South Dakota Statutes

Title 55. FIDUCIARIES AND TRUSTS

Chapter 5. Investment And Management Powers Of Fiduciaries

Reflects legislation through February 20, 2014

§ 55-5-17. [Effective 7/1/2014] Duties of trustee with respect to life insurance-Notice to settlor

(a) Unless otherwise required by the terms of the trust instrument or court order, no trustee of a trust, with respect to acquiring, retaining, or disposing of a contract of insurance or holding one or more insurance contracts upon the life of the settlor, or the lives of the settlor and the settlor's spouse, has the following duties:

(1) To determine whether any such contract is or remains a proper investment;

(2) To investigate the financial strength or changes in the financial strength of the life insurance company;

(3) To make a determination of whether to exercise any policy options available under any such contract;

(4) To make a determination of whether to diversify any such contract relative to one another or to other assets, if any, administered by the trustee;

(5) To inquire about changes in the health or financial condition of the insured or insured's relative to any such contract; or

(6) To vote, or give proxies to vote, on corporate matters.

A trustee of a revocable or an irrevocable trust, or of either a directed trust pursuant to chapter 55-1B or a delegated trust pursuant to § 55-5-16, is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section which was established prior to the effective date of this section, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within sixty days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section does not apply if, within sixty days of the trustee's notice, the settlor notifies the trustee that subsection (a) does not apply.
Cite as SDCL 55-5-17


History. Amended by S.L. 2014, ch. TBD, s. 5, eff. 7/1/2014.

Note: This section is set out twice. See also § 55-5-17, effective until 7/1/2014.
§ 55-5-17. [Effective Until 7/1/2014] Duties of trustee with respect to life insurance—Notice to settlor.

South Dakota Statutes

Title 55. FIDUCIARIES AND TRUSTS

Chapter 5. Investment And Management Powers Of Fiduciaries

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§ 55-5-17. [Effective Until 7/1/2014] Duties of trustee with respect to life insurance—Notice to settlor

(a) Unless otherwise required by the terms of the trust instrument or court order, no trustee of a trust, with respect to acquiring, retaining, or disposing of a contract of insurance or holding one or more insurance contracts upon the life of the settlor, or the lives of the settlor and the settlor's spouse, has the following duties:

(1) To determine whether any such contract is or remains a proper investment;

(2) To investigate the financial strength or changes in the financial strength of the life insurance company;

(3) To make a determination of whether to exercise any policy options available under any such contract;

(4) To make a determination of whether to diversify any such contract relative to one another or to other assets, if any, administered by the trustee; or

(5) To inquire about changes in the health or financial condition of the insured or insured's relative to any such contract.

A trustee of a revocable or an irrevocable trust, or of either a directed trust pursuant to chapter 55-1B or a delegated trust pursuant to § 55-5-16, is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section which was established prior to the effective date of this section, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within sixty days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section does not apply if, within sixty days of the trustee's notice, the settlor notifies the trustee that subsection (a) does not apply.
Cite as SDCL 55-5-17


Note: This section is set out twice. See also § 55-5-17, as amended by S.L. 2014, ch. TBD, s. 5, eff. 7/1/2014.
§ 35-14-105. Diversification.

Tennessee Statutes

Title 35. Fiduciaries And Trust Estates

Chapter 14. Uniform Prudent Investor Act

Current through Acts 2014 ch. 498

§ 35-14-105. Diversification

(a) A trustee shall diversify the investments of the trust:

(1) Unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying, or

(2) Except as otherwise provided in subsection (b).

(b) (1) In the absence of express provisions to the contrary in the governing instrument, a fiduciary may without liability continue to hold property received into a trust at its inception or subsequently added to it or acquired pursuant to proper authority if and as long as the fiduciary, in the exercise of good faith and reasonable prudence, discretion and intelligence, may consider that retention is in the best interest of the trust and its beneficiaries or in furtherance of the goals of the trustor as determined from that instrument. Such property may include capital stock in the corporate fiduciary and stock in any corporation controlling, controlled by or under common control with such fiduciary; and the fiduciary may acquire additional shares of such stock by stock dividends, stock splits, exchanges and conversions for other stock or debentures and exercise of rights to acquire stock of the corporation or another corporation acquiring the stock of the corporation by merger, consolidation or reorganization.

(2) In the absence of express provisions to the contrary in the governing instrument, a deposit of trust funds at interest in any bank, savings and loan association or other financial institution (including the fiduciary and an affiliated depository institution) shall be a qualified investment to the extent that such deposit is insured under any present or future law of the United States. The fiduciary may also hold deposits in such institutions without interest in reasonable amounts and for reasonable times for operating expenses, anticipated distributions and pending investments.

(c) (1) Notwithstanding any other provision of this chapter to the contrary, and except as otherwise provided in the governing instrument, the duties of a trustee regarding the acquisition, retention or ownership of a contract of insurance on the life of the
grantor of the trust, or on the lives of the grantor and the grantor's spouse, children, grandchildren, or parents, do not include a duty to:

(A) Determine whether any contract of life insurance in the trust, or to be acquired by the trust, is or remains a proper investment;
   (i) As to the type of insurance contract;
   (ii) As to the quality of the insurance company;
   (iii) Or otherwise.

(B) Diversify the investment; or

(C) Exercise any policy options, rights, or privileges available under any contract of life insurance in the trust, including any right to borrow the cash value or reserve of the policy, acquire a paid-up policy, or convert to a different policy.

(2) The trustee is not liable to the beneficiaries of the contract of insurance or to any other party for loss arising from the absence of these duties regarding insurance contracts under this subsection (c).

Cite as T.C.A. § 35-14-105

§ 64.2-782. Standard of care; portfolio strategy; risk and return objectives.

Virginia Statutes

Title 64.2. WILLS, TRUSTS, AND FIDUCIARIES

Chapter 7. Uniform Trust Code

Current through 2014, Act 190

§ 64.2-782. Standard of care; portfolio strategy; risk and return objectives

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

B. A trustee’s investment and management decisions respecting individual assets shall be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
   1. General economic conditions;
   2. The possible effect of inflation or deflation;
   3. The expected tax consequences of investment decisions or strategies;
   4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
   5. The expected total return from income and the appreciation of capital;
   6. Other resources of the beneficiaries;
   7. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
   8. An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the
standards of this article.

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

G. A trustee may hold any policies of life insurance acquired by gift or pursuant to an express permission or direction in the governing instrument including an authority granted by subdivision B 19 of § 64.2-105 with no duty or need to (i) determine whether any such policy is or remains a proper investment, (ii) dispose of such policy in order to diversify the investments of the trust, or (iii) exercise policy options under any such contract not essential to the continuation of the life insurance provided by such contract. However, apart from these specific authorities, this subsection is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in this section. This subsection shall apply to all trusts, regardless of when established.

Cite as Va. Code § 64.2-782

§ 44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

West Virginia Statutes

Chapter 44. ADMINISTRATION OF ESTATES AND TRUSTS

Article 6C. UNIFORM PRUDENT INVESTOR ACT

Current through 2013 1st Special Session

§ 44-6C-2. Standard of care; portfolio strategy; risk and return objectives

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the
standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g) (1) Unless otherwise directed by the terms of the trust instrument, the duties of a trustee of an irrevocable life insurance trust with respect to acquiring or retaining a contract of insurance upon the life of the grantor, or the lives of the grantor and the grantor's spouse, do not include a duty:

(A) To determine whether the contract is or remains a proper investment;

(B) To exercise policy options available under the contract in the event the policy lapses or is terminated due to failure to pay premiums; or

(C) To diversify the contract.

(2) A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

Cite as W. Va. Code § 44-6C-2

§ 4-10-902. Standard of care; portfolio strategy; risk and return objectives.

Wyoming Statutes

Title 4. TRUSTS

Chapter 10. UNIFORM TRUST CODE

Article 9. UNIFORM PRUDENT INVESTOR ACT

Current through the 2013 legislative session

§ 4-10-902. Standard of care; portfolio strategy; risk and return objectives

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee's investment and management decisions respecting individual assets shall be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
   (i) General economic conditions;
   (ii) The possible effect of inflation or deflation;
   (iii) The expected tax consequences of investment decisions or strategies;
   (iv) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;
   (v) The expected total return from income and the appreciation of capital;
   (vi) Other resources of the beneficiaries;
   (vii) Needs for liquidity, regularity of income and preservation or appreciation of capital; and
   (viii) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and
management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g) Notwithstanding the foregoing provisions of this section, a trustee who discloses the application of this subsection and the limitation of the trustee's duties it provides either in the trust instrument or in a separate writing delivered to each insured at the inception of a life insurance contract or thereafter, if the disclosure is prior to an event giving rise to a claim thereunder, may acquire or retain a life insurance contract upon the life of the settlor or the settlor's spouse, or both, without liability for a loss arising from the trustee's failure to perform any of the following duties, unless the trust instrument states or limits otherwise:

(i) Determine whether the contract is or remains a proper investment;

(ii) Investigate the financial strength or changes in the financial strength of the life insurance company;

(iii) Make a determination of whether to exercise any policy option available under the contract;

(iv) Make a determination of whether to diversify the contracts relative to one another or to other assets, if any, administered by the trustee; or

(v) Inquire about changes in the health or financial condition of the insured or insureds relative to a contract.

Cite as W.S. 4-10-902
EXHIBIT B

TRUSTEE EXCULPATION WITH RESPECT TO LIFE INSURANCE

By: Trent S. Kiziah

Thirteen states have enacted statutes which exculpate a trustee from any losses sustained with respect to life insurance held by the trustee. These charts analyze these thirteen statutes giving particular interest to the duties that the statutes waive, whether notice must be given before exculpation occurs, on whose life the life insurance policy can cover and their effective date provisions. See Trent S. Kiziah, "Statutory Exculpation of Trustees Holding Life Insurance Policies," 47 Real Property, Trust & Estate Law Journal 328 (2012) for more information concerning dates of enactment, legislative history and a critique of the statutes.

PART 1 OF 3

<table>
<thead>
<tr>
<th>Statutory Reference</th>
<th>Relieves Investment Duties(1)</th>
<th>Exculpates(2)</th>
<th>Notice Required</th>
<th>Settlor's Life</th>
<th>Settlor's Spouse's Life</th>
<th>Joint Policy</th>
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</table>

*Notice is required if the trust was established before a certain date.

(1) A "yes" in this column means the trustee is relieved of investment duties with respect to life insurance held by the trustee.

(2) A "yes" in this column means the statute expressly exculpates the trustee from any loss arising with respect to life insurance held by the trustee.

(3) A "no" means the trustee is not relieved of the investment duties with respect to the life insurance policy. Note: The trustee may have investment duties but exculpated from failure to fulfill those duties. See column "Exculpates".

(4) Ten states place no limitations on how the policy is acquired.

(5) Alabama's statute is limited to policies contributed by the settlor or purchased by the trustee upon settlor's request. Provided the acquisition limitation is met, a policy on any person is permitted.

(6) North Dakota's statute is limited to policies contributed to the trust by any party, other than the trustee, and policies acquired by the trustee which before the acquisition of the policy, the trustee never owned a policy.

(7) South Carolina's statute addresses acquisition of the policy. It does not specifically address retention.

(8) Virginia's statute applies to policies "acquired by gift or pursuant to an express permission or direction in the governing instrument." Provided this acquisition limitation is met, a policy on any person is permitted.

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### PART 2 OF 3

<table>
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<tr>
<th>DUTIES RELEASED OR EXCLUDATED FROM</th>
<th>Determine whether policy is or remains a proper investment</th>
<th>Investigate financial strength of life insurance company</th>
<th>Exercise Policy Option</th>
<th>Exercise non-forfeiture provisions</th>
<th>Inquire into changes in health or financial condition of insured(s)</th>
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A empty box means the statute makes no mention of the duty.

### PART 3 OF 3

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<th>Applies to trusts existing on effective date</th>
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ATTACHMENT C
Inventory Fee Discussion

In principal, the Court Rules, Procedures and Forms Committee supports the Michigan Probate Judge Committee’s recommendations to raise the filing fees and eliminate the inventory fees in probate court. However, we have determined from a year’s discussions that there are pluses and minuses, as with all change, and we share that list here for the Committee on Special Projects and the Probate Council:

Here are the reasons why the committee feels a flat fee would be a good idea:
- continue adequate revenue for the probate courts
- increase privacy for estates
- reduce costs in administration for estate — less administrative work for PR and, depending on size of estate, less court fees
- simplify administration for both the court, its staff and the PR/attorneys (would eliminate the reporting requirements of MCL 600.871 between 3-31-15 and 3-31-18)
- make the collection of fees fairer
- get money up front when the PR is around and has motivation to pay,

Here are some committee concerns about the flat fee approach:
- chilling effect on filing of small estates,
- chilling effect on PR who has to personally pay the filing fee when cash is not available in the probate estate
- reduce the likelihood that inventories will be prepared
- reduce likelihood that inventories will be provided to heirs/devisees,
- graduated filing fees are difficult to determine in that when opening an estate, a nominated PR may have no idea the size of the estate (although it appears that graduated fees are not one of the suggestions of MPJ)

We understand that the changes, however they end up, must generate $7.5 million in order to remain “revenue neutral”. The committee was especially concerned about the possible chilling effect for PRs who do not personally have the funds to open the estates.
The Taxation Section had its most recent meeting at the Dykema Office in Lansing.

The Taxation Section filed an amicus brief in *Ford Motor Company v. Department of Treasury, State of Michigan, Supreme Court*, No. 141332. The brief took the position that a claim for refund for Michigan tax purposes. The Taxation Section position is that absent clear legislative or administrative guidance a taxpayer files a claim for refund when the taxpayer provides notice as to the fact the taxpayer believes that the taxpayer has overpaid a tax and the nature of the overpayment. [It is significant as interest does not start to run until 45 days after a claim for refund is filed.]

There is a pending case which deals with powers of attorney for Michigan Tax Purposes. Treasury takes the position that a power of attorney gives them permission to divulge information but does not require them to mail notices to the power of attorney holder.

If you are a member of the Taxation Section you can for no additional charge join the Estates and Trust Committee and get e-mails about its activities. (There are 615 persons who are members of both sections). You can also join other committees. Unlike our committee meetings, Taxation Section Committee meetings are typically about 75% continuing legal education and new matters discussion.

Upcoming events which might interest Probate & Estate Planning Section Members:

Other Trusts and Estates Committee meetings (topics and locations to be announced)
- May 8, 2014
- September 18, 2014

Annual Tax Conference, May 22, 2014, 9:00 am - 5:00 pm, Plymouth (also available by webcast) which will include

1. **Washington Update** by Christopher E. Bergin, President and Publisher of *Tax Analysts*.
2. **The DOMA Supreme Court Case and Its Tax Implications** by Gina Torielli of Cooley Law School.
3. **An Update on the Michigan Economy** by Robert Schneider of Citizens Research Council (new speaker replaces John Nixon who has left the state).
4. **State Tax Commission** by Douglas Roberts, Chair, State Tax Commission.
5. **Base Erosion: Will the OECD Change the World?** by William Henson, Randall Janiczek, and Joel Mitchell all of Plante Moran.
6.  *Historic Tax Credit Arrangements and the Impact of Recent Cases and IRS Guidance.* by Anthony Iardi, Jr., of Dykema and Joseph Kopeitz of Clark Hill.

A luncheon and cocktail reception are included.

The Taxation Section hosts luncheons when U.S. Tax Court Judges come to town for trials.

There are 40 lawyers working on Taxation Section Pro Bono projects. The Taxation Section also funds a variety of tax projects (for example Cooley and MSU tax clinics).

Legislation:

PA 3 of 2014 requires timely audits, refunds and responses. House Substitute (with changes in BOLD and Senate Fiscal Agency Analysis is attached.

HB 4291 was presented to the Governor for signing. It adds MCL 205,21(1) to provide the taxpayer with a right to Treasury audit work papers and reports.

SB 821-830 became Public Act 86 (a copy is attached). It increases some personal property taxes, but only if approved in public election this August.

Offer-in-compromise legislation is pending.

Tax Tribunal / Court of Claims changes

Senator Caswell heads a working group. The Taxation Section opposes reducing the avenues of appeal. Treasury would prefer one avenue of appeal. The creation of the new Michigan Court of Claims from the Michigan Court of Appeals (as opposed to the Ingham County Circuit Court) is not proceeding without hitches at least from a tax point of view.

Internet

SBM connect is readying for launch. There will be a Tax Section connect page. the idea is to explain what is going on in the section, start dialogues on changes, public policy, and court opinions.

The creation of the new Michigan Court of Claims from the Michigan Court of Appeals (as opposed to the Ingham County Circuit Court) is not proceeding without hitches at least from a tax point of view.

Respectively submitted

George W. Gregory, Liaison
A bill to amend 1941 PA 122, entitled

"An act to establish the revenue collection duties of the department of treasury; to prescribe its powers and duties as the revenue collection agency of this state; to prescribe certain powers and duties of the state treasurer; to establish the collection duties of certain other state departments for money or accounts owed to this state; to regulate the importation, stamping, and disposition of certain tobacco products; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments, and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals of taxes and tax liability; to prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; and to declare the effect of this act,"

by amending sections 21, 27a, and 30 (MCL 205.21, 205.27a, and 205.30), section 21 as amended by 2006 PA 11, section 27a as amended by 2012 PA 211, and section 30 as amended by 2017 PA 133.
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 21. (1) If a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the department may obtain information on which to base an assessment of the tax. By its duly authorized agents, the department may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax.

(2) In carrying out this section, the department and the taxpayer shall comply with the following procedure:

(a) The department shall send to the taxpayer a letter of inquiry stating, in a courteous and nonintimidating manner, the department's opinion that the taxpayer needs to furnish further information or owes taxes to the state, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the person may initiate communication with the department to resolve any dispute. This subdivision does not apply in any of the following circumstances:

(i) The taxpayer files a return showing a tax due and fails to pay that tax.

(ii) The deficiency resulted from an audit of the taxpayer's books and records by this state.

(iii) The taxpayer otherwise affirmatively admits that a tax is due and owing.

(b) If the dispute is not resolved within 30 days after the
department sends the taxpayer a letter of inquiry or if a letter
of inquiry is not required pursuant to subdivision (a), the
department, after determining the amount of tax due from a
taxpayer, shall give notice to the taxpayer of its intent to
assess the tax. The notice shall include the amount of the tax
the department believes the taxpayer owes, the reason for that
deficiency, and a statement advising the taxpayer of a right to
an informal conference, the requirement of a written request by
the taxpayer for the informal conference that includes the
taxpayer's statement of the contested amounts and an explanation
of the dispute, and the 60-day time limit for that request.

(c) If the taxpayer serves written notice upon the
department within 60 days after the taxpayer receives a notice of
intent to assess, remits the uncontested portion of the
liability, and provides a statement of the contested amounts and
an explanation of the dispute, the taxpayer is entitled to an
informal conference on the question of liability for the
assessment.

(d) Upon receipt of a taxpayer's written notice, the
department shall set a mutually agreed upon or reasonable time
and place for the informal conference and shall give the taxpayer
reasonable written notice not less than 20 days before the
informal conference. The notice shall specify the intent to
assess, type of tax, and tax year that is the subject of the
informal conference. The informal conference provided for by this
subdivision is not subject to the administrative procedures act
of 1969, 1969 PA 306, MCL 24.201 to 24.328, but is subject to the
rules governing informal conferences as promulgated by the department in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The taxpayer may appear or be represented by any person before the department at an informal conference, and may present testimony and argument. At the party's own expense and with advance notice to the other party, a taxpayer or the department, or both, may make an audio recording of an informal conference. A taxpayer who has made a timely request for an informal conference may at any time withdraw that request by filing written notice with the department. Upon receipt of the request for withdrawal from the informal conference process, the department shall issue a decision and order of determination and, where appropriate, a final assessment, from which a taxpayer may seek an appeal as provided under section 22.

(e) After the informal conference, the department shall render a decision and order in writing, setting forth the reasons and authority, and shall assess the tax, interest, and penalty found to be due and payable. The decision and order are limited to the subject of the informal conference as included in the notice under subdivision (d).

(f) If the taxpayer does not protest the notice of intent to assess within the time provided in subdivision (c), the department may assess the tax and the interest and penalty on the tax that the department believes are due and payable. An assessment under this subdivision or subdivision (e) is final and subject to appeal as provided in section 22. The final notice of
assessment shall include a statement advising the person of a right to appeal.

(3) If as a result of an audit it is determined that a taxpayer is owed a refund, the department shall send a notice to the taxpayer stating the amount of the refund the department believes is owed to the taxpayer as a result of the audit. The notice shall inform the taxpayer of his or her appeal rights. If the taxpayer disputes the findings of the audit, the taxpayer may serve written notice upon the department in the same manner as provided for in subsection (2)(c) and the taxpayer is entitled to the same informal conference and subsequent appeals as provided for in this section.

(4) If a protest to the notice of intent to assess the tax is determined by the department to be a frivolous protest or a desire by the taxpayer to delay or impede the administration of taxes administered under this act, a penalty of $25.00 or 25% of the amount of tax under protest, whichever is greater, shall be added to the tax.

(5) During the course of the informal conference under subsection (2)(d), the taxpayer by written notice may convert his or her contest of the assessment to a claim for a refund. The written notice shall be accompanied by payment of the contested amount. The informal conference shall continue and the department shall render a decision and issue an order regarding the claim for refund.

(6) For audits commenced after September 30, 2014, the department must complete fieldwork and provide a written
PRELIMINARY AUDIT DETERMINATION FOR ANY TAX PERIOD NO LATER THAN 1 YEAR AFTER THE PERIOD PROVIDED FOR IN SECTION 27A(2) WITHOUT REGARD TO THE EXTENSION PROVIDED FOR IN SECTION 27A(3). THE LIMITATION DESCRIBED IN THIS SUBSECTION DOES NOT APPLY TO ANY TAX PERIOD IN WHICH THE DEPARTMENT AND THE TAXPAYER AGREED IN WRITING TO EXTEND THE STATUTE OF LIMITATIONS DESCRIBED IN SECTION 27A(2).


Sec. 27a. (1) If a person liable for a tax administered under this act sells out his or her business or its stock of goods or quits the business, the person shall make a final return within 15 days after the date of selling or quitting the business. The purchaser or succeeding purchasers, if any, who purchase a going or closed business or its stock of goods shall escrow sufficient money to cover the amount of taxes, interest, and penalties as may be due and unpaid until the former owner produces a receipt from the state treasurer or the state treasurer's designated representative showing that the taxes due are paid, or a certificate stating that taxes are not due. Upon
the owner's written waiver of confidentiality, the department may
SHALL, WITHIN 60 DAYS OF RECEIPT OF THE REQUEST, release to a
purchaser a business's known OR ESTIMATED tax liability for the
purposes of establishing an escrow account for the payment of
taxes. THE DEPARTMENT MAY ESTIMATE TAX LIABILITY BASED ON PRIOR
RETURNS AND PAYMENTS. IF THE DEPARTMENT BELIEVES THAT A RETURN
MADE OR PAYMENT DOES NOT SUPPLY SUFFICIENT INFORMATION FOR AN
ACCURATE DETERMINATION, THE DEPARTMENT MAY MAKE AN ESTIMATE BASED
ON OTHER AVAILABLE INFORMATION. If the purchaser or succeeding
purchasers of a business or its stock of goods fail to comply
with the escrow requirements of this subsection, the purchaser is
personally liable for the payment of the taxes, interest, and
penalties accrued and unpaid by the business of the former owner.
THE IF THE PURCHASER OR SUCCEEDING PURCHASERS OF A BUSINESS OR
ITS STOCK OF GOODS COMPLY WITH THE ESCROW REQUIREMENTS OF THIS
SUBSECTION, THE PURCHASER SHALL NOT BE HELD LIABLE FOR MORE THAN
THE KNOWN OR ESTIMATED TAX LIABILITY DISCLOSED BY THE DEPARTMENT
AND HELD IN ESCROW. HOWEVER, THE PURCHASER SHALL NOT BE HELD
LIABLE IF THE DEPARTMENT HAS FAILED TO PROVIDE THE INFORMATION
REQUESTED WITHIN 60 DAYS. FOR A PURCHASER OR SUCCEEDING PURCHASER
THAT HAS NOT COMPLIED WITH THE ESCROW REQUIREMENTS OF THIS
SECTION, THE purchaser's or succeeding purchaser's personal
liability is limited to the fair market value of the business
less the amount of any proceeds that are applied to balances due
on secured interests that are superior to the lien provided for
in section 29(1).

(2) A deficiency, interest, or penalty shall not be assessed
after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return. A person who has failed to file a return is liable for all taxes due for the entire period for which the person would be subject to the taxes. If a person subject to tax fraudulently conceals any liability for the tax or a part of the tax, or fails to notify the department of any alteration in or modification of federal tax liability, the department, within 2 years after discovery of the fraud or the failure to notify, shall assess the tax with penalties and interest as provided by this act, computed from the date on which the tax liability originally accrued. The tax, penalties, and interest are due and payable after notice and hearing as provided by this act.

(3) The running of the statute of limitations is suspended for the following if the period exceeds that described in subsection (2):

(a) The period pending a final determination of tax liability through audit, conference, hearing, and litigation of liability for federal income tax or a tax administered by the department and for 1 year after that period.

(b) The period for which the taxpayer and the state treasurer have consented in writing that the period be extended.

(C) THE PERIOD DESCRIBED IN SECTION 21(6) AND (7) OR PENDING
THE COMPLETION OF AN APPEAL OF A FINAL ASSESSMENT.

(D) A PERIOD OF 90 DAYS AFTER A DECISION AND ORDER FROM AN INFORMAL CONFERENCE, OR A COURT ORDER THAT FINALLY RESOLVES AN APPEAL OF A DECISION OF THE DEPARTMENT IN A CASE IN WHICH A FINAL ASSESSMENT WAS NOT ISSUED PRIOR TO APPEAL.

(4) The running-of-the-statute of limitations is suspended EXTENDED only as to those items that were the subject of the audit, conference, hearing, or litigation for federal income tax or a tax administered by the department. AS USED IN THIS SUBSECTION, "ITEMS THAT WERE THE SUBJECT OF THE AUDIT" MEANS ITEMS THAT SHARE A COMMON CHARACTERISTIC THAT WERE EXAMINED BY AN AUDITOR EVEN IF THERE WAS NO ADJUSTMENT TO THE TAX AS A RESULT OF THE EXAMINATION. ITEMS THAT SHARE A COMMON CHARACTERISTIC INCLUDE ITEMS THAT ARE REPORTED ON THE SAME LINE ON A TAX RETURN OR ITEMS THAT ARE GROUPED BY LEDGER, ACCOUNT, OR RECORD OR BY CLASS OR TYPE OF ASSET, LIABILITY, INCOME, OR EXPENSE.

(5) If a corporation, limited liability company, limited liability partnership, partnership, or limited partnership BUSINESS liable for taxes administered under this act fails, for any reason AFTER ASSESSMENT, to file the required returns or to pay the tax due, any of its officers, members, managers OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY, or partners who the department determines, based on either an audit or an investigation, have control or supervision of, or responsibility for, making the returns or payments IS A RESPONSIBLE PERSON is personally liable for the failure FOR THE TAXES DESCRIBED IN SUBSECTION (14). The signature of any corporate officers,
members, managers, or partners on returns or negotiable
instruments submitted in payment of taxes is prima facie evidence
of their responsibility for making the returns and payments. The
dissolution of a corporation, limited liability company, limited
liability partnership, partnership, or limited partnership
BUSINESS does not discharge an officer's, member's, manager's, or
partner's A RESPONSIBLE PERSON'S liability for a prior failure of
the corporation, limited liability company, limited liability
partnership, partnership, or limited partnership to make BUSINESS
to file a return or remit PAY the tax due. The sum due for a
liability may be assessed and collected under the related
sections of this act. THE DEPARTMENT SHALL PROVIDE A RESPONSIBLE
PERSON ASSESSED UNDER THIS SECTION WITH NOTICE OF ANY AMOUNT
COLLECTED BY THE DEPARTMENT FROM ANY OTHER RESPONSIBLE PERSON
DETERMINED TO BE LIABLE UNDER THIS SUBSECTION OR PURCHASER
DETERMINED TO BE LIABLE UNDER SUBSECTION (1) THAT IS ATTRIBUTABLE
TO THE ASSESSMENT. THE DEPARTMENT SHALL NOT ASSESS A RESPONSIBLE
PERSON UNDER THIS SECTION MORE THAN 4 YEARS AFTER THE DATE OF THE
ASSESSMENT ISSUED TO THE BUSINESS. A RESPONSIBLE PERSON MAY
CHALLENGE THE VALIDITY OF AN ASSESSMENT TO THE SAME EXTENT THAT
THE BUSINESS COULD HAVE CHALLENGED THAT ASSESSMENT UNDER SECTIONS
21 AND 22 WHEN ORIGINALLY ISSUED. THE DEPARTMENT HAS THE BURDEN
TO FIRST PRODUCE PRIMA FACIE EVIDENCE AS DESCRIBED IN SUBSECTION
(15) OR ESTABLISH A PRIMA FACIE CASE THAT THE PERSON IS THE
RESPONSIBLE PERSON UNDER THIS SUBSECTION THROUGH ESTABLISHMENT OF
ALL ELEMENTS OF A RESPONSIBLE PERSON AS DEFINED IN SUBSECTION
(15). IN A SEPARATE PROCEEDING BEFORE THE CIRCUIT COURT, A
RESPONSIBLE PERSON FOUND TO BE LIABLE FOR THE ASSESSMENT UNDER THIS SECTION MAY RECOVER FROM OTHER RESPONSIBLE PERSONS AN AMOUNT EQUAL TO THE ASSESSMENT OR PORTION OF THE ASSESSMENT BASED ON THAT PERSON'S PROPORTIONATE LIABILITY FOR THE ASSESSMENT AS DETERMINED IN THAT PROCEEDING. BEFORE ASSESSING A RESPONSIBLE PERSON AS LIABLE UNDER THIS SUBSECTION FOR THE TAX ASSESSED TO THE BUSINESS, THE DEPARTMENT SHALL FIRST ASSESS A PURCHASER OR SUCCEEDING PURCHASER OF THE BUSINESS PERSONALLY LIABLE UNDER SUBSECTION (1) IF THE DEPARTMENT HAS INFORMATION THAT CLEARLY IDENTIFIES A PURCHASER OR SUCCEEDING PURCHASER UNDER SUBSECTION (1) AND ESTABLISHES THAT THE ASSESSMENT OF THE PURCHASER OR SUCCEEDING PURCHASER WOULD PERMIT THE DEPARTMENT TO COLLECT THE ENTIRE AMOUNT OF THE TAX ASSESSMENT OF THE BUSINESS. THE DEPARTMENT MAY ASSESS A RESPONSIBLE PERSON UNDER THIS SUBSECTION NOTWITHSTANDING THE LIABILITY OF A PURCHASER OR SUCCEEDING PURCHASER UNDER SUBSECTION (1) IF THE PURCHASER OR SUCCEEDING PURCHASER FAILS TO PAY THE ASSESSMENT.

(6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, UPON REQUEST OF A RESPONSIBLE PERSON WHO WAS ISSUED AN INTENT TO ASSESS BY THE DEPARTMENT UNDER SECTION 21 FOR LIABILITY UNDER SUBSECTION (5), THE DEPARTMENT SHALL DISCLOSE ANY DOCUMENTS CONSIDERED IN THE DEPARTMENT'S AUDIT OR INVESTIGATION IN DETERMINING THAT THE PERSON IS A RESPONSIBLE PERSON AND IS PERSONALLY LIABLE FOR THE ASSESSMENT AND ANY OTHER DOCUMENTS THAT THE TRIBUNAL OR COURT DETERMINES ARE NECESSARY FOR A FAIR ADJUDICATION OF A PERSON'S LIABILITY UNDER SUBSECTION (5).

(7) Notwithstanding the provisions of subsection (2), a
claim for refund based upon the validity of a tax law based on
the laws or constitution of the United States or the state
constitution of 1963 shall not be paid unless the claim is filed
within 90 days after the date set for filing a return.
(8) (7) Subsection (6)-(7) does not apply to a claim for the
refund of a tax paid for the 1984 tax year or a tax year after
the 1984 tax year on income received as retirement or pension
benefits from a public retirement system of the United States
government if the claimant waives any claim for the refund of
such a tax paid for a tax year before 1984. Claims for refunds to
which this subsection applies shall be paid in accordance with
the following schedule:

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(9) (8) Notwithstanding any other provision in this act, for
a taxpayer that filed a tax return under former 1975 PA 228 that
included in the tax return an entity disregarded for federal
income tax purposes under the internal revenue code, both of the
following shall apply:

(a) The department shall not assess the taxpayer an
additional tax or reduce an overpayment because the taxpayer
included an entity disregarded for federal income tax purposes on
its tax return filed under former 1975 PA 228.

(b) The department shall not require the entity disregarded for federal income tax purposes on the taxpayer’s tax return filed under former 1975 PA 228 to file a separate tax return.

(10) Notwithstanding any other provision in this act, if a taxpayer filed a tax return under former 1975 PA 228 that included in the tax return an entity disregarded for federal income tax purposes under the internal revenue code, then the taxpayer shall not claim a refund based on the entity disregarded for federal income tax purposes under the internal revenue code filing a separate return as a distinct taxpayer.

(11) Notwithstanding any other provision in this act, the department shall not assess a tax or reduce an overpayment, and shall approve a claim for a refund of any tax paid, under former 1975 PA 228 and subject to the statute of limitations for an individual, estate, or person organized for estate or gift planning purposes for amounts received, income, or gain other than those from transactions, activities, and sources in the regular course of the person’s trade or business. For purposes of this subsection, all of the following apply:

(a) Receipts, income, and gain that are from transactions, activities, and sources in the regular course of the person’s business include, but are not limited to, amounts derived from the following:

(i) Tangible and intangible property if the acquisition, rental, lease, management, or disposition of the property constitutes integral parts of the person’s regular trade or
business operations.

(ii) Transactions in the course of the person's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(iii) Isolated sales, leases, assignments, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving tangible, intangible, or real property if the property is or was used in the person's trade or business operation.

(iv) The sale of an interest in a business that constitutes an integral part of the person's regular trade or business.

(v) The lease or rental of real property.

(b) Receipts, income, and gain that are not from transactions, activities, and sources in the regular course of the person's trade or business include, but are not limited to, amounts derived from the following:

(i) Investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the person's trade or business.

(ii) The disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

(12) Notwithstanding any other provision in this act, the department shall not assess a tax or reduce an overpayment, and shall approve a claim for a refund for any tax paid, under former 1975 PA 228 and subject to the statute of limitations for
receipts, income, or gain derived from investment activity other than receipts, income, or gain from transactions, activities, and sources in the regular course of the person's trade or business by a person that is organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related to that individual or by a common trust fund established under the collective investment funds act, 1941 PA 174, MCL 555.101 to 555.113. For purposes of this subsection, a person is related to an individual if that person is a spouse, brother or sister, whether of the whole or half blood or by adoption, ancestor, lineal descendant of that individual or related person, or a trust benefiting that individual or 1 more persons related to that individual.

(13) The filing of a return includes the filing of a combined, consolidated, or composite return whether or not any tax was paid and whether or not the taxpayer reported any amount in the tax line including zero.

(14) SUBSECTION (5) APPLIES TO ALL OF THE FOLLOWING TAXES ADMINISTERED UNDER THIS ACT:

(A) FOR ASSESSMENTS ISSUED TO RESPONSIBLE PERSONS BEFORE JANUARY 1, 2014, TAXES ADMINISTERED UNDER THIS ACT.

(B) FOR ASSESSMENTS ISSUED TO RESPONSIBLE PERSONS AFTER DECEMBER 31, 2013, ALL OF THE FOLLOWING:

(i) TAXES LEVIED UNDER THE GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.51 TO 205.78.

(ii) TAXES LEVIED UNDER THE USE TAX ACT, 1937 PA 94, MCL...
1 205.91 to 205.111, that are required to be collected or were
collected from or on behalf of a third person for remittance to
the state.

4 (iii) Taxes levied under the Tobacco Products Tax Act, 1993 PA
327, MCL 205.421 to 205.436.

6 (iv) Taxes levied under the Motor Fuel Tax Act, 2000 PA 403,
MCL 207.1001 to 207.1170.

8 (v) Taxes levied under the Motor Carrier Fuel Tax Act, 1980
PA 119, MCL 207.211 to 207.234.

10 (vi) Withholding and remittance of income taxes levied under

12 (vii) Any other tax administered under this act that a person
is required to collect from or on behalf of a third person, to
truthfully account for and to pay over to this state.

15 (15) As used in subsections (5) and (6):

17 (A) "Business" means a corporation, limited liability
company, limited liability partnership, partnership, or limited
partnership.

19 (B) "Responsible Person" means an officer, member, manager
of a manager-managed limited liability company, or partner for
the business who controlled, supervised, or was responsible for
the filing of returns or payment of any of the taxes described in
subsection (14) during the time period of default and who, during
the time period of default, willfully failed to file a return or
pay the tax due for any of the taxes described in subsection
(14). The signature, including electronic signature, of any
officer, member, manager of a manager-managed limited liability
COMPANY, OR PARTNER ON RETURNS OR NEGOTIABLE INSTRUMENTS

SUBMITTED IN PAYMENT OF TAXES OF THE BUSINESS DURING THE TIME

PERIOD OF DEFAULT, IS PRIMA FACIE EVIDENCE THAT THE PERSON IS A

RESPONSIBLE PERSON. A SIGNATURE, INCLUDING ELECTRONIC SIGNATURE,

ON A RETURN OR NEGOTIABLE INSTRUMENT SUBMITTED IN PAYMENT OF

TAXES AFTER THE TIME PERIOD OF DEFAULT ALONE IS NOT PRIMA FACIE

EVIDENCE THAT THE PERSON IS A RESPONSIBLE PERSON FOR THE TIME

PERIOD OF DEFAULT BUT MAY BE CONSIDERED ALONG WITH OTHER EVIDENCE

TO MAKE A PRIMA FACIE CASE THAT THE PERSON IS A RESPONSIBLE

PERSON. WITH RESPECT TO A RETURN OR NEGOTIABLE INSTRUMENT

SUBMITTED IN PAYMENT OF TAXES BEFORE THE TIME PERIOD OF DEFAULT,

THE SIGNATURE, INCLUDING ELECTRONIC SIGNATURE, ON THAT DOCUMENT

ALONG WITH EVIDENCE, OTHER THAN THAT DOCUMENT, SUFFICIENT TO

DEMONSTRATE THAT THE SIGNATORY WAS AN OFFICER, MEMBER, MANAGER OF

A MANAGER-MANAGED LIMITED LIABILITY COMPANY, OR PARTNER DURING

THE TIME PERIOD OF DEFAULT IS PRIMA FACIE EVIDENCE THAT THE

PERSON IS A RESPONSIBLE PERSON.

(C) "TIME PERIOD OF DEFAULT" MEANS THE TAX PERIOD FOR WHICH

THE BUSINESS FAILED TO FILE THE RETURN OR PAY THE TAX DUE UNDER

SUBSECTION (5) AND THROUGH THE LATER OF THE DATE SET FOR THE

FILING OF THE TAX RETURN OR MAKING THE REQUIRED PAYMENT.

(D) "WILLFUL" OR "WILLFULLY" MEANS THE PERSON KNEW OR HAD

REASON TO KNOW OF THE OBLIGATION TO FILE A RETURN OR PAY THE TAX,

BUT INTENTIONALLY OR RECKLESSLY FAILED TO FILE THE RETURN OR PAY

THE TAX.

Sec. 30. (1) The department shall credit or refund an

overpayment of taxes; taxes, penalties, and interest erroneously
assessed and collected; and taxes, penalties, and interest that are found unjustly assessed, excessive in amount, or wrongfully collected with interest at the rate calculated under section 23 for deficiencies in tax payments.

(2) A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a. If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund. If the department agrees the claim is valid, the amount of overpayment, penalties, and interest shall be first applied to any known liability as provided in section 30a, and the excess, if any, shall be refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability. CLAIMS FOR REFUNDS, OTHER THAN THOSE MADE UNDER PART 1 OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, THAT HAVE NOT BEEN APPROVED, DENIED, OR ADJUSTED WITHIN 1 YEAR OF THE DATE RECEIVED MAY BE TREATED AS DENIED AT THE ELECTION OF THE TAXPAYER, AND MAY BE APPEALED BY THE TAXPAYER IN ACCORDANCE WITH SECTION 22.

(3) The department shall certify a refund to the state disbursing authority who shall pay the amount out of the proceeds of the tax in accordance with the accounting laws of the state. Interest at the rate calculated under section 23 for deficiencies in tax payments shall be added to the refund commencing 45 days after the claim is filed or 45 days after the date established by law for the filing of the return, whichever is later. Interest on
refunds intercepted and applied as provided in section 30a shall cease as of the date of interception. Refunds for amounts of less than $1.00 shall not be paid.

(4) Beginning January 1, 2014, in addition to and separate from the interest added to a refund under subsection (3), for refunds for taxes imposed under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, the state disbursing authority shall add interest to refunds that are not paid within 1 of the following dates for the applicable tax year:

(a) May 1, for returns received by the department on or before March 1 of the applicable tax year.

(b) Sixty days from the date the return was received by the department for returns received by the department after March 1 of the applicable tax year.

(5) Interest described in subsection (4) shall be paid at a rate of 3% per annum, calculated from the date the original return was due under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315, and until the refund is paid, if all of the following conditions are met:

(a) The refund is due on an original return which was timely filed under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315.

(b) The refund is not adjusted by the department.

(c) The return is not subject to section 27a(3) or (4) except for audit by the department.

(d) The return is complete for processing purposes with no calculation errors and contains all required information as
prescribed by the department under section 315(1)(d) of the income tax act of 1967, 1967 PA 281, MCL 206.315, including any state and federal returns, forms, or schedules necessary to process the return.

(e) The taxpayer who has filed a complete return under subdivision (d) has complied with the department's request, if any, for additional documentation or information within 30 days of that request.

(f) No portion of the refund is subject to interception under section 30a.

(g) The amount to be refunded is more than $1.00.
Senate Bill 337 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Tax Policy
Date Completed: 3-3-14

CONTENT

The bill amended the revenue Act to do the following:

-- Set deadlines for the Department of Treasury, when conducting an audit, to complete fieldwork, provide a preliminary audit determination to the taxpayer, and issue a final assessment.
-- Revise and expand the circumstances in which the statute of limitations must be extended.
-- Allow a taxpayer to treat a claim for a refund as denied, and bring an appeal, if the claim has not been approved, adjusted, or denied within one year.

The bill also amended provisions of the Act under which the purchaser of a business may be liable for the former owner's unpaid taxes, to do the following:

-- Require the Department to release the business's known or estimated tax liability to the purchaser within 60 days of a request, if the owner waives confidentiality.
-- Limit the purchaser's liability to the known or estimated tax liability disclosed by the Department, if the purchaser complies with escrow requirements.
-- Provide that the purchaser cannot be held liable if the Department does not comply with the disclosure requirement.

In addition, the bill amended provisions that make an officer, manager, or partner personally liable for unpaid taxes of a business, to do the following:

-- Limit personal liability to a "responsible person", i.e., a person who was responsible for filing returns or paying taxes during the time period of default, and willfully failed to file or pay.
-- Prohibit the Department from assessing a responsible person more than four years after the date of the assessment issued to the business.
-- Provide that the Department has the burden of producing prima facie evidence or establishing a prima facie case that a person is a responsible person.
-- Require the Department to notify the responsible person of amounts collected from another responsible person or a business purchaser attributable to the assessment.
-- Require the Department to assess a purchaser of the business before assessing a responsible person, under certain circumstances.
-- Require the Department to disclose various documents to a responsible person.
Allow a responsible person to challenge an assessment to the same extent the business could have done.
Allow a responsible person to recover from another responsible person in a circuit court proceeding.
List the taxes for which a responsible person may be personally liable.

The bill took effect on February 6, 2014.

Audit Deadlines

The Act allows the Department to obtain information for the assessment of a tax when a taxpayer fails or refuses to make a return or payment as required, or when the Department believes that a return or payment does not supply enough information for an accurate determination of the amount due. Through its agents, the Department may examine the books, records, and papers, and audit the accounts of a person or any other records pertaining to the tax.

In carrying out these responsibilities, the Department must send the taxpayer a letter of inquiry, except in certain situations. If the dispute is not resolved within 30 days after the letter is sent, or if a letter is not required, the Department must give the taxpayer notice of its intent to assess the tax. If the taxpayer serves written notice on the Department within 60 days after receiving the letter, pays the uncontested portion of the liability, and provides a statement of contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment. After the informal conference, the Department must render a decision and order, and assess the tax, interest, and penalty found to be due. If the taxpayer does not protest the notice of intent within the time provided, the Department may assess the tax, interest, and penalty; this assessment is final and may be appealed to the Tax Tribunal or the Court of Claims.

Under the bill, the following requirements apply to audits commenced after September 30, 2014.

The Department must complete fieldwork and provide a written preliminary audit determination for any tax period within one year after the four-year statute of limitations provided for in Section 27a(2). This requirement does not apply to any tax period in which the Department and the taxpayer agreed in writing to extend the statute of limitations. (Section 27a(2) prescribes a four-year period, referred to as the statute of limitations, for a taxpayer to claim a refund after the date set for filing the original return; or for the Department to assess a deficiency, interest, or a penalty after the filing date or the date a return was filed.)

Unless otherwise agreed to by the taxpayer and the Department, the final assessment must be issued within nine months of the date the Department provided the taxpayer with a written preliminary audit determination, unless the taxpayer, for any reason, requests reconsideration of the preliminary audit determination or requests an informal conference. A taxpayer's request for reconsideration permits, but does not require, the Department to delay issuing a final assessment.

Extension of Statute of Limitations

Previously, the Act provided for running of the statute of limitations to be suspended for the following:

-- The period pending a final determination of tax, including audit, conference, hearing, and litigation of liability for Federal income tax or a tax administered by the Department, and for one year after that period.
-- The period for which the taxpayer and the State consented to the extension.

Under the bill, instead, the statute of limitations must be extended for the following if the period exceeds the four-year period set in Section 27a(2):

-- The period for which the taxpayer and the State have consented to the extension.
-- The period pending a final determination of tax through audit, conference, hearing, and litigation for Federal income tax, and for one year after that period.
-- The periods established by the bill for a preliminary audit determination and a final assessment (described above), or pending the completion of an appeal of a final assessment.
-- A period of 90 days after a decision and order from an informal conference, or a court order that finally resolves an appeal of a decision of the Department in a case in which a final assessment was not issued before appeal.

As previously provided, the statute of limitations is extended only as to those items that were the subject of the audit, conference, hearing, or litigation. The bill defines "items that were the subject of the audit" as items that share a common characteristic that were examined by an auditor even if there was no adjustment to the tax as a result of the examination. Items that share a common characteristic include items that are reported on the same line on a tax return or items that are grouped by ledger, account, or record or by class or type of asset, liability, income, or expense.

Liability of Purchaser of a Business

Under the Act, a person who purchases a going or closed business, or its stock, is required to escrow enough money to cover the amount of taxes, interest, and penalties that may be due and unpaid, until the former owner produces a receipt from the State Treasurer showing that the taxes are paid, or a certificate stating that the taxes are not due.

Previously, if the owner waived confidentiality, the Department was permitted to release to the purchaser the business's known tax liability for the purpose of establishing the escrow account. The bill instead requires the Department, within 60 days of receiving the request, to timely release the business's known or estimated liability, if the owner waives confidentiality.

The bill allows the Department to estimate tax liability based on prior returns and payments. If it believes that a return or payment does not supply enough information for an accurate determination, the Department may make an estimate based on other available information.

Under the Act, if the purchaser or a succeeding purchaser fails to comply with these escrow requirements, the purchaser is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid by the business of the former owner. The bill specifies that, if the purchaser or succeeding purchaser complies with the escrow requirements, the purchaser cannot be held liable for more than the known or estimated tax liability disclosed by the Department and held in escrow. The purchaser cannot be held liable, however, if the Department has failed to provide the information requested within 60 days.

For a purchaser or succeeding purchaser that has not complied with the escrow requirements, the purchaser's liability is limited to the fair market value of the business less the amount of any proceeds that are applied to balances on certain secured transactions. (The Act previously contained this limitation but it was not restricted to purchasers who did not comply with the escrow requirements.)
Personal Liability for Business Default

Liability of Responsible Person. Previously, if a business (a corporation, limited liability company, limited liability partnership, partnership, or limited partnership) was liable for taxes administered under the Act and failed, for any reason, to file required returns or pay a tax due, any of its officers, members, managers, or partners was personally liable for the failure, if the Department of Treasury determined, based on an audit or investigation, that he or she had control or supervision of, or responsibility for, making the returns or payments.

Under the bill, in such a situation, an officer, member, manager of a manager-managed limited liability company (LLC), or partner is personally liable if he or she is a "responsible person" and fails, for any reason after assessment, to file the required returns or pay the tax due. "Responsible person" means an officer, member, manager of a manager-managed LLC, or partner for the business who controlled, supervised, or was responsible for the filing of returns or payment of any of the taxes listed in the bill during the time period of default and who, during that period, willfully failed to file a return or pay the tax due.

("Time period of default" means the tax period for which the business failed to file the return or pay the tax due and through the date set for filing the return or making the required payment, whichever is later. "Willfully" means the person knew or had reason to know of the obligation to file a return or pay the tax, but intentionally or recklessly failed to do so.)

The bill prohibits the Department from assessing a responsible person more than four years after the date of the assessment issued to the business.

Collection from Other Responsible Person or Purchaser. The bill requires the Department to provide a responsible person assessed under these provisions with notice of any amount collected by the Department from any other responsible person or purchaser of the business determined to be liable, that is attributable to the assessment.

A responsible person may challenge the validity of an assessment to the same extent that the business could have done when the assessment was originally issued. The Department has the burden to first produce prima facie evidence (as described below) or establish a prima facie case that the person is the responsible person through establishing all elements of a responsible person as defined in the bill.

In a separate proceeding before the circuit court, a responsible person found to be liable for the assessment may recover from other responsible persons an amount equal to the assessment or portion of the assessment based on that person's proportionate liability for the assessment, as determined in that proceeding.

Before assessing a responsible person as liable for the tax assessed to the business, the Department must first assess a purchaser or succeeding purchaser of the business personally liable under the Act if the Department has information that clearly identifies a purchaser and establishes that the assessment of the purchaser would permit the Department to collect the entire amount of the tax assessment of the business. Notwithstanding the liability of a purchaser, the Department may assess a responsible person if the purchaser fails to pay the assessment.

Signature as Prima Facie Evidence. Previously, the signature of an officer, member, manager, or partner on returns or negotiable instruments submitted in payment of taxes was prima facie evidence of the responsibility for making the returns and payments. (Prima facie evidence is evidence sufficient to establish a given fact or raise a presumption unless disproved or rebutted.)
ENROLLED SENATE BILL No. 821

AN ACT to create a metropolitan authority; to prescribe the powers, duties, and jurisdictions of the metropolitan authority; to prescribe the powers and duties of certain state officials; to levy, collect, and distribute a tax; and to repeal acts and parts of acts.

Sec. 1. This act shall be known and may be cited as the “local community stabilization authority act”.

Sec. 3. (1) The legislature finds and declares all of the following:

(a) That there exists in this state a continuing need to strengthen and revitalize the economy of this state and to organize the activities of local government in metropolitan areas in a manner that reduces governmental barriers to economic growth, facilitates economic development, helps small businesses grow, preserves communities and strengthens neighborhoods, prevents or reduces unemployment, and creates jobs.

(b) That under section 27 of article VII of the state constitution of 1963, the legislature may establish in metropolitan areas additional forms of government or authorities with power, duties, and jurisdictions as the legislature shall provide.

(c) That it is necessary and appropriate for the promotion of the health, safety, and welfare of the people of this state to enable the formation of metropolitan governments designed to perform multipurpose functions.

(d) That the formation of a metropolitan government under this act and the powers conferred by this act constitute a necessary program and serve a necessary public purpose.

(2) The purpose of this act is to do all of the following:

(a) Establish an authority to perform multipurpose functions in the metropolitan areas of this state.

(b) Promote the public health, safety, welfare, convenience, and prosperity of this state and its metropolitan areas.

(c) Modernize the tax system to help small businesses grow and create jobs in this state.

(d) Dedicate revenue for local purposes, including, but not limited to, police safety, fire protection, and ambulance emergency services.

Sec. 5. As used in this act:

(a) “Acquisition cost” means that term as defined in section 3 of the state essential services assessment act multiplied by the following percentages:

(i) For eligible personal property reported to the department and described in section 5(2)(a) of the state essential services assessment act, 100%.

(47)
(ii) For eligible personal property reported to the department and described in section 5(2)(b) of the state essential services assessment act, 52.19.

(iii) For eligible personal property reported to the department and described in section 5(2)(c) of the state essential services assessment act, 52.19.

(b) "Ambulance services" means patient transport services, nontransport prehospital life support services, and advanced life support, paramedic, and medical first-responder services.

(c) "Authority" means the local community stabilization authority, a metropolitan authority established under section 7.

(d) "Captured value" means 1 or more of the following:

(i) For a tax increment finance authority under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2631 to 125.2652, captured taxable value as determined in sections 2 and 7 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2632 and 125.2657.

(ii) For a tax increment finance authority under 1975 PA 197, MCL 125.1651 to 125.1681, captured assessed value as defined in section 7 of 1975 PA 197, MCL 125.1681.

(iii) For a tax increment finance authority under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, captured assessed value as defined in section 1 of the tax increment finance authority act, 1980 PA 450, MCL 125.1801.

(iv) For a tax increment finance authority under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174, captured assessed value as defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152.

(v) For a tax increment finance authority under the historic neighborhood tax increment finance authority act, 2004 PA 530, MCL 125.2841 to 125.2866, captured assessed value as defined in section 2 of the historic neighborhood tax increment finance authority act, 2004 PA 530, MCL 125.2862.

(vi) For a tax increment finance authority under the corridor improvement authority act, 2005 PA 290, MCL 125.2971 to 125.2990, captured assessed value as defined in section 2 of the corridor improvement authority act, 2005 PA 290, MCL 125.2972.

(vii) For a tax increment finance authority under the neighborhood improvement authority act, 2007 PA 61, MCL 125.2911 to 125.2932, captured assessed value as defined in section 2 of the neighborhood improvement authority act, 2007 PA 61, MCL 125.2912.

(viii) For a tax increment finance authority under the water resource improvement tax increment finance authority act, 2008 PA 194, MCL 125.1772.

(ix) For a tax increment finance authority under the private investment infrastructure funding act, 2009 PA 250, MCL 125.1871 to 125.1883, captured assessed value as defined in section 2 of the private investment infrastructure funding act, 2009 PA 250, MCL 125.1872.

(x) For a tax increment finance authority under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.27, captured assessed value as defined in section 23 of the nonprofit street railway act, 1867 PA 35, MCL 472.23.

(xi) "Commercial personal property" means, except as otherwise provided in subparagraph (iii), all of the following:

(i) Personal property classified as commercial personal property under section 34f of the general property tax act, 1899 PA 206, MCL 211.34f.

(ii) Personal property subject to the industrial facilities tax under section 14(1) or (4) of 1974 PA 198, MCL 297.564, that is situs on land classified as commercial real property under section 34e of the general property tax act, 1899 PA 206, MCL 211.34e.

(iii) Personal property does not include personal property that after 2012 was classified in the municipality where it is currently located as real property or utility personal property.

(xii) "Council" means the council established for the authority under section 9.

(xii) "Debt loss" means, for a municipality that is not a local school district, intermediate school district, or tax increment finance authority, the amount of ad valorem property taxes and any specific tax levied for the payment of principal and interest of obligations incurred before January 1, 2013 pledging the unlimited or limited taxing power of the municipality that are lost as a result of the exemption of industrial personal property and commercial personal property under sections 5m, 9a, and 9b of the general property tax act, 1899 PA 206, MCL 211.34f, 211.5n, and 211.9o.

(xiv) "Department" means the department of treasury.

(xv) "Eligible personal property" means personal property described in section 3e(1) or (10) or (11) of the state essential services assessment act.

(xvi) "Essential services" means all of the following:

(i) Ambulance services.
(ii) Fire services.

(iii) Police services.

(iv) Jail operations.

(v) The funding of pensions for personnel providing services described in subparagraphs (i) to (iv).

(k) "Fire services" means services in the prevention and suppression of fire, homeland security response, hazardous materials response, rescue, fire marshal, and medical first-responder services.

(i) "Fiscal year" means either an annual period that begins on October 1 and ends on September 30 or the fiscal year for the authority established by the council.

(b) "Increased captured value" means the anticipated increase in captured value for all industrial personal property and commercial personal property in a tax increment finance authority that would have occurred as a result of either the addition of personal property as part of a specific project or the expiration of an exemption under section 7k, 7ff or 9f of the general property tax act, 1893 PA 206, MCL 211.7k, 211.7f, and 211.9f, after 2013 if the exemptions under section 9m, 9n, or 9o of the general property tax act, 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o, were not in effect. In order for an anticipated increase in captured value to qualify as increased captured value, the tax increment financing plan must have demonstrated before 2013 that the tax increment finance authority was relying on this anticipated increase in captured value to pay 1 or more qualified obligations by specifically projecting the anticipated increase in captured value that would be used to pay the qualified obligations and the plan must meet all of the following:

(i) The tax increment financing plan was fully approved by the governing body of the applicable local government. This does not prevent subsequent amendment to the tax increment financing plan, provided the amendment does not change the amount of any obligation under the plan, the scope of the project or projects described in the plan, or the time needed to repay any obligation.

(ii) If the tax increment financing plan is part of a brownfield reinvestment financing act, 1996 PA 881, MCL 125.2651 to 125.2677, any needed work plans were also approved by the appropriate state agencies not later than December 21, 2012. This does not prevent subsequent amendment to a work plan, provided the amendment does not change the amount of any obligation under the plan, the scope of the project or projects described in the plan, or the time needed to repay any obligation.

(iii) The tax increment financing plan identifies a particular site owner and site occupant that is engaged in industrial processing or direct integrated support, as defined in section 9m of the general property tax act, 1893 PA 206, MCL 211.9m. This does not preclude a change in the site owner or occupant, provided that change in the site owner or occupant did not result from a financial difficulty encountered during the construction and installation of the project and provided change in the site owner or occupant will not result in any change in the project.

(iv) The tax increment financing plan identifies a particular project on a specific parcel and that project includes the addition of particular personal property that is eligible manufacturing personal property, as defined in section 9n of the general property tax act, 1893 PA 206, MCL 211.9n, that is also identified in the tax increment financing plan.

(v) The personal property that is eligible manufacturing personal property, as defined in section 9m of the general property tax act, 1893 PA 206, MCL 211.9m, and is identified in the tax increment financing plan comprises less than 20% of the true cash value of the improvements to be made as part of the specific project identified in the tax increment financing plan. The requirement under this subparagraph does not apply to the addition of personal property as a result of the expiration of an exemption under section 7k, 7ff, or 9f of the general property tax act, 1893 PA 206, MCL 211.7k, 211.7f, and 211.9f.

(vi) Before December 31, 2012, the specific project identified in the tax increment financing plan had obtained all necessary local zoning approvals, including any necessary rezoning, special land use, and site plan approvals for that project.

(vii) Before December 31, 2012, orders had been placed and significant investments made in the personal property that is eligible manufacturing personal property, as defined in section 9n of the general property tax act, 1893 PA 206, MCL 211.9n, to be located on the site.

(n) "Increased value from expired tax exemptions" means the increase in taxable value subject to tax of industrial personal property and commercial personal property placed in service before 2013 that would have occurred after 2013 if the exemptions under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, were not in effect as a result of the expiration of an exemption under section 7k, 7ff, or 9f of the general property tax act, 1893 PA 206, MCL 211.7k, 211.7f, and 211.9f, that had been in effect in 2012, assuming an exemption under section 7k of the general property tax act, 1893 PA 206, MCL 211.7k, was not extended under section 11a of 1974 PA 198, MCL 207.561a, and an exemption under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, was not extended under section 9f02 of the general property tax act, 1893 PA 206, MCL 211.9f.

(o) "Industrial personal property" means, except as otherwise provided in subparagraph (iii), all of the following:

(i) Personal property classified as industrial personal property under section 34e of the general property tax act, 1893 PA 206, MCL 211.34e.
(ii) Personal property subject to the industrial facilities tax under section 14(1) or (4) of 1974 PA 198, MCL 207.564, that is sited on land classified as industrial real property under section 4c of the general property tax act, 1898 PA 290, MCL 211.34c.

(iii) Industrial personal property does not include personal property that after 2012 was classified in the municipality where it is currently located as real property or utility personal property.

(p) "Jail operations" means all of the following:

(i) The operation of a jail, holding cell, holding center, or lockup as those terms are defined in section 62 of the corrections code of 1953, 1953 PA 232, MCL 791.262.

(ii) The operation of a juvenile detention facility by a county juvenile agency as authorized under section 7 of the county juvenile agency act, 1998 PA 518, MCL 45.627.

(q) "Local community stabilization share" means that portion of the use tax levied by the authority and authorized under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

(r) "Municipality" includes, but is not limited to, the following:

(i) Counties.

(ii) Cities.

(iii) Villages.

(iv) Townships.

(v) Authorities, excluding an authority created under this act.

(s) Local school districts.

(t) Intermediate school districts.

(u) Community college districts.

(v) Libraries.

(w) Other local and intergovernmental taxing units.

(x) "Personal property exemption loss" means 1 of the following:

(i) For a municipality that is not a local school district, intermediate school district, or tax increment finance authority, the 2013 taxable value of commercial personal property and industrial personal property minus the current year taxable value of commercial personal property and industrial personal property and minus the small taxpayer exemption loss.

(ii) For a municipality that is a local school district, intermediate school district, or tax increment finance authority, the 2013 taxable value of commercial personal property and industrial personal property minus the current year taxable value of commercial personal property and industrial personal property.

(y) "Police services" means law enforcement services for the prevention and detection of crime, the enforcement of laws and ordinances, homeland security response, and medical first-responder services.

(z) "Qualified loss" means the amounts calculated under section 14(1) and (3) that are not distributed to the municipality under section 17(3)(a).

(a) "Qualified obligation" means a written promise to pay by a tax increment finance authority, whether evidenced by a contract, agreement, lease, sublease, bond, resolution promising repayment of an advance, or note, or a requirement to pay imposed by law. A qualified obligation does not include a payment required solely because of default upon an obligation, employee salary, or consideration paid for the use of municipal offices. A qualified obligation does not include bonds that have been economically defeased by refunding.

(b) "School debt loss" means the amount of revenue lost from ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors before January 1, 2013 or obligations pledging the unlimited taxing power of a local school district or intermediate school district incurred before January 1, 2013, as a result of the exemption of industrial personal property and commercial personal property under sections 9m, 9n, and 9o of the general property tax act, 1898 PA 206, MCL 211.9m, 211.9n, and 211.9o.

(c) "School operating loss not reimbursed by the school aid fund" means the amount of revenue lost from ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors before January 1, 2013 or obligations pledging the unlimited taxing power of a local school district or intermediate school district incurred before January 1, 2013, as a result of the exemption of industrial personal property and commercial personal property under sections 9m, 9n, and 9o of the general property tax act, 1898 PA 206, MCL 211.9m, 211.9n, and 211.9o, for mills other than basic school operating mills, as that term is defined in section 2c of the use tax act, 1937 PA 94, MCL 205.92c.

(d) "Small taxpayer exemption loss" means the 2013 taxable value of commercial personal property and industrial personal property minus the 2014 taxable value of commercial personal property and industrial personal property.

(e) "Specific tax" means a tax levied under any of the following:

(i) 1974 PA 198, MCL 207.561 to 207.572.
Sec. 7. (1) The local community stabilization authority is established as a metropolitan government for the metropolitan areas of this state under section 27 of article VIII of the state constitution of 1963. The authority is a public body corporate and a special authority. The authority is not an agency or instrumentality of state government. The authority council is established as the governing body of the authority. The powers, duties, functions, and responsibilities of the authority are vested in the council. The council shall consist of 5 residents of this state appointed by the governor. Not less than 3 members of the council shall be residents of separate metropolitan areas within this state. An officer or employee of this state may not serve as a member of the council.

(2) The property of the authority is public property devoted to an essential public and governmental purpose. Any income of the authority is for a public and governmental purpose. Any income of the authority is for a public and governmental purpose. Any income of the authority is for a public and governmental purpose.

(3) Property of the authority and its income, activities, and operations are exempt from all taxes and special assessments of this state or a political subdivision of this state. Property of the authority is exempt from any ad valorem property taxes levied under the general property tax act, 1893 PA 206, MCL 211.27a, or other law of this state authorizing the taxation of real or personal property. The authority is an entity of government for purposes of section 4a(1)(a) of the general sales tax act, 1933 PA 206, MCL 211.27a, and section 4(1)(b) of the use tax act, 1957 PA 94, MCL 207.651.

(4) The validity of the creation of the authority is presumed unless held invalid by the court of appeals in an original action filed in the court of appeals not later than 60 days after the establishment of the authority under this section. The court of appeals has original jurisdiction to hear an action under this subsection. The court shall hear the action in an expedited manner.

Sec. 9. (1) The authority council is established as the governing body of the authority. The powers, duties, functions, and responsibilities of the authority are vested in the council. The council shall consist of 5 residents of this state appointed by the governor. Not less than 3 members of the council shall be residents of separate metropolitan areas within this state. An officer or employee of this state may not serve as a member of the council.

(2) Of the members of the council initially appointed by the governor, 1 member shall be appointed for an initial term of 5 years, 1 member shall be appointed for an initial term of 4 years, 1 member shall be appointed for an initial term of 3 years, 1 member shall be appointed for an initial term of 2 years, and 1 member shall be appointed for an initial term of 1 year. After the initial appointments, a member of the council shall be appointed for a term of 6 years. If a vacancy on the council occurs other than by expiration of a term, the vacancy shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member of the council may continue to serve until a successor is appointed and qualified. The governor shall designate a member of the council to serve as its chairperson at the pleasure of the governor.

(3) An individual appointed as a member of the council shall take the oath of office as provided under section 1 of article XI of the state constitution of 1963.
(4) A member of the council shall serve without compensation but may be reimbursed by the authority for necessary travel and expenses to the extent not prohibited by law and consistent with a reimbursement policy adopted by the council.

(5) A member of the council shall discharge the duties of his or her position in a nonpartisan manner, in good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the council, when acting in good faith, may rely upon any of the following:

(a) The opinion of legal counsel for the authority.
(b) The report of an independent appraiser selected by the council.
(c) Financial statements of the authority represented to the member of the council to be correct by the officer of the authority having charge of its books of account or stated in a written report by an auditor or a certified public accountant, or a firm of certified accountants, to reflect the financial condition of the authority.

(6) Within not more than 30 days following appointment of the initial members of the council, the council shall hold its first meeting at a date and time determined by the chairperson of the council. The council shall elect from among the members of the council an individual to serve as vice-chairperson of the council and secretary of the council and may elect other officers as the council considers necessary. All officers under this subsection shall be elected annually by the council.

(7) The council shall conduct its business at a public meeting held in compliance with the open meetings act, 1976 PA 297, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 297, MCL 15.261 to 15.275. The council shall adopt bylaws consistent with the open meetings act, 1976 PA 297, MCL 15.261 to 15.275, governing its procedures and the holding of meetings. After organization, the council shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time. A special meeting of the council may be called by the chairperson of the council or as provided in bylaws adopted by the council. Notice of a special meeting shall be given in the manner required by the open meetings act, 1976 PA 297, MCL 15.261 to 15.275.

(8) The council shall keep a written or printed record of each meeting, which record and any other document or record prepared, owned, used, in the possession of, or retained by the authority in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.266.

(9) The council shall provide for a system of accounts for the authority to conform to a uniform system required by law and for the auditing of the accounts of the authority. The council shall obtain an annual audit of the authority by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by sections 6 to 13 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.420 to 141.433. The audit also shall be in accordance with generally accepted government auditing standards.

(10) Before the beginning of each fiscal year, the council shall prepare a budget for the authority containing an itemized statement of the estimated expenses and revenue of the authority from all sources for the next fiscal year. Before final adoption of the budget, the council shall hold a public hearing as required by 1963 (2nd Ex Sess) PA 43, MCL 141.411 to 141.415, and the open meetings act, 1976 PA 297, MCL 15.261 to 15.275. The council shall adopt a budget for the fiscal year in compliance with the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(11) The council shall adopt a procurement policy consistent with the requirements of state law relating to procurement. The procurement policy shall address all of the following:

(a) The purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third-party financing, equipment, printing, and all other items as needed by the authority to efficiently and effectively meet the needs of the authority using competitive procurement methods to secure the best value for the authority.

(b) That the council shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of authority contracts.

(c) Control, supervision, management, and oversight of each contract to which the authority is a party.

(d) Monitoring of contracts to assure the contract is being performed in compliance with the terms of the contract and applicable law.

(12) Members of the council are public servants subject to 1968 PA 317, MCL 15.321 to 15.330, and are subject to any other applicable law with respect to conflicts of interest. The council shall establish policies and procedures requiring periodic disclosure of relationships which may give rise to conflicts of interest. The council shall require that a member of the council with a direct interest in any matter before the authority disclose the member's interest before the council takes any action with respect to the matter. The council shall establish an ethics manual for the authority governing authority business and the conduct of authority officers and employees. The authority shall establish policies that are no less stringent than those provided for public officers and employees by 1979 PA 196, MCL 15.341 to 15.348, and coordinate efforts for the authority to preclude the opportunity for and the occurrence of transactions by the authority
that would create a conflict of interest involving officers or employees of the authority. At a minimum, the policies shall include compliance by each officer or employee who regularly exercises significant discretion over the award and management of authority procurements with policies governing all of the following:

(a) Immediate disclosure of the existence and nature of any financial interest that could reasonably be expected to create a conflict of interest.

(b) Withdrawal by an officer or employee from participation in or discussion or evaluation of any recommendation or decision involving an authority procurement that would reasonably be expected to create a conflict of interest for that officer or employee.

(iii) The governor may remove a member of the council from office for gross neglect of duty, corrupt conduct in office, or any other misfeasance or malfeasance in office.

Sec. 11. (1) The authority may exercise all of the following powers, duties, functions, and responsibilities:

(a) Powers, duties, functions, and responsibilities vested in the authority under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

(b) Exercise the powers, duties, functions, and responsibilities vested in the authority under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.8101 to 484.8120, and other laws of this state. The authority may exercise the powers, duties, functions, and responsibilities under this subdivision through a director hired by the authority.

(2) When exercising the powers, duties, functions, and responsibilities vested in the authority under subsection (1), the authority may do 1 or more of the following:

(a) Establish and maintain an office.

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

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

(d) Solicit, receive, and accept gifts or grants from any public or private source.

(e) Employ personnel, contract for goods and services, and enter into agreements with other governmental entities.

(f) Establish 1 or more depositories for authority money and invest authority money under an investment policy consistent with this act and 1943 PA 20, MCL 129.91 to 129.97a.

(g) Acquire, hold, and dispose of interests in property.

(h) Incur indebtedness, but only in the manner and to the extent authorized by law.

(3) The powers, duties, functions, and responsibilities of the authority may be exercised throughout this state, including all the metropolitan areas of this state. The authority possesses the jurisdiction to exercise its functions on a statewide basis and may do other things and take other action necessary or convenient to the exercise of the powers, duties, functions, and responsibilities of the authority under this section if they relate to the purposes and jurisdiction of the authority.

Sec. 12. (1) The authority has the exclusive power to levy the local community stabilization share under the use tax act, 1987 PA 94, MCL 205.91 to 205.111. The authority is authorized to levy the local community stabilization share under the use tax act, 1987 PA 94, MCL 205.91 to 205.111, and shall levy the local community stabilization share at the rate provided under section 3 of the use tax act, 1987 PA 94, MCL 205.91 to 205.111, but is not authorized to increase the rate of the local community stabilization share. The authority is not authorized to increase any other tax.

(2) The department shall administer under the use tax act, 1987 PA 94, MCL 205.91 to 205.111, the receipt and collection of the local community stabilization share on behalf of the authority as an agent of the authority. The department may enter into an agreement with the department relating to the receipt and collection of the local community stabilization share and the payment of the authority revenue generated by the local community stabilization share to the authority.

(3) Money generated by the local community stabilization share is money of the authority, not state funds, and shall not be credited to the state treasury as state funds.

Sec. 13. (1) Not later than June 5, 2014, the assessor for each city and township shall report to the county equalization director all of the following:

(a) The 2013 taxable value of commercial personal property and industrial personal property for each municipality in the city or township.

(b) The 2014 taxable value of commercial personal property and industrial personal property for each municipality in the city or township.

(c) The small taxpayer exemption loss for each municipality in the city or township.
(2) Not later than June 20, 2014, the equalization director for each county shall report to the department the information described in subsection (1) for each municipality in the county. For each municipality levying a millage in more than 1 county, the county equalization director responsible for compiling the municipality's taxable value under section 34d of the general property tax act, 1898 PA 206, MCL 211.34d, shall compile the municipality's information described in subsection (1).

(3) Not later than June 5, 2016, and each June 5 thereafter, the assessor for each city and township shall report to the county equalization director the current year taxable value of commercial personal property and industrial personal property for each municipality in the city or township. Not later than June 20, 2016, and each June 20 thereafter, the equalization director for each county shall report to the department the current year taxable value of commercial personal property and industrial personal property for each municipality in the county. For each municipality levying a millage in more than 1 county, the county equalization director responsible for compiling the municipality's taxable value under section 34d of the general property tax act, 1898 PA 206, MCL 211.34d, shall compile the municipality's information described in this subsection.

(4) Not later than August 15, 2014, and each August 15 thereafter, each municipality shall report to the department the millage rate levied or to be levied that year for a millage described in section 5(g) or (w) that is used to calculate an appropriation under section 17(1)(a) or a distribution under section 17(3)(a)(i). For 2014 and 2015, the rate of that millage shall be calculated using the sum of the municipality's taxable value and the municipality's small taxpayer exemption loss. Beginning in 2016 and each year thereafter, the rate of that millage shall be calculated using the sum of the municipality's taxable value and the municipality's personal property exemption loss. For 2014 and 2015, the department shall calculate each municipality's debt loss or school debt loss by multiplying the municipality's millage rate reported under this subsection by the municipality's small taxpayer exemption loss. Beginning in 2016 and each year thereafter, the department shall calculate each municipality's school debt loss by multiplying the municipality's millage rate reported under this subsection by the municipality's personal property exemption loss.

(5) The department shall calculate and make available to each municipality by May 1 of each year that municipality's sum of the lowest rate of each individual millage levied in the period between 2012 and the year immediately preceding the current year. For a municipality, other than a municipality described in section 14, the calculation shall exclude debt millage. For an individual millage rate not levied in 1 of the years, the lowest millage rate is zero. A millage used to make the calculations under this act must be levied against both real property and personal property.

(6) Not later than June 5, 2016, and each June 5 thereafter, the assessor for each city and township shall report to the county equalization director the increased value from expired tax exemptions for each municipality that is subject to section 14(2) and that levies taxes in the city or township. Not later than June 20, 2016, and each June 20 thereafter, the equalization director for each county shall report to the department the increased value from expired tax exemptions for each municipality that is subject to section 14(2) and that levies taxes in the city or township. For each municipality subject to section 14(2) that levies a millage in more than 1 county, the county equalization director responsible for compiling the municipality's taxable value under section 34d of the general property tax act, 1898 PA 206, MCL 211.34d, shall compile the municipality's information described in this subsection.

Sec. 14. (1) Not later than August 15, 2016, and each August 15 thereafter, for each municipality that is not a local school district, intermediate school district, or tax increment finance authority, the department shall do all of the following:

(a) Calculate the municipality's personal property exemption loss.

(b) Multiply the municipality's personal property exemption loss by the millage rates calculated under section 13(5).

(c) Adjust the amount calculated under subdivision (b) by the amount required to reflect the final order of a court or body of competent jurisdiction related to any prior year calculation under this subsection. An adjustment under this subdivision shall only be made for municipalities for which changes in prior year taxable values can be calculated from taxable values reported under section 151(1) of the state school aid act of 1979, 1979 PA 94, MCL 388.175.

(d) Adjust the amount calculated under subdivision (b), as adjusted by subdivision (c), by the amount calculated under section 16a(2) for captured taxes levied by the municipality not including taxes attributable to increased captured value.

(2) Not later than August 15, 2016, and each August 15 thereafter, for each municipality that is a county, township, village, city, or authority that provides essential services, the department shall do all of the following:

(a) Add to the amount calculated under subsection (1)(a) any increased value from expired tax exemptions for the current year.

(b) Subject from the amount calculated under subdivision (a) the amount calculated under section 16a(2)(b) for the municipality, not including any amount attributable to increased captured value.

(c) Multiply the result of the calculation in subdivision (b) by the millage rate calculated under section 13(5) for general operating millage.
(d) Multiply the result of the calculation in subdivision (c) by the percentage of the municipality's general operating
millage used to fund the cost of essential services in the municipality's fiscal year ending in 2012. Each municipality's
comprehensive annual financial report for the municipality's fiscal year ending in 2014 must include a calculation of the
municipality's percentage of general operating revenues used to fund essential services in the municipality's fiscal year
ending in 2012.

(e) Add to the result of the calculation in subdivision (d) an amount calculated by multiplying the amount calculated
under subsection (2)(b) by the millage rates calculated under section 13(5) that are dedicated solely for the cost of
essential services levied on industrial personal property and commercial personal property. A millage levied to fund a
pension under the fire fighters and police officers retirement act, 1937 PA 451, MCL 38.551 to 38.562, is dedicated solely
for the cost of essential services.

(3) Not later than August 15, 2016, for each municipality that is a city, the department shall do all of the following:
(a) Calculate the municipality's small taxpayer exemption loss.
(b) Multiply the amount calculated under subdivision (a) by the millage rates calculated under section 13(5) for 2014.
(c) Multiply the amount calculated under subdivision (a) by the millage rates calculated under section 13(5) for 2015.
(d) Add the amounts calculated under subdivisions (b) and (c).

(e) Subtract from the amount calculated under subdivision (d) the sum of the municipality's debt loss for 2014 and
2015.

(f) Subtract from the amount calculated under subdivision (e) the amount of any tax increment small taxpayer loss
for captured taxes levied by the municipality in 2014 and 2015.

(4) Not later than August 15, 2016, and each August 15 thereafter, for each municipality that is not a local school
district, intermediate school district, or tax increment finance authority, the department shall do all of the following:
(a) Calculate the municipality's small taxpayer exemption loss.
(b) Multiply the amount calculated under subdivision (a) by the millage rates calculated under section 13(5).
(c) Adjust the amount calculated under subdivision (b) by the amount required to reflect the final order of a court
or body of competent jurisdiction related to any prior year calculation under this section. An adjustment under this
subdivision shall only be made for municipalities for which changes in prior year taxable values can be calculated from
taxable values reported under section 151(1) of the state school aid act of 1970, 1979 PA 94, MCL 388.1751.
(d) Subtract from the result of the calculation in subdivision (c) the amount of any tax increment small taxpayer loss
levied on industrial personal property and commercial personal property. A millage levied to fund a pension under the
fire fighters and police officers retirement act, 1937 PA 451, MCL 38.551 to 38.562, is dedicated solely
for the cost of essential services.

Sec. 15. Not later than August 15, 2016, and each August 15 thereafter, for each municipality that is a local school
district, the department shall do all of the following:
(a) Calculate the municipality's personal property exemption loss.
(b) Multiply the result of the calculation in subdivision (a) by the sum of the lowest rate of each individual millage
levied under section 1212 of the revised school code, 1976 PA 451, MCL 380.1212, and section 2 of 1917 PA 156,
MCL 388.52, levied by that municipality in the period between 2012 and the year immediately preceding the current
year. For an individual millage rate not levied in 1 of the years, the lowest millage rate is zero.
(c) Adjust the amount calculated under subdivision (b) by the amount required to reflect the final order of a court
or body of competent jurisdiction related to any prior year calculation under this section.
(d) Subtract from the result of the calculation under subdivision (c) the amount of any tax increment personal property
loss for the cost of essential services levied by the municipality not including taxes attributable to increased captured
value.

Sec. 16. Not later than August 15, 2016, and each August 15 thereafter, for each municipality that is an intermediate
school district, the department shall do all of the following:
(a) Calculate the municipality's personal property exemption loss.
(b) Multiply the result of the calculation in subdivision (a) by the millage rates calculated under section 13(5).
(c) Adjust the amount calculated under subdivision (b) by the amount required to reflect the final order of a court
or body of competent jurisdiction related to any prior year calculation under this section.
(d) Subtract from the result of the calculation in subdivision (b) the amount of any tax increment personal property
loss for the cost of essential services levied by the municipality not including taxes attributable to increased captured
value.
Sec. 16a. (1) Not later than June 15, 2014 and June 15, 2015, each municipality that is a tax increment finance authority shall calculate and report to the department the municipality’s tax increment small taxpayer loss for the current calendar year.

(2) Not later than June 15, 2016, and each June 15 thereafter, each municipality that is a tax increment finance authority shall do all of the following for each of its tax increment financing plans:

(a) Calculate the total captured value of all industrial personal property and commercial personal property in the municipality that is a tax increment finance authority in 2013 and add any increased captured value for the current year.

(b) From the amount calculated in subdivision (a), subtract the total captured value of all industrial personal property and commercial personal property in the municipality that is a tax increment finance authority in the current year. If the resulting amount, when added to the taxable value of all property within the tax increment finance authority in the current year, would result in a captured value for all property within the tax increment finance authority that is less than the resulting amount, then this captured value shall be used instead of the resulting amount.

(c) Multiply the result of the calculation in subdivision (b) by the sum of the lowest rate of each individual millage levied in the period between 2012 and the current year, to the extent the millage is subject to capture by that tax increment finance authority. For an individual millage rate not levied in 1 of the years, the lowest millage rate is zero. A millage used to make the calculation under this subdivision must be eligible to be levied against both real property and personal property.

(d) Adjust the amount calculated under subdivision (c) by the amount required to reflect the final order of a court or body of competent jurisdiction related to any prior year calculation under this section.

(e) For an obligation refinanced after 2012, estimate for the term of the obligation:

(i) The cumulative school district operating tax and state education tax that would have been captured to repay the obligation had the obligation not been refinanced.

(ii) The cumulative amount calculated under subdivision (c), as adjusted by subdivision (d), for school district operating tax and state education tax for the obligation had it not been refinanced.

(f) Once the amount included in subdivision (c), as adjusted by subdivision (d), for the current and prior years for school district operating tax and state education tax for the refinanced obligation equals the amount estimated in subdivision (e)(ii), subtract from the amount calculated under subdivision (c), as adjusted by subdivision (d), the amount calculated under subdivision (c), as adjusted by subdivision (d), for school district operating tax and state education tax for the refinanced obligation.

(g) Once the amount of school district operating tax and state education tax captured for the current and prior years to pay the refinanced obligation equals the amount estimated under subdivision (e)(ii), subtract from the amount calculated in subdivision (c), as adjusted by subdivision (d), the amount of school operating tax and state education tax captured to repay the refinanced obligation.

(3) Not later than June 15, 2016, and each June 15 thereafter, each municipality that is a tax increment finance authority shall report to the department the results of the calculations under subsection (2) for each tax increment financing plan.

Sec. 16b. (1) Each municipality that is a tax increment finance authority shall report to the department the calculation required under section 16a on a form and in a manner prescribed by the department.

(2) If a municipality that is a tax increment finance authority fails to make the calculation and report it to the department by the date provided in section 16a, the department may extend the calculation and reporting date upon good cause as determined by the department.

(3) The department shall exclude from the calculations under sections 14, 15, and 16 the taxable value of property exempt under section 7ff of the general property tax act, 1893 PA 306, MCL 211.7ff, for millages subject to the exemption.

Sec. 17. (1) The legislature shall appropriate funds for all of the following purposes:

(a) For fiscal year 2014-2015 and fiscal year 2015-2016, to the authority, an amount equal to all debt loss for municipalities that are not a local school district, intermediate school district, or tax increment finance authority, an amount equal to all school debt loss for municipalities that are a local school district or intermediate school district, and an amount equal to all tax increment small taxpayer loss for municipalities that are a tax increment finance authority.

(b) Beginning in fiscal year 2014-2015 and each fiscal year thereafter; an amount equal to the necessary expenses incurred by the authority and the department in implementing this act.

(2) In fiscal year 2014-2015 and fiscal year 2015-2016, the authority shall distribute to municipalities those funds appropriated under subsection (1)(a). However, in fiscal year 2014-2015, if the authority is not able to make the distribution under this subsection, the department shall make the distribution under this subsection on behalf of the authority.
(3) Beginning in fiscal year 2015-2016, the authority shall distribute local community stabilization share revenue as follows in the following order of priority:

(a) The authority shall distribute to each municipality an amount equal to all of the following:

(i) 100% of that municipality's school debt loss in the current year and 100% of its amount calculated under section 15.

(ii) 100% of that municipality's amount calculated under section 16.

(iii) 100% of that municipality's school operating loss not reimbursed by the school aid fund in the current year.

(iv) 100% of the amount calculated in section 14(2). However, the amount distributed to a municipality under this subparagraph shall not exceed the amount calculated in section 14(1)(d). All distributions under this subparagraph shall be used to fund essential services.

(v) For a municipality that is a tax increment finance authority, 100% of its amount calculated under section 16a(2).

(vi) 100% of that municipality's amount calculated under section 14(4).

(b) Beginning in fiscal year 2015-2016, after the distributions under subdivision (a), and subject to subparagraph (vi), the authority shall distribute 5% of the remaining balance of the local community stabilization share fund for the current fiscal year to each municipality that is not a local school district, intermediate school district, or tax increment finance authority in an amount determined as follows:

(i) Calculate the total acquisition cost of all eligible personal property in the municipality.

(ii) Multiply the result of the calculation in subparagraph (i) by the sum of the lowest rate of each individual millage levied by the municipality in the period between 2012 and the year immediately preceding the current year that is not used to calculate a distribution under subdivision (a). For an individual millage rate not levied in 1 of the years, the lowest millage rate is zero. A millage used to make the calculation under this subparagraph must be eligible to be levied against both real property and personal property.

(iii) Multiply the result of the calculation in subparagraph (ii) by the amount calculated under section 16a(2) for captured taxes levied by the municipality not including taxes attributable to increased captured value.

(iv) Subtract from the amount calculated under subparagraph (ii) the amount calculated under subparagraph (iv).

(v) Divide the result of the calculation in subparagraph (iv) by the sum of the calculation under subparagraph (v) for all municipalities.

(vi) Multiply the result of the calculation in subparagraph (v) by the amount to be distributed under this subdivision.

(vii) For fiscal year 2020-2021, and each fiscal year thereafter, the percentage amount described in this subdivision shall be increased an additional 5% each year, not to exceed 100%.

(c) After the distributions in subdivisions (a) and (b), the authority shall distribute the remaining balance of that fiscal year's local community stabilization share fund to each municipality in an amount determined by multiplying the remaining balance by a fraction, the numerator of which is that municipality's qualified loss and the denominator of which is the total qualified loss.

(4) The authority shall make the payments required by subsection (5) not later than on the following dates:

(a) For county allocated millage, September 20 of the year the millage is levied.

(b) For county extra-voted millage, township millage, and other millages levied 100% in December of a year, February 20 of the following year.

(c) For other millages, October 20 of the year the millage is levied.

(5) If the authority has insufficient funds to make the payments on the dates required in subsection (4), the department shall advance to the authority the amount necessary for the authority to make the required payments. The authority shall repay the advance to the department from the local community stabilization share fund in the following order of priority:

1. The authority shall distribute to each municipality an amount equal to all of the following:

   (i) 100% of that municipality's school debt loss in the current year.

   (ii) 100% of its amount calculated under section 15.

   (iii) 100% of that municipality's amount calculated under section 16.

   (iv) 100% of that municipality's school operating loss not reimbursed by the school aid fund in the current year.

   (v) 100% of the amount calculated in section 14(2). However, the amount distributed to a municipality under this subparagraph shall not exceed the amount calculated in section 14(1)(d). All distributions under this subparagraph shall be used to fund essential services.

   (vi) For a municipality that is a tax increment finance authority, 100% of its amount calculated under section 16a(2).

   (vii) 100% of that municipality's amount calculated under section 14(4).

2. For county allocated millage, September 20 of the year the millage is levied.

3. For county extra-voted millage, township millage, and other millages levied 100% in December of a year, February 20 of the following year.

4. For other millages, October 20 of the year the millage is levied.

Sec. 18. (1) Beginning in fiscal year 2015-2016, and each fiscal year thereafter, the department shall determine the amount of the distributions under this act.

(2) Each municipality shall submit to the department sufficient information for the department to make its calculations under this act, as determined by the department.

Sec. 19. (1) A local unit of government may issue bonds or other obligations in anticipation of the distribution of local community stabilization share revenue under section 17(3)(a)(iv).

(2) Bonds or other obligations issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.
Sec. 20. From the amount of local community stabilization share revenue distributed under section 17(3)(a)(iv), a municipality shall first replace the amount of ad valorem property taxes used for the payment of principal and interest of essential services obligations incurred before 2013 pledging the unlimited or limited taxing power of the municipality that are lost from the exemptions provided by sections 9m, 9n, and 9o of the general property tax act. 1893 PA 206, MCL 211.9m, 211.9n, and 211.9o. A municipality shall not receive distributions under section 17(3)(a)(iv) if it has increased its millage rate without voter approval in order to replace lost property taxes that would otherwise be reimbursed under section 17(3)(a)(iv) if that were repaying essential service obligations incurred before 2013 pledging the unlimited or limited taxing power of the municipality and that were lost as a result of the exemptions provided by sections 9m, 9n, and 9o of the general property tax act.

Sec. 21. From the amount received under section 17, a municipality shall first replace debt loss or school debt loss, as applicable. A municipality shall not receive a distribution under this act if it has increased its millage rate without voter approval to replace debt loss or school debt loss, as applicable, that otherwise would be reimbursed under this act.

Sec. 22. This act shall be construed to effectuate the legislative intent and the purposes of this act as complete and independent authorization for the performance of each and every act and thing authorized in the act, and all powers granted in this act shall be broadly interpreted to effectuate the intent and purposes of this act and not as to limitation of powers.

Enacting section 1. The Michigan metropolitan areas metropolitan authority act, 2012 PA 407, MCL 123.1311 to 123.1330, is repealed.

Enacting section 2. This act does not take effect unless Senate Bill No. 822 of the 97th Legislature is approved by a majority of the qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014.

Enacting section 3. If Senate Bill No. 822 of the 97th Legislature is not approved by the majority of the qualified electors of this state voting on the question at an election to be held on the August regular election in 2014, for fiscal year 2014-2015, the legislature shall appropriate an amount sufficient to make the appropriation described in section 17(1)(a) for the fiscal year 2014-2015.

This act is ordered to take immediate effect.

Carol Moon Viventi
Secretary of the Senate

Sara E. Ryan
Clerk of the House of Representatives

Governor
The bills would amend, enact, and replace various statutes to revise legislation that was enacted in 2012 to create tax exemptions for eligible industrial and commercial personal property, and provide mechanisms to replace a portion of the revenue lost by local units of government. Like the enacted legislation, many of the proposed bills would require voter approval of an August 2014 ballot question in order to take effect.

The proposed legislation would retain a measure providing for a local share of the use tax, and reducing the State use tax commensurately, but would raise the annual increases in the amount the local use tax may generate between fiscal year (FY) 2016-15 and FY 2022-23, and would extend the years in which the amounts increase to FY 2027-28.

The proposed changes also would revise the distribution of local use tax revenue to local units of government. The legislation would reimburse local units, in aggregate, for the amount of estimated revenue lost due to the personal property tax exemptions.

In addition, the bills would levy a State essential services assessment on eligible personal property subject to a personal property tax exemption; levy an alternative assessment at 50% of the State essential services assessment on eligible personal property exempt from that assessment; and eliminate a local assessment on industrial and commercial real property for essential services.

Further, the proposals specify a legislative intent that the State essential services assessment, and revenue from expiring refundable tax credits, offset the impact on the State's General Fund from the reduction of the State use tax.
Tables 1 and 2 below outline the legislation enacted in 2012. Table 3 indicates the 2012 legislation that would be amended or replaced by the proposed bills. A description of each of the bills follows the tables.

### Table 1

**Personal Property Tax Exemptions Enacted in 2012**

<table>
<thead>
<tr>
<th>Bill</th>
<th>Public Act</th>
<th>Statute Amended</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>1069</td>
<td>401</td>
<td>General Property Tax Act – Sec. 9m</td>
<td>Exemption of qualified new personal property</td>
</tr>
<tr>
<td>1070</td>
<td>402</td>
<td>General Property Tax Act – Sec. 9o</td>
<td>Exemption for owners of property worth &lt; $40,000 in a local unit</td>
</tr>
<tr>
<td>1071</td>
<td>403</td>
<td>General Property Tax Act – Sec. 9n</td>
<td>Exemption of property subject to taxation for 10 years or more</td>
</tr>
<tr>
<td>1065</td>
<td>397</td>
<td>P.A. 198 of 1974</td>
<td>Continuation of current exemptions until new exemption applies</td>
</tr>
<tr>
<td>1066</td>
<td>398</td>
<td>Technology Park Development Act</td>
<td></td>
</tr>
<tr>
<td>1067</td>
<td>399</td>
<td>General Property Tax Act</td>
<td></td>
</tr>
<tr>
<td>1068</td>
<td>400</td>
<td>Enterprise Zone Act</td>
<td></td>
</tr>
</tbody>
</table>

### Table 2

**Revenue Loss Reimbursement Enacted in 2012**

<table>
<thead>
<tr>
<th>Bill</th>
<th>Public Act</th>
<th>Statute Amended or Created</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>6024</td>
<td>406</td>
<td>Local Unit of Government Essential Services Special Assessment Act</td>
<td>Allow special assessment by local unit for essential services</td>
</tr>
<tr>
<td>6025</td>
<td>407</td>
<td>Michigan Metropolitan Areas Metropolitan Authority Act</td>
<td>Create the MAMA to levy &amp; distribute local use tax authorized by PA 408</td>
</tr>
<tr>
<td>6026</td>
<td>408</td>
<td>Use Tax Act</td>
<td>Authorize local use tax &amp; reduce State use tax; place question on August 2014 statewide ballot</td>
</tr>
<tr>
<td>6022</td>
<td>404</td>
<td>Metropolitan Extension Telecommunications Rights-of-Way Oversight Act</td>
<td>Transfer duties of METRO Authority to the MAMA</td>
</tr>
</tbody>
</table>

### Table 3

**2012 Legislation Affected by Proposed Bills**

<table>
<thead>
<tr>
<th>2012 Act</th>
<th>Bill</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>407</td>
<td>821</td>
<td>Replace Michigan Metropolitan Areas Authority (MAMA) Act with Local Community Stabilization Authority (LCSA) Act; revise distribution of local use tax revenue</td>
</tr>
<tr>
<td>408</td>
<td>822</td>
<td>Increase amounts generated by local use tax &amp; extend years of increase</td>
</tr>
<tr>
<td>399</td>
<td>823</td>
<td>Require voter approval of PA 408 or SB 822 for continuation of an exemption</td>
</tr>
<tr>
<td>401</td>
<td>823</td>
<td>Exclude utility personal property from eligibility for an exemption</td>
</tr>
<tr>
<td>404</td>
<td>824</td>
<td>Transfer duties of METRO Authority to LCSA instead of MAMA</td>
</tr>
<tr>
<td>408</td>
<td>825</td>
<td>Require submission of PA 408 to voters unless SB 822 is enacted</td>
</tr>
<tr>
<td>401</td>
<td>826</td>
<td>Repeal Sec. 9m of General Property Tax Act (GPTA) if neither PA 408 nor SB 822 is approved by voters</td>
</tr>
<tr>
<td>402</td>
<td>827</td>
<td>Repeal Sec. 9n of GPTA if neither PA 408 nor SB 822 is approved by voters</td>
</tr>
<tr>
<td>403</td>
<td>828</td>
<td>Repeal Sec. 9n of GPTA if neither PA 408 nor SB 822 is approved by voters</td>
</tr>
<tr>
<td>407</td>
<td>829</td>
<td>Repeal Local Unit of Government Essential Services Special Assessment Act; enact State Essential Services Assessment Act</td>
</tr>
<tr>
<td>NA</td>
<td>830</td>
<td>Enact Alternative State Essential Services Assessment Act</td>
</tr>
</tbody>
</table>

Senate Bill 822 (H-1), which would amend the Use Tax Act, would have to be submitted to the voters at an election held on the August regular election date in 2014. If approved by a majority of the electors voting on it, the bill would take effect on January 1, 2015. Senate
Bills 821 (H-1), 824, 829 (H-1), and 830 (H-1) would not take effect unless the voters approved Senate Bill 822.

**Senate Bill 821 (H-1)**

The bill would repeal the Michigan Metropolitan Areas Metropolitan Authority Act and enact the "Local Community Stabilization Authority Act" to do the following:

-- Replace the Metropolitan Areas Metropolitan Authority with the Local Community Stabilization Authority (LCSA).
-- Authorize the LCSA to levy the "local community stabilization share" (the local use tax provided for in Senate Bill 822), which would replace the metropolitan areas component tax (the local use tax provided for in Public Act 408 of 2012).
-- Require the LCSA to levy the local community stabilization share at the rate provided in the Use Tax Act, and specify that the LCSA would not be authorized to increase the rate.
-- Require the LCSA to distribute the local community stabilization share to municipalities for the losses described in the bill, according to prescribed calculations.
-- Establish reporting requirements for cities and villages, school districts, other municipalities, and tax increment finance authorities.
-- Retain requirements that the Legislature appropriate, in fiscal year (FY) 2013-14 and FY 2014-15, amounts equal to debt loss or school debt loss, and that the Authority distribute the appropriated funds.

**Reporting Requirements; Calculation of Millage Rate & Loss**

The bill would require each city and township assessor, by June 5, 2014, to report to the county equalization director the 2013 and 2014 taxable value of commercial personal property and industrial personal property for each municipality in the city or township, and the small taxpayer exemption loss of each municipality in the city or township. By June 20, 2014, each county equalization director would have to report that information to the Department of Treasury.

(The term "municipality" would include a county, city, village, township, authority (except the LCSA), local school district, intermediate school district (ISD), community college district, library, and other local or intergovernmental taxing unit. "Small taxpayer exemption loss" would mean the 2013 taxable value of commercial personal property and industrial personal property minus the 2014 taxable value of that property.)

By June 5, 2016, and every subsequent June 5, each city or township assessor would have to report to the county equalization director the current year taxable value of commercial personal property and industrial personal property for each municipality in the city or village. The county equalization director would have to report that information to the Department by June 20 in 2016 and each subsequent year.

By August 15, 2014, and every subsequent August 15, each municipality would have to report to the Department millage levied or to be levied that year for a millage described in Section 5(g) or 5(w) (which define "debt loss" and "school debt loss", respectively) that was used to calculate an appropriation for debt loss or a distribution to the municipality for school debt loss. For 2014 and 2015, the rate of the millage would have to be calculated using the sum of the municipality's taxable value and its small taxpayer exemption loss. In each subsequent year, the rate of the millage would have to be calculated using the sum of the municipality's taxable value and its personal property exemption loss. For 2014 and 2015, the Department would have to calculate the debt loss or school debt loss of each municipality by multiplying its reported millage rate by its small taxpayer exemption loss. In
each subsequent year, the Department would have to calculate the school debt loss of each municipality by multiplying its reported millage rate by its personal property exemption loss.

(For a municipality other than a school district, ISD, or tax increment finance authority (TIFA), "personal property exemption loss" would mean the 2013 taxable value of commercial personal property and industrial personal property minus the current year taxable value of that property and minus the small taxpayer exemption loss. For a local school district, ISD, or TIFA, the term would mean the 2013 taxable value of commercial personal property and industrial personal property minus the current year taxable value of that property.

For a municipality other than a local school district, ISD, or TIFA, "debt loss" would mean the amount of ad valorem property taxes and any specific tax levied for the payment of principal and interest of obligations incurred before January 1, 2013, pledging the taxing power of the municipality that are lost as a result of the exemption of industrial personal property and commercial personal property under Sections 9m, 9n, and 9o of the General Property Tax Act (GPTA).

"School debt loss" would mean the amount of revenue lost from ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors before January 1, 2013, or obligations pledging the unlimited taxing power of a local school district or ISD incurred before that date, as a result of the exemption of property under Sections 9m, 9n, and 9o of the GPTA.

Sections 9m and 9n of the GPTA provide exemptions for industrial and commercial personal property that meets the definition of "eligible manufacturing personal property", beginning December 31, 2015. Section 9m applies to "qualified new personal property" and Section 9n applies to "qualified previously existing personal property". Under Section 9o (as amended by Public Act 153 of 2013), an exemption may be claimed if the combined true cash value of all industrial and commercial personal property in a local tax collecting unit owned by, leased by, or in the possession of the owner or a related entity is less than $80,000 on December 31 of the preceding year.)

By May 1 of each year, the Department would have to calculate each municipality's sum of the lowest rate of each individual millage levied between 2012 and the year immediately before the current year. For a municipality, other than a school district, ISD, or TIFA, the calculation would have to exclude debt millage. A millage used to make the calculations under the LCSA Act would have to be levied against both real property and personal property.

By June 5, 2016, and each subsequent June 5, each city and township assessor would have to report to the county equalization director the increased value from expired tax exemptions for each municipality that would be subject to Department calculations for a county, township, city, or authority that provides essential services, and that levies taxes in the city or township. By June 20, 2015, and each subsequent June 20, each county equalization director would have to report that information to the Department.

Calculations to Determine Distributions

The bill details calculations that the Department would have to make for municipalities other than school districts, ISDs, and TFAs; for each municipality that is a county, township, village, city, or authority that provides essential services; for each municipality that is a city; for each municipality that is a local school district; and for each municipality that is an intermediate school district. ("Essential services" would mean ambulance, fire, and police services, jail operations, and the funding of pensions for personnel providing those services.)
The Department also would have to make specified calculations for each municipality that is a tax increment finance authority, which would have to report the results of those calculations for each tax increment financing plan and the TIFA's tax increment debt loss shortfall.

The Department would have to exclude from all of these calculations the taxable value of property exempt under Section 7ff of the GPTA for millages subject to the exemption. (Section 7ff provides tax exemptions for real and personal property located in a renaissance zone.)

These calculations would be used to determine the distributions to each municipality of local community stabilization share revenue (as described below and explained in the Fiscal Impact section of this document).

Appropriations; Distributions

For fiscal year (FY) 2015-15 and FY 2015-16, the bill would require the Legislature to appropriate to the Local Community Stabilization Authority the following:

-- An amount equal to all debt loss for municipalities other than school districts, ISDs, and TIFAS.
-- An amount equal to all debt loss for school districts and ISDs.
-- An amount equal to all debt loss for TIFAS.

(If the voters did not approve Senate Bill 822 (H-1) at the August 2014 election, the debt loss appropriations for FY 2014-15 would still be required.)

Also, beginning in FY 2014-15 and each subsequent fiscal year, the bill would require the Legislature to appropriate an amount equal to the necessary expenses incurred by the LCSA and the Department in implementing the Act.

In FY 2014-15 and FY 2015-16, the LCSA would have to distribute to municipalities the funds appropriated for debt loss. If the Authority were not able to make this distribution in FY 2014-15, however, the Department would have to make the distribution on behalf of the LCSA.

Beginning in 2015-16, the LCSA would have to distribute local community stabilization share (local use tax) revenue as described below and in the following order of priority:

A. The LCSA would have to distribute to each municipality an amount equal to all of the following:

1. 100% of the municipality's school debt loss in the current year and 100% of its amount calculated by the Department under Section 15 (which applies to calculations for school districts).
2. 100% of the municipality's amount calculated by the Department under Section 16 (which applies to calculations for ISDs).
3. 100% of the municipality's school operating loss not reimbursed by the School Aid Fund.
4. 100% of the amount calculated in Section 14(2) (which applies to a county, township, village, city, or authority that provides essential services), which would have to be used to fund essential services.
5. For a TIFA, 100% of the amount under Section 16a(2) (which applies to the calculation for increment finance authorities).
6. 100% of the municipality's amount calculated under Section 14(4) (which applies to a municipality that is not a local school district, ISD, or TIFA).
B. Beginning in FY 2019-20, after the distributions listed above, the LCSA would have to distribute 5% of the remaining balance in the Local Community Stabilization Share Fund for the current fiscal year to each municipality that is not a local school district, ISD, or TIFA, in an amount determined according to calculations set forth in the bill. For FY 2020-21 and each subsequent fiscal year, the percentage amount would have to be increased by an additional 5% each year, not to exceed 100%.

C. After the distributions in A. and B., the LCSA would have to distribute the remaining balance of that fiscal year’s Local Community Stabilization Share Fund to each municipality in the amount determined by multiplying the balance by a fraction representing the municipality’s qualified loss in proportion to total qualified loss.

("Qualified loss" would mean the amounts calculated under Sections 14(1) and 14(3) that are not distributed to the municipality under Section 17(3)(a). Sections 14(1) and 14(3) prescribe the calculation of losses for municipalities other than school districts, ISDs, and TIFAs, and for municipalities that are cities, respectively. Section 17(3)(a) is shown as item A. above. "Total qualified loss" would mean the amount of qualified losses of all municipalities, as determined by the Department.)

The LCSA would have to make these payments by the following dates:

-- For county allocated millage, September 20 of the year the millage was levied.
-- For county extra-voted millage, township millage, and other millage levied 100% in December of a year, February 20 of the following year.
-- For other millages, October 20 of the year the millage was levied.

If the LCSA had insufficient funds to make the payments on the required dates, the Department would have to advance the Authority the amount necessary to make the payments. The LCSA would have to repay the Department from the Local Community Stabilization Share.

Beginning in FY 2015-16 and in each subsequent fiscal year, the Department would have to determine the amount of the distributions under the LCSA Act. Each municipality would have to submit to the Department sufficient information for it to make its calculations, as determined by the Department.

Essential Services Obligations

The bill would allow a local unit of government to issue bonds or other obligations in anticipation of the distribution of local use tax revenue for essential services. These bonds or other obligations would be subject to the Revised Municipal Finance Act. If authorized by its electors, the local unit could pledge its full faith and credit for the payment of the bonds or other obligations.

From the amount of local use tax revenue distributed for essential services, a municipality first would have to replace the amount of ad valorem property taxes used for the payment of principal and interest of essential services obligations incurred before 2013 pledging the taxing power of the municipality, that were lost from the exemptions under Sections 9m, 9n, and 9o of the GPTA. A municipality could not receive a distribution of local use tax revenue for essential services if it had increased a millage rate without voter approval in order to replace lost property taxes that otherwise would be reimbursed for essential services under the bill, that were repaying essential service obligations incurred before 2013 pledging the municipality's taxing power and that were lost as a result of the exemptions under Sections 9m, 9n, and 9o.
Debt Loss Replacement

From the amount received from local use tax revenue, a municipality first would have to replace debt loss or school debt loss, as applicable. A municipality could not receive a distribution under the LCSA Act if it had increased its millage rate without voter approval to replace debt loss or school debt loss that otherwise would be reimbursed under the Act.

**Senate Bill 827 (H-1)**

The Use Tax Act levies a tax on a person purchasing nonexempt personal property or services. The rate of the tax is 6% of the purchase price. Public Act 408 of 2012 amended the Act (subject to voter approval in the August 2014 election) to provide that the use tax consists of the "state component tax" and a local use tax, called the "metropolitan areas component tax". The local use tax may generate a specified amount of revenue annually, which determines the rate of the local use tax; the rate of the State component tax is determined by subtracting the local rate from 6%.

The bill would amend the provisions enacted by Public Act 408 of 2012 to do the following:

--- Replace the metropolitan areas component tax with the "local community stabilization share tax", and replace the "state component tax" with the "state share tax".

--- Retain a requirement that the local use tax rate be based on the amount of revenue that it may generate each year, but raise the scheduled annual increases between FY 2015-16 and FY 2022-23, and extend annual increases to FY 2027-28, as shown in Table 4.

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Community Stabilization Share Tax Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>$41.7 million</td>
</tr>
<tr>
<td>2016-17</td>
<td>$257.5 million</td>
</tr>
<tr>
<td>2017-18</td>
<td>$277.1 million</td>
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<tr>
<td>2018-19</td>
<td>$293.8 million</td>
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<tr>
<td>2019-20</td>
<td>$311.3 million</td>
</tr>
<tr>
<td>2020-21</td>
<td>$326.8 million</td>
</tr>
<tr>
<td>2021-22</td>
<td>$345.2 million</td>
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<tr>
<td>2022-23</td>
<td>$362.4 million</td>
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<tr>
<td>2023-24</td>
<td>$391.7 million</td>
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<tr>
<td>2024-25</td>
<td>$396.8 million</td>
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<tr>
<td>2025-26</td>
<td>$371.4 million</td>
</tr>
<tr>
<td>2026-27</td>
<td>$372.2 million</td>
</tr>
<tr>
<td>2027-28</td>
<td>$373.6 million</td>
</tr>
</tbody>
</table>

Under Public Act 408, for FY 2023-24 and each subsequent fiscal year, the local use tax rate is to be the rate sufficient to generate the amount distributed in the preceding year adjusted by an industrial and commercial personal property growth factor, as calculated by the Department of Treasury. The bill would retain this requirement for the rate beginning in FY 2028-29.

As required by Public Act 408, from the money received and collected for the State share, an amount equal to all revenue lost under the State Education Tax Act, and all revenue lost from basic school operating mills as a result of the exemption of personal property under Sections 9m, 9n, and 9o of the General Property Tax Act, as determined by the Department of Treasury, would have to be deposited into the State School Aid Fund. The funds deposited would not include the portion of the State share of the use tax imposed at the
additional rate of 2% approved by the voters in 1994 and dedicated for aid to schools under the Use Tax Act.

**Senate Bill 823 (H-1)**

**Property in Eligible Local Assessing District**

Section 9f of the General Property Tax Act allows an exemption, pursuant to a local resolution, for new personal property that is owned or leased by an eligible business in an eligible local assessing district. Under Section 9f(8), if the property is eligible manufacturing personal property and was exempt on December 31, 2012, it is to remain exempt until it otherwise would be exempt under Section 9m, 9n, or 9o of the Act, unless Public Act 408 is not approved by a majority of the qualified electors voting on the question at the August 2014 regular election.

Under the bill, the exemption would be discontinued if either Public Act 408 or Senate Bill 822 were presented to the electors and the measure presented were not approved by a majority of qualified electors voting on the question.

**Qualified New Personal Property: Utility Property Exclusion**

Under Section 9m, exempt property must be located on occupied real property that is predominantly used in industrial processing or direct integrated support. The GPTA specifies that personal property is used in industrial processing if it is not used to generate electricity for sale (and it meets other criteria). Under the bill, the property could not be used to generate, transmit, or distribute electricity for sale, and could not be utility personal property as described in Section 34c(3)(e) of the Act. The bill also provides that utility personal property described in that section would not be used in direct integrated support.

(Section 34c(3) describes classifications of assessable personal property, and subdivision (e) describes what utility personal property includes.)

The bill states a legislative intent that the exclusion of generation, transmission, or distribution of electricity for sale from the definition of "industrial processing" not affect any other provision of Michigan law or affect the Michigan Court of Appeals decision in Detroit Edison Co. v Department of Treasury (Docket No. 309732).

The bill also would define the term "original cost", which is used in the calculation to determine whether personal property on occupied real property is predominately used in industrial processing or direct integrated support.

**Section 9m & 9n Affidavits**

In order to claim an exemption under Section 9m or 9n, a person must file an affidavit with the local tax collecting unit where the qualified new personal property or the qualified previously existing personal property is located. The bill would require the local tax collecting unit to transmit the affidavits filed under Sections 9m and 9n, or the information contained in the affidavits, to the Department of Treasury in the manner prescribed by the Department.

**Personal Property Statements**

Under the Act, except as otherwise provided in Section 9m, 9n, or 9o, a supervisor or assessing officer must require any person to make a statement of all personal property of that person, if the supervisor or officer believes that the person is in possession of personal property. The statement must be delivered to the assessor by February 20 each year. For
2015, a statement of personal property must include a schedule of when any personal property included in the statement will become eligible for exemption under Section 9m or 9n.

Under the bill, for 2015 statements that identified personal property eligible for exemption under Section 9m or 9n, a supervisor or assessor would have to give the Department of Treasury a copy of the statement, or the information on it. The Department’s use of the statement or information would be subject to Section 28(1)(f) of the revenue Act (which limits the disclosure of tax information by Department employees or representatives).

Reporting Requirements

The bill would require each city and village, by June 5, 2014, to report to the county treasurer the 2013 and 2014 taxable value of commercial personal property and industrial personal property for each municipality in the city or township, as well as each municipality’s small taxpayer exemption loss. By June 20, 2014, each county equalization director would have to report that information to the Department of Treasury. By August 15, 2014, each municipality would have to report to the Department the millage rate levied or to be levied for a millage described in the definition of debt loss or school debt loss. For 2014, the rate of that millage would have to be calculated using the sum of the taxable value of the municipality and its small taxpayer exemption loss. The Department would have to calculate each municipality’s debt loss or school debt loss by multiplying the municipality’s reported millage rate by the municipality’s small taxpayer exemption loss.

Also, the assessor for each city and township would have to transmit to the Department information from the affidavits filed under Sections 9m and 9n.

**Senate Bill 824**

The bill would amend the Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act to transfer the responsibilities of the METRO Authority to the proposed Local Community Stabilization Authority (instead of to the Metropolitan Areas Metropolitan Authority).

The bill also would authorize the LCSA to contract with the Department of Licensing and Regulatory Affairs for one or more employees of the Department to assist in exercising the powers, duties, functions, and responsibilities vested in the Authority under the Act.

**Senate Bill 825**

The bill would amend an enacting section of Public Act 408 of 2012 to require that the Act not be submitted to the voters at the August 2014 election if Senate Bill 822 were enacted and placed on the ballot, and require Public Act 408 to be submitted to the voters (as currently required) if Senate Bill 822 were not enacted.

**Senate Bills 826 (H-1), 827 (H-1), and 828 (H-1)**

Enacting sections of Public Acts 401, 402, and 403 of 2012 provide for the repeal of Sections 9m, 9o, and 9n, respectively, of the General Property Tax Act if Public Act 408 of 2012 is not approved by a majority of the electors voting on the question at the August 2014 regular election.

Senate Bills 826 (H-1), 827 (H-1), and 828 (H-1) would amend those enacting sections to provide for the repeal of Sections 9m, 9o, and 9n, respectively, if either Public Act 408 or Senate Bill 822 were presented to the electors at the August election and the measure presented were not approved by a majority of the electors voting on the question.
Senate Bill 829 (H-1)

The bill would enact the "State Essential Services Assessment Act" to do the following:

- Beginning January 1, 2016, levy the "state essential services assessment", which would be a State specific tax on eligible personal property owned by, leased to, or in the possession of an eligible claimant (a person claiming an exemption for the property).
- Require revenue from the assessment to be credited to the General Fund.
- Provide for a penalty to be imposed on delinquent assessments.
- Require an exemption to be rescinded for an assessment year if an eligible claimant did not fully pay the assessment and any penalty by the deadline.
- Allow the Michigan Strategic Fund board to exempt eligible personal property from the assessment, if an eligible claimant had a plan to invest at least $25.0 million in additional eligible personal property in the State.
- Require the Legislature to appropriate funds equal to the necessary expenses incurred by the Department of Treasury in implementing the Act, beginning in FY 2014-15 and in each subsequent fiscal year.

Assessment Levy

The assessment amount would be calculated by multiplying the property's acquisition cost (as defined in the bill) by the following:

- 2.4 mills for property acquired by the eligible claimant in a year one to five years before the assessment year (the year in which the assessment levied would be due).
- 1.25 mills for property acquired by the eligible claimant in a year six to 10 years before the assessment year.
- 0.9 mill for property acquired by the eligible claimant in a year more than 10 years before the assessment year.

"Eligible personal property" would mean all of the following:

- Personal property exempt under Section 9m or 9n of the GPTA.
- Personal property exempt under Section 9f of the GPTA, if the exemption was approved after 2013, unless the application for the exemption was filed with the eligible local assessing district or Next Michigan Development Corporation before August 5, 2014, and the resolution approving the exemption stated that the project was expected to have total new personal property of over $25.0 million within five years.
- Personal property subject to an extended exemption under Section 9f(8) of the GPTA.
- Personal property subject to an extended industrial facilities exemption certificate under Section 11a of Public Act 198 of 1974.

(Regarding the last category, if a facility was subject to an industrial facilities exemption certificate on December 31, 2012, the portion of the facility that is eligible manufacturing personal property remains subject to the tax levied under Public Act 198 and exempt from the property tax until it would otherwise be exempt under Section 9m, 9n, or 9c.)

Payment: Recession

By May 1 in each assessment year, the Department of Treasury would have to make available in electronic form to each eligible claimant a statement for calculation of the assessment. By September 15 in each assessment year, each eligible claimant would have to submit electronically to the Department a completed statement for calculation of the assessment and full payment of the assessment. The Department could waive or delay the electronic filing requirement at its discretion. The statement would have to include all of the
claimant’s eligible personal property located in the state subject to the assessment and, beginning in 2019, specify the location of the property on December 31 of the preceding year.

If a claimant failed to submit the statement and full payment of the assessment by September 15, the Department would have to issue a notice to the claimant by October 15. By November 1, the claimant would have to submit payment in full and a penalty of 1.0% per week on the unpaid balance for each week payment was not made, up to a maximum of 5.0% of the total amount due and unpaid. For a claimant’s first assessment year, the penalty would have to be waived if the claimant submitted the statement and payment within seven business days of September 15.

If an eligible claimant did not submit payment in full and any penalty due by November 1, the State Tax Commission would have to direct the assessor to rescind for the assessment year an exemption under Section 9m or 9n or the GPTA, or the Commission would have to rescind for the assessment year an exemption under Section 9f of the GPTA that was approved after 2013, an exemption for eligible personal property subject to an extended industrial facilities exemption certificate under Section 11a of Public Act 198 of 1974, or an extended exemption for eligible personal property under Section 9f(8)(a) of the GPTA. In addition, the claimant would have to file a personal property tax statement with the assessor by November 10 for all property for which the exemption had been rescinded.

**Appeal**

An eligible claimant could appeal an assessment or a penalty or rescission to the State Tax Commission by filing a petition by December 31 in the tax year. The Department also could appeal to the Commission by filing a petition for the current calendar year and the three preceding years. The Commission would have to decide the appeal based on the petition and recommendations of Commission staff as well as any other relevant information. The Department or eligible claimant could appeal the Commission’s decision to the Michigan Tax Tribunal.

**Exemption**

The board of the Michigan Strategic Fund could adopt a resolution to exempt from the assessment all eligible personal property designated in the resolution that was owned by, leased to, or in the possession of an eligible claimant. In the resolution, the Fund board could determine that the designated property would be subject to the alternative State essential services assessment. The resolution could not be approved if the State Treasurer, or his or her designee to the board, voted against it. An exemption would continue in effect for a period specified in the resolution.

An eligible claimant, or a Next Michigan Development Corporation on behalf of an eligible claimant, could apply for an exemption to the assessment. After receiving an application, the Fund could enter into an agreement with an eligible claimant if the claimant agreed to make certain investments of eligible personal property in this State. An eligible claimant would have to present a business plan or demonstrate that a minimum of $25.0 million would be invested in additional eligible personal property in the State during the period of the agreement. The Fund board would have to consider specified criteria to the extent reasonably applicable to the type of investment proposed, when approving an exemption.

The Fund board, or the Michigan Economic Development Corporation, could charge actual and reasonable fees for costs associated with administering the activities authorized under these provisions.
Access to Records

A person that filed a statement for calculating the assessment would have to provide access to the books and records related to the description, date of purchase, lease, or acquisition, and purchase price, lease amount, or value of all industrial personal property and commercial personal property owned by, leased by, or in the possession of that person or a related entity, if requested by the local assessor, county equalization department, or Department of Treasury, for the year in which the statement was filed and the previous three years.

Legislative Declaration & Intent

The bill contains a statement that, in furtherance of declared objectives, "[T]he legislature has reduced the state use tax...and replaced the portion reduced with a use tax levied by the local community stabilization authority on behalf of local units of government...to provide more stable funding for local units of government than exists today. It is the intent of the legislature to offset the fiscal impact on the state general fund resulting from the reduction of the state use tax with new revenue generated by the assessment levied under this act and with new revenue resulting from the expiration of over $630,000,000.00 in expiring refundable tax credits that were awarded to individual businesses under tax laws enacted by past legislatures."

Repeal

The bill would repeal the Local Unit of Government Essential Services Special Assessment Act. (The Act, subject to voter approval of Public Act 408 of 2012, authorizes a local unit of government, beginning January 1, 2016, to levy a special assessment on each parcel of industrial real property and commercial real property in the local unit, to defray the cost of essential services equipment, maintenance of the equipment, and the provision of essential services, i.e., ambulance, fire, and police services, and jail operations.)

Senate Bill 830 (H-1)

The bill would enact the "Alternative State Essential Services Assessment Act" to:

-- Impose the "alternative state essential services assessment", beginning January 1, 2016, on eligible personal property exempt from the levy imposed by the State Essential Services Assessment Act.
-- Provide for the alternative assessment to be 50% of the State essential services assessment.
-- Require revenue from the alternative assessment to be credited to the General Fund.

The bill contains generally the same provisions as in Senate Bill 829 (H-1) regarding the following:

-- The electronic submission of a statement and full payment of the assessment by September 15.
-- The inclusion in the statement of all eligible personal property in the State and, beginning in 2019, its location.
-- The consequences of failure to submit the statement and payment on time, including recession of the exemption.
-- An appeal to the State Tax Commission.
-- Access to books and records.
-- The appropriation of funds to the Department.
-- Legislative declarations.
Senate Bill 821 (H-1) would increase expenses to the Department of Treasury, the Local Community Stabilization Authority (LCSA) that would be created by the bill, and local units of government, by an unknown amount. The bill also would provide for the redistribution of revenue collected under Senate Bill 822 (H-1), as well as other revenue appropriated during FY 2014-15 and FY 2015-16, to local units of government.

During FY 2014-15 and FY 2015-16, revenue distributed by the LCSA would equal either a local unit's debt loss or, in the case of a tax increment finance authority (TIFA), the small taxpayer loss. Beginning in FY 2015-16, revenue would be distributed to local units in a specified priority: 1) school debt loss, 2) losses to intermediate school districts, 3) school district losses not reimbursed by increased payments from the School Aid Fund, 4) losses associated with the provision of essential services, 5) losses to TIFAs, 6) losses associated with the exemption of small parcels under Public Act 402 of 2012, and 7) all other reimbursements.

The last category of reimbursements would begin in FY 2015-16 and would be distributed through a formula. Initially, reimbursements would be proportional to each local unit's share of total qualified losses. Beginning in FY 2019-20, 5% of the revenue would be distributed proportionally based on the acquisition cost of exempt personal property located in a municipality other than a local school district, intermediate school district (ISD), or TIFA. The 5% portion would increase in 5% increments in each subsequent year. By FY 2038-39, all revenue in the last category of reimbursements would be distributed based on the acquisition cost of exempt personal property located in the local unit.

In aggregate, the revenue redistributed to local units of government would be the same as the estimated losses local units are expected to experience. However, given the nature of the distribution formulas, many local units would likely receive a reimbursement that would differ from their actual loss. In some cases, individual local units could receive a reimbursement greater than the revenue lost as a result of the exemptions, while other units could receive less. Certain losses, such as those associated with school debt, local school districts, ISDs, and certain tax increment finance authority losses, would be reimbursed first and would be 100% reimbursed. Losses associated with essential services also would be reimbursed at 100%, as would losses associated with small parcels exempt under the provisions of Public Act 402 of 2012. Table A, attached, presents a summary of the reimbursement provisions.

As indicated above, losses not reimbursed at a 100% rate would be reimbursed through a combination of two formulas, the first of which would gradually be phased out over a 20-year period. Losses reimbursed under the formulas would generally not provide 100% reimbursement to individual local units, particularly once the second formula was fully phased in. The first formula would reimburse local units for their 100% losses only to the extent that the use tax amounts specified in Senate Bill 822 (H-1) (that would be directed to the LCSA for reimbursement) correctly predicted losses. However, the second formula would create shifts in reimbursements, primarily because, while the basis of the first formula would be the current-year taxable value in each local unit relative to the value in 2013, the basis of the second formula only would examine the acquisition cost of exempt property in the current year. Therefore, the second formula would shift from taxable value measures to acquisition cost as well as eliminate the comparison to 2013, when there was no exemption.
Furthermore, the second formula also would provide reimbursements for revenue foregone, rather than just actual losses. For example, under the second formula, if a new facility were constructed in a local unit, it would increase that local unit’s share of the reimbursement although the loss of revenue would represent revenue forgone, rather than a loss relative to current revenue. In this example, the acquisition cost of exempt property would increase in the local unit relative to other local units. Because the amount of total reimbursement would be fixed, such increases would shift reimbursements away from local units with more stagnant growth in personal property acquisition to local units where new property was being purchased. For example, between 2011 and 2013 investments in Dundee Township in Monroe County and York Township in Washtenaw County have increased those units’ share of total personal property in Michigan, while slower-than-average increases in personal property in the City of Grand Rapids and the City of Sterling Heights have resulted in declining shares of the State’s total personal property. If these changes were to occur during FY 2019-20, and all of the reimbursement amounts were distributed through the second formula, the shifts would result in reimbursements to Grand Rapids falling $0.9 million and those to Sterling falling $2.6 million, while reimbursements to Dundee Township and York Township each would increase $0.3 million.

Between 2011 and 2013, the taxable value of industrial personal property in Michigan increased 24.0%. Many of the investments behind that increase in total industrial personal property reflect investments in electricity generation and/or have occurred in renaissance zones and thus reflect investments (and potential revenue or reimbursements) that would not be affected by the bills. Property located in a renaissance zone would affect reimbursements once the authorization for the zone ended. As a result, renaissance zone expirations also could be a source of significant changes in the distribution of reimbursement revenue under the second formula. For example, investments over the last two years in renaissance zones in Detroit and Holland could, once the zones expired, alter the City of Detroit’s and City of Holland’s shares of losses by approximately 3.3 and 0.4 percentage points, respectively. Based on the aggregate revenue to be redistributed in FY 2027-28, if it were all distributed under the second formula, reimbursements to the City of Detroit would increase by approximately $18.8 million, and those to the City of Holland would increase by $2.5 million, with distributions to most other local units correspondingly reduced according to the formula. Generally speaking, under the second formula the share of reimbursements received would increase for local units in which the value of personal property rises more rapidly than the State average, whether the increase is due to greater investment or such factors as the expiration of tax exemptions or renaissance zones, and would fall for local units that grow at less than the State average.

Another reason that reimbursements under the second formula would generally not equal losses is differences between the treatment of acquisition cost under the bills and current depreciation tables for personal property. In some cases, such as computer equipment, losses may be reimbursed by more than 100% because, under current law, a four-year-old personal computer would be assessed at approximately 24% of the acquisition cost, while under the bills a local unit would be reimbursed as if the assessment were 100% of the acquisition cost. In most cases, the definition of acquisition cost would provide a higher level of value than current multiplier tables used to assess personal property, meaning that the second distribution formula would shift reimbursements toward local units with newer personal property at the expense of local units with predominantly older personal property.

Compared to Senate Bill 821 (S-1), as passed by the Senate, reimbursements under Senate Bill 821 (H-1) would more closely approximate losses because the reimbursements would be based on factors related to the property exempted by Public Acts 401, 402, and 403 of 2012, rather than the value of real industrial property within a local unit. While the actual magnitude by which reimbursements would differ from actual losses for specific local units is unknown, the differences would be less than those under the versions of the bills as passed the Senate.
Some reimbursable losses would not be reimbursed until several years after the local unit experienced the losses. For example, non-debt mill losses attributable to the small parcel exemption created in Public Act 402 of 2012 would begin during FY 2013-14. However, reimbursements for the losses experienced in tax years 2014 and 2015 would not be reimbursed until after August 15, 2016, and only cities would receive reimbursements for such losses. In some cases, the timing of revenue replacement appears ambiguous. For example, Senate Bill 822 (H-1) indicates that the State would have to redirect from its portion of the 4% use tax rate, an amount to compensate the School Aid Fund for increased expenditures associated with local school district reductions in operating revenue. The bill would not be effective until January 1, 2015, and it is unclear to what extent the language would require losses incurred during calendar year 2014 to be reimbursed.

Based on estimates from the Michigan Department of Treasury, debt loss reimbursements under the bill are estimated to total $19.3 million both in FY 2014-15 and in FY 2015-16.

Senate Bill 822 (H-1) would increase local unit revenue and lower State revenue by an equal amount by directing a portion of revenue currently collected by the State to revenue that would be received by the LCSA. Based on estimates from the Department, the bill would increase local unit revenue (reduce State use tax revenue) by approximately $76.9 million in FY 2015-16. The revenue increase (loss) would grow to $380.6 million in FY 2016-17 and continue growing approximately $30.0 million per year through FY 2023-24. By FY 2023-24, the increased local unit revenue (and decreased State revenue) would total approximately $561.7 million. The revenue impact would continue to increase, but at a slower rate, finally stabilizing at 1.0% annual growth for an FY 2027-28 revenue impact of $572.6 million.

The revenue increases to local units (and revenue losses to the State) under Senate Bill 822 (H-1) are specified in statute. While one-third of the current 6% State use tax rate is directed to the School Aid Fund, with the remainder deposited into the General Fund, the bill would require that all of the reduced revenue to the State lower the revenue to the General Fund. The bill also would require any local school district operating mills or State Education Tax revenue lost as a result of Public Acts 401, 402, or 403 of 2012 be replaced from the State's share of use tax revenue that would otherwise be deposited into the General Fund. Those losses are estimated to total $19.9 million in FY 2014-15, and increase to $30.9 million in FY 2015-16, and $47.0 million in FY 2016-17. By FY 2027-28, local school operating and State Education Tax losses are estimated to total $47.1 million. As a result, the total loss of General Fund revenue under the bill would increase from $107.8 million in FY 2015-16 to $422.6 million in FY 2016-17 and continue to rise, reaching $619.7 million in FY 2027-28.

Senate Bill 823 (H-1) would have an indeterminate and likely minimal impact on State and local property tax revenue. The bill also would increase local unit expenses by an indeterminate amount by increasing reporting requirements.

Senate Bill 824 would have no fiscal impact. The changes are substantively the same as those in Public Act 404 of 2012, except that the name of the authority would be altered.

Senate Bill 825 would have no fiscal impact independent of the other bills. The bill would eliminate the current ballot issue regarding the changes in the Use Tax Act adopted in Public Act 408 of 2012 if Senate Bill 822 (H-1) were enacted, replacing it with a similar ballot issue.

Senate Bills 826 (H-1), 827 (H-1), and 828 (H-1) also would have no fiscal impact independent of the other bills. The amended sections affect the circumstances under which
certain sections of statute may be repealed. The changes would expand the circumstances to reflect the possible enactment of Senate Bill 822 (H-1).

Senate Bill 829 (H-1) would increase State revenue by levying an assessment on exempt eligible manufacturing personal property. Under certain circumstances, property could be exempted from the assessment. The applicable tax rate would decline, based on how long the taxpayer had owned the property, and would be assessed based on the acquisition cost of the property. The applicable tax rate would decline from 2.4 mills during the first five years the taxpayer owned the property, to 1.25 mills for the next five years, and to 0.9 mill in all later years.

Senate Bill 830 (H-1) would provide an alternative assessment for property exempt from the assessment levied under Senate Bill 829 (H-1). The tax rates on affected property would be 50% of those levied under Senate Bill 829 (H-1).

The assessments under Senate Bills 829 (H-1) and 830 (H-1) would not be levied until January 1, 2016, and would generate approximately $20.0 million in FY 2015-16 and $72.1 million in FY 2016-17. The revenue generated by the assessments would increase, reaching an estimated $117.5 million in FY 2027-28. Revenue from the assessments would be directed to the General Fund.

Senate Bill 829 (H-1) would exclude certain property from the definition of property subject to the assessment. Excluded property would be property related to NETM Michigan businesses and other entities exempt under Section 9f of the General Property Tax Act that met certain requirements, most notably that the property would be part of a project for which the application was filed before August 5, 2014, and the project involved the addition of at least $25 million in new personal property over a five-year period.

Senate Bill 829 (H-1) also would exempt property from the assessment provided for in the bill, and also could exempt property from the alternative assessment provided for in Senate Bill 830 (H-1). Property exempted from the assessment or alternative assessment would be specified in a resolution adopted by the Michigan Strategic Fund board and the affected taxpayer would need to present a business plan that included investments in new eligible personal property of at least $25 million over the course of an agreement. The language in the bill would appear to allow the exemption to apply to any property listed in the resolution and would not limit the exemption to just the new property under the eligibility requirements. While the bill would provide for clawback provisions if an agreement were not met, few conditions would have to be placed upon agreements beyond the acquisition of $25 million in eligible personal property. Agreements would not be limited in the number of years they could cover or the types of investments that would have to be undertaken, and there would be no limit on the number of agreements and exemptions that could be approved.

Because of the open-ended nature of the exemptions and exclusions that would be available under Senate Bill 829 (H-1), it is likely the estimates for revenue under the essential services assessment and alternative assessment are subject to a high degree of uncertainty. Effectively, large taxpayers would be able to exempt substantial property from the assessments and there is no way to accurately forecast the amount of property that would be exempted or excluded from the assessments.

Senate Bill 821 (H-1), and Senate Bills 823 (H-1) through 830 (H-1), are, in effect, tied-barred to Senate Bill 822 (H-1), which would place the question of creating the local use tax before the voters in the August 2014 election. If Senate Bill 822 (H-1) were not enacted and approved by the voters, the bills would have no impact.
The bills generally would amend provisions enacted in 2012, which were estimated to affect State and local unit revenue beginning in FY 2013-14. For example, the increases in local unit revenue and decreases in State revenue in Senate Bill 822 (H-1) are substantively similar to provisions already enacted in 2012. As a result, the impact of the bills relative to current law is much less than the impact of the bills relative to historical revenue flows or absent the 2012 legislation. Compared to the 2012 legislation (which is current law, assuming approval of the ballot question in some cases), and based on estimates from the Department of Treasury, the bills would reduce State General Fund revenue by $34.4 million in FY 2015-16 and $44.9 million in FY 2016-17. The losses would increase in later years, reaching $76.1 million in FY 2022-23 and $81.9 million in FY 2027-28. For local units, the bills would increase local unit revenue compared to the 2012 legislation, but leave local unit revenue relatively unchanged compared to revenue before the provisions of the 2012 public acts take effect. Compared to current law, the bills would provide local units with approximately $19.3 million more revenue in FY 2014-15, $45.1 million more in FY 2015-16, and $21.1 million more in FY 2016-17. After FY 2016-17, the increase in revenue relative to current law would increase, reaching $88.2 million in FY 2022-23 and $111.0 million in FY 2027-28.

Table B, attached, shows the fiscal impact of select aspects of the bills.

Fiscal Analyst: David Zin
Table A

Reimbursements under Senate bills 821 (H-1) through 830 (H-1)
(As Passed by the House)

<table>
<thead>
<tr>
<th>Losses Attributable to</th>
<th>Percent Reimbursed</th>
<th>Calendar Year Losses Begin</th>
<th>Fiscal Year Reimbursements Begin</th>
<th>First Calendar Year of Losses Reimbursed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LOSSES NOT DISTRIBUTED BY FORMULA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local School District Mills</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Operating Mills reimbursed by School Aid Formula</td>
<td>100%</td>
<td>2014</td>
<td>2015</td>
<td>2014</td>
</tr>
<tr>
<td>School Operating Mills not reimbursed by the School Aid Fund (hold-harmless mills and out-of-formula districts)</td>
<td>100%</td>
<td>2014</td>
<td>2016</td>
<td>2016</td>
</tr>
<tr>
<td>School Debt Mills</td>
<td>100%</td>
<td>2014</td>
<td>2015</td>
<td>2014</td>
</tr>
<tr>
<td>Sinking Fund and Recreation Mills</td>
<td>100%</td>
<td>2014</td>
<td>2016</td>
<td>2016</td>
</tr>
<tr>
<td>Intermediate School District (ISD) Mills</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ISD Debt Mills</td>
<td>100%</td>
<td>2014</td>
<td>2015</td>
<td>2014</td>
</tr>
<tr>
<td>Other ISD Mills</td>
<td>100%</td>
<td>2014</td>
<td>2016</td>
<td>2016</td>
</tr>
<tr>
<td>Losses to Tax Increment Financing Authorities (TIFAs)</td>
<td>100%</td>
<td>2014</td>
<td>2015</td>
<td>2014</td>
</tr>
<tr>
<td>Other Municipalities (not local school districts, ISDs, or TIFAs)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Losses attributed to small parcels (PA 402 of 2012), 2016 and later</td>
<td>100%</td>
<td>2014</td>
<td>2016</td>
<td>2016</td>
</tr>
<tr>
<td><strong>LOSSES DISTRIBUTED BY FORMULA</strong></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Proportional Loss Formula (Begins in FY 2015-16, Phase-out Starts in FY 2019-20)</td>
<td></td>
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<td></td>
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<tr>
<td>Losses attributable to small parcels (PA 402 of 2012)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Losses in 2014 and 2015 (cities only)</td>
<td>Est. 100%*</td>
<td>2014</td>
<td>2016</td>
<td>2014</td>
</tr>
<tr>
<td>Losses in 2014 and 2015 (other local units)</td>
<td>0%</td>
<td>2014</td>
<td>Not Reimbursed</td>
<td></td>
</tr>
<tr>
<td>All Losses not listed above</td>
<td>Est. 100%*</td>
<td>2016</td>
<td>2016</td>
<td>2016</td>
</tr>
<tr>
<td>Acquisition Cost Formula (Begins Phase-in in FY 2019-20)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Losses not listed above</td>
<td>Varies</td>
<td>2016</td>
<td>2016</td>
<td>2016</td>
</tr>
</tbody>
</table>

**Note:** Amount available for distribution equals 100% of estimated losses from distribution. If the estimate is correct, the formula would reimburse 100% of losses. If the amount available exceeds actual losses, units would receive greater than 100% reimbursement, while if the estimate is less than actual losses, units would receive less than 100% reimbursement. Any shortfall/excess would be distributed such that all local units would receive an equal percentage shortfall/excess from the actual losses (e.g., all local units would receive 98% of the actual losses if the total available for reimbursement were 98% of total losses, and 103% of actual losses if the total available for reimbursement were 103% of total losses).
Table B
Estimated Impact of Senate Bills 821 (H-1) through 830 (H-1) - As Passed by the House
(Dollar Amounts in Million)

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Revenue Loss from Exemptions (Current Law)</td>
<td></td>
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.
Sometimes adults need help taking care of themselves and making decisions. Michigan law allows a probate court judge to appoint a "guardian" of an adult in certain situations where help is needed.

A court appointed guardian can make decisions for the person who needs help. The judge will determine what decisions the guardian can make. For example, a guardian might be able to decide:

- where the person lives
- what medical care the person should receive
- who will care for the person every day

You should know that there are options other than a guardianship that may help the person. Some of those options are listed below.

It is important to understand that not all of the options below will work for everyone. Some of them will only work if the person is still able to make their own decisions. Some depend on what help the person may need.

The descriptions below are very basic. There are many things that need to be thought about before any action is taken. If at all possible, the person should see an experienced lawyer to help figure out what is best for them.

Alternatives to Guardianship

Limited Guardianship

A limited guardian is a guardian appointed by a probate judge. However, in a limited guardianship the guardian is only allowed to make certain decisions. For example, the judge may say that the guardian can only make decisions about living arrangements. A limited guardianship can provide the person with the specific help needed, but maintain more independence.

Conservator

A conservator is a person appointed by a probate judge to take care of another person's finances and assets. The conservator is not expected to use his or her own money to support the person needing assistance. The conservator is responsible for making sure that the person's assets are managed, bills timely paid, and for making general financial decisions. The court can also limit this authority to certain kinds of decisions.

DPOA

If finances are the issue, it is possible for a person to appoint someone of his or her own choosing to take care of finances through a financial "durable power of attorney" document (DPOA). He or she can limit when this document would be effective and what the appointed person can do.

A DPOA is something the person must decide he or she wants and must be competent to sign it. The DPOA does not create a conservatorship and the court is not involved.

Because a POA can be very complicated and can give away a great deal of power, it is best that the person seek the help of a lawyer to create one.

MORE INFORMATION ON SECOND PAGE
Health Care Power of Attorney

You will sometimes hear this called a “patient advocate designation” or a “durable power of attorney for health care.” Basically, it is a document a person signs that can give someone else the authority to make decisions for them when he or she is not capable of making the decisions. Those decisions might be about health care, mental health treatment, or living arrangements.

The person can give their “agent” or “patient advocate” as much or as little authority as the person wants. This can include authority to withhold or withdraw life support services.

This document is something the person must decide he or she wants and must also be competent to sign it. Because this document can be very complicated and can give away a great deal of power, it is best that the person seek the help of a lawyer to create one.

Do Not Resuscitate Order

A person can sign a document that will refuse CPR (cardiopulmonary resuscitation) for them if their breathing and heart have stopped. This document is known as a “Do Not Resuscitate Order” or “DNR”. This document must be completed in front of two witnesses and signed by the person’s physician. If the person’s religious beliefs depend on only prayer to seek healing, the person can sign a special DNR that does not require a physician’s signature. It is important to remember that the person must be competent to sign this document.

If the person is an inpatient at a hospital, their wishes regarding resuscitation should be discussed with their physician as soon as possible.

Filing a Petition for Guardianship

There may be options other than guardianship or the ways described here that would work best to get the person you are concerned about the help that he or she needs. Remember that a guardian will only be appointed by the judge if the condition of the person fits certain requirements that are laid out in the laws.

In order to ask for a guardian to be appointed, a Petition for Appointment of Guardian of Incapacitated Individual (PC625) must be filed with the court. If you look at this form, you will find the specific conditions that must be met for a guardian to be appointed. This form is available at your local probate court or at www.courts.mi.gov/scao/forms.
APPENDIX A

ADM File No. 2013-29

Proposed Amendments of Rules
5.108, 5.125, 5.208, and 5.403
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 5.108, 5.125, 5.208, and 5.403 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 5.108 Time of Service

(A) [Unchanged.]

(B) Mail.

(1) Petition or Motion. Service by mail of a petition or motion must be made at least 14 days before the date set for hearing, or an adjourned date.

(2) Application by a Guardian or Conservator Appointed in Another State.

(a) A court may appoint a temporary guardian or conservator without a hearing pursuant to MCL 700.5202a, MCL 700.5301a, or MCL 700.5433.

(b) If a court reappoints a temporary guardian or conservator pursuant to MCL 700.5202a, MCL 700.5301a or MCL 700.5433, the temporary
guardian or conservator must, not later than 14 days after the appointment, serve notice of the appointment by mail to all interested persons.

(C)-(E)[Unchanged.]

Rule 5.125 Interested Persons Defined

(A) [Unchanged.]

(B) Special Conditions for Interested Persons.

(1) [Unchanged.]

(2) Devisee. Only a devisee whose devise remains unsatisfied, or a trust beneficiary whose beneficial interest remains unsatisfied, need be notified of specific proceedings under subrule (C).

(3)-(5)[Unchanged.]

(C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1)-(5)[Unchanged.]

(6) The persons interested in a proceeding for examination or approval of an account of a fiduciary are the:

(a) for a testate estate, the devisees under the will (and if one of the devisees is a trustee or a trust, and the persons referred to in MCR 5.125[B][3]),

(b) for an intestate estate, the heirs,

(c) for a conservatorship, the protected individual (if he or she is 14 years of age or older and can be located), the presumptive heirs of the protected individual, and the guardian ad litem, if any,

(d) for a final conservatorship or guardianship account following the death of the protected person, the personal representative, if one has been appointed.
(e) for a guardianship, the ward (if he or she is 14 years of age or older and can be located), the presumptive heirs of the ward, and the guardian ad litem, if any.

(f) for a revocable trust, the settlor (and if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603(2)), the current trustee, and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust protector.

(g) for an irrevocable trust, the current trustee, the qualified trust beneficiaries, as defined in MCL 700.7103(g), and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust protector.

(h) in all matters described in this subsection (6), claimants, and

(i) in all matters described in this subsection (6), any person whose interests would be adversely affected by the relief requested, including an insurer or surety who might be subject to financial obligations as the result of the approval of the account, or a claimant.

(a) devisees of a testate estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3);

(b) heirs of an intestate estate;

(e) protected person and presumptive heirs of the protected person in a conservatorship;

(d) ward and presumptive heirs of the ward in a guardianship;

(e) claimants;

(f) settler of a revocable trust;

(g) if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603(2);

(h) current trustee;
(i) qualified trust beneficiaries described in MCL 700.7103(g)(i), for a trust accounting, and

(j) other persons whose interests would be adversely affected by the relief requested, including insurers and sureties who might be subject to financial obligations as the result of the approval of the account.

(7)-(18)[Unchanged.]

(19) The persons interested in an application for appointment of a guardian or a minor by a guardian appointed in another state and in a petition for appointment of a guardian for a minor are

(a) the minor, if 14 years of age or older;

(b) if known by the petitioner or applicant, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition or application;

(c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, and;

(d) the nominated guardian, and

(e) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to make decisions regarding the person of a minor.

(20)-(21)[Unchanged.]

(22) The persons interested in an application for appointment of a guardian or an incapacitated individual by a guardian appointed in another state or in a petition for appointment of a guardian of an alleged incapacitated individual are

(a) the alleged incapacitated individual or the incapacitated individual,

(b) if known, a person named as attorney in fact under a durable power of attorney,
(c) the alleged incapacitated individual's spouse or the incapacitated individual's spouse.

(d) the alleged incapacitated individual's adult children and the individual's parents or the incapacitated individual's adult children and parents.

(e) if no spouse, child, or parent is living, the presumptive heirs of the individual,

(f) the person who has the care and custody of the alleged incapacitated individual or of the incapacitated individual, and

(g) the nominated guardian, and

(h) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to have care and control of the incapacitated individual.

(23) [Unchanged.]

(24) The persons interested in an application for appointment of a conservator for a protected individual by a conservator appointed in another state or for the petition for the appointment of a conservator or for a protective order are:

(a) the individual to be protected if 14 years of age or older,

(b) the presumptive heirs of the individual to be protected,

(c) if known, a person named as attorney in fact under a durable power of attorney,

(d) the nominated conservator, and

(e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending, and

(f) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to manage the protected individual's finances.

(25)-(26) [Unchanged.]
The persons interested in receiving a copy of an inventory or account of a conservator or of a guardian are:

(a) the protected individual or ward, if he or she is 14 years of age or older and can be located,

(b) the presumptive heirs of the protected individual or ward,

(c) the claimants, and

(d) the guardian ad litem, and

(e) the personal representative, if any.

Rule 5.208 Notice to Creditors, Presentment of Claims

(A)-(B) [Unchanged.]

(C) Publication of Notice to Creditors and Known Creditors by Trustee. A notice that must be published under MCL 700.7608 must include:

(1) The name, and, if known, last known address, date of death, and date of birth of the trust’s deceased settlor;

(2)-(5) [Unchanged.]

Rule 5.403 Proceedings on Temporary Guardianship

(A) Limitation. The court may appoint a temporary guardian only in the course of a proceeding for permanent guardianship or pursuant to an application to appoint a guardian serving in another state to serve as guardian in this state.

(B)-(D) [Unchanged.]

Staff Comment: These proposed Chapter 5 rule amendments were submitted to the Court by the Probate and Estate Planning Section of the State Bar of Michigan so that the
rules would comport to recent legislation regarding foreign guardianships and conservatorships.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by XXXXX XX, 2014, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-29. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.
MEMORANDUM

TO: Probate and Estate Planning Council
FROM: George F. Bearup, Real Estate Committee Chair
RE: P.A. 497 Amendment Update

On March 27, 2014 David Fry of our subcommittee contacted Matt Blakely, Representative Pettalia’s legislative aide, who intends to sponsor the proposed technical correction legislation. Mr. Blakely informed Mr. Fry that the “team” (we are not sure what Mr. Blakely meant by his use of that term) has been busy working on the personal property tax exemption legislation and thus has not really focused on the proposed amendment to P.A. 497.

Mr. Blakely did say that Representative Pettalia wants to add “grandparents” to the list of persons whose transfers would be exempt from “uncapping.” David noted that adding grandparents would be an expansion of the existing exemption under P.A. 497. Mr. Blakely said that Representative Pettalia thought grandparents had been included in P.A. 497, and when he found out that was not the case, he wanted to add grandparents to the list of exempt transferors as part of our proposed technical amendment.

Mr. Blakely provided an estimated time for the technical correction amendment to P.A. 497. The best case is that they will have language back from the Legislative Service Bureau in time to introduce the Bill in the House in May; and then again in the Senate in June. We are assured that Representative John Walsh, the House Speaker Pro Tem, fully supports our attempts to clarify the statute, and he has given his overwhelming support for P.A. 497 itself.

When asked whether significant opposition had surfaced to this proposed amendment, Mr. Blakely said that he expects the “locals” (by which he means the Townships and other taxing municipalities) and the MEA to oppose the proposed change, perhaps even more aggressively than last time when P.A. 497 was passed. At the same time, Mr. Blakely remains optimistic that we will see an amendment to P.A. 497 passed and signed yet this calendar year.

Over the months I have collected more than a few emails from Council members and other well intended attorneys who have noted that our proposed amendment moves beyond the limiting language of “to the first degree.”

Other questions have been raised that deal with adopted children, e.g., is a transfer between adopted siblings the same as falling within the “first degree” limitation? Do we graft onto the proposed technical correction EPIC’s definitions as “gap fillers” to deal with some technical questions? Or, what about spouses who transfer title after a divorce, when they are no longer spouses? Are they covered by the “first degree” exemption? [Maybe they are covered by the uncapping exemption for transfers of title that are pursuant to an order of the Court.]
My point is that a lot of attention is given to the proposed amendment to P.A. 497 for good reason, but the temptation among all those who closely watch is to suggest added language that clarifies the scope of the exemption, but which also appears to take us away from our original charge to come up with a clarifying “technical correction” to the existing exemption. The more we add to the exemption, the more it appears to be a deliberate expansion to the scope of the exemption, which then invites strong opposition from the groups that are dependent upon property tax revenues to conduct their business.

In sum, try as we did to “keep it simple” with a modest clarification only, as indicated by Representative Pettalia’s own desire to now include grandparents in the exemption, we are moving away from a technical correction to an expanded non-common law definition of “the first degree.” The obvious challenge is where to draw a line between “clarifying” and “expanding” the exemption.

We hope to know more when the Legislative Service Bureau comes back with proposed language change to P.A. 497.

George F. Bearup
ATTACHMENT H
How Crummey is It?

The General Explanation of the Administration’s Fiscal Year 2015 Revenue Proposals, or Treasury “Greenbook” released last month, has a new proposal, titled, “Simplify Gift Tax Exclusion for Annual Gifts.”

This proposal addresses the concerns Treasury has with the use of Crummey Powers, temporary or lapsing power allowing beneficiaries to withdraw interest which resulted in an annual gift tax exclusion. It indicates that the use of Crummey Powers has resulted in significant compliance costs, including the cost of notices, records, and IRS enforcement.

It provides for a new category of non-present interest gifts, and gives each taxpayer a $50,000 annual transfer that will qualify for an annual exclusion. Gifts above that amount will be taxable. Gifts in this category do not qualify for the annual now $14,000 exclusion so if the amount exceeds $50,000, it is taxable even if the amount to each individual does not exceed $14,000.

The proposal indicates it will begin in the year following enactment. This may affect your attitude about Crummey Power trusts, especially those set up with large insurance payments and multiple remote beneficiaries.

What remains for tax free gifting is unlimited gifts directly made for tuition or medical payments; gifts up to $14,000 of present interest gifts, $28,000 if split with spouse; gifts to trusts described in section 2642(c)(2); as well as $50,000 in this new category.

Lorraine F. New
George W. Gregory PLLC
Troy, MI