

Act No. 96
Public Acts of 1992
Approved by the Governor
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**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Varga and Joe Young, Jr.

Reps. Anthony, Bandstra, Bankes, Barns, Bartnik, Bennane, Bennett, Bobier, Brackenridge, Perry Bullard, Willis Bullard, Clack, Clarke, Dalman, DeMars, Dobb, Dobronski, Dolan, Dresch, Gagliardi, Gernaat, Gilmer, Goss, Gubow, Harder, Harrison, Jacobetti, Jaye, Johnson, Jonker, Keith, Kilpatrick, Kosteva, Leland, London, McBryde, Murphy, Olshove, Oxender, Palamara, Pitoniak, Profit, Saunders, Scott, Shugars, Stallworth, Wallace, Weeks and Yokich named co-sponsors

ENROLLED HOUSE BILL No. 5504

AN ACT to amend the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Act No. 169 of the Public Acts of 1970, entitled as amended "An act to provide for establishment of historic districts; to provide for the acquisition of land and structures for historic purposes; to provide for preservation of historic and nonhistoric sites and structures within historic districts; to provide for the creation of historic district commissions; and to provide for the maintenance of publicly owned historic sites and structures by local units," sections 2 and 5 as amended by Act No. 230 of the Public Acts of 1986 and section 3 as amended by Act No. 125 of the Public Acts of 1980, being sections 399.201, 399.202, 399.203, 399.204, 399.205, 399.206, 399.207, 399.208, 399.209, 399.210, and 399.211 of the Michigan Compiled Laws; and to add sections 1a, 14, and 15.

The People of the State of Michigan enact:

Section 1. The title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Act No. 169 of the Public Acts of 1970, sections 2 and 5 as amended by Act No. 230 of the Public Acts of 1986 and section 3 as amended by Act No. 125 of the Public Acts of 1980, being sections 399.201, 399.202, 399.203, 399.204, 399.205, 399.206, 399.207, 399.208, 399.209, 399.210, and 399.211 of the Michigan Compiled Laws, are amended and sections 1a, 14, and 15 are added to read as follows:

TITLE

An act to provide for the establishment of historic districts; to provide for the acquisition of certain resources for historic preservation purposes; to provide for preservation of historic and nonhistoric resources within historic districts; to provide for the establishment of historic district commissions; to provide for the maintenance of publicly owned resources by local units; to provide for certain assessments under certain circumstances; to provide for procedures; and to provide for remedies and penalties.

Sec. 1. This act shall be known and may be cited as the "local historic districts act".

Sec. 1a. As used in this act:

- (a) "Alteration" means work that changes the detail of a resource but does not change its basic size or shape.
- (b) "Bureau" means the bureau of history of the Michigan department of state.

(c) "Certificate of appropriateness" means the written approval of a permit application for work that is appropriate and that does not adversely affect a resource.

(d) "Commission" means a historic district commission created by the legislative body of a local unit pursuant to section 4.

(e) "Committee" means a historic district study committee appointed by the legislative body of a local unit pursuant to section 3 or 14.

(f) "Demolition" means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect.

(g) "Demolition by neglect" means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.

(h) "Denial" means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.

(i) "Historic district" means an area, or group of areas not necessarily having contiguous boundaries, that contains 1 resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

(j) "Historic preservation" means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archaeology, engineering, or culture.

(k) "Historic resource" means a publicly or privately owned building, structure, site, object, feature, or open space that is significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state, or of the United States.

(l) "Local unit" means a county, city, village, or township.

(m) "Notice to proceed" means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource, pursuant to a finding under section 5(6).

(n) "Open space" means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

(o) "Ordinary maintenance" means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering. Ordinary maintenance does not constitute work for purposes of this act.

(p) "Proposed historic district" means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee or a standing committee for the purpose of making a recommendation as to whether it should be established as a historic district or added to an established historic district.

(q) "Repair" means to restore a decayed or damaged resource to a good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for purposes of this act.

(r) "Resource" means 1 or more publicly or privately owned historic or nonhistoric buildings, structures, sites, objects, features, or open spaces located within a historic district.

(s) "Standing committee" means a permanent body established by the legislative body of a local unit pursuant to section 14 to conduct the activities of a historic district study committee on a continuing basis.

(t) "Work" means construction, addition, alteration, repair, moving, excavation, or demolition.

Sec. 2. Historic preservation is declared to be a public purpose and the legislative body of a local unit may by ordinance regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts within the limits of the local unit. The purpose of the ordinance shall be to do 1 or more of the following:

(a) Safeguard the heritage of the local unit by preserving 1 or more historic districts in the local unit that reflect elements of the unit's history, architecture, archaeology, engineering, or culture.

(b) Stabilize and improve property values in each district and the surrounding areas.

(c) Foster civic beauty.

(d) Strengthen the local economy.

(e) Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the local unit and of the state.

Sec. 3. (1) A local unit may, by ordinance, establish 1 or more historic districts. The historic districts shall be administered by a commission established pursuant to section 4. Before establishing a historic district, the legislative body of the local unit shall appoint a historic district study committee. The committee shall contain a

majority of persons who have a clearly demonstrated interest in or knowledge of historic preservation, and shall contain representation from 1 or more duly organized local historic preservation organizations. The committee shall do all of the following:

(a) Conduct a photographic inventory of resources within each proposed historic district following procedures established or approved by the bureau.

(b) Conduct basic research of each proposed historic district and the historic resources located within that district.

(c) Determine the total number of historic and nonhistoric resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the committee shall be guided by the selection criteria for evaluation issued by the United States secretary of the interior for inclusion of resources in the national register of historic places, as set forth in 36 C.F.R. part 60, and criteria established or approved by the bureau, if any.

(d) Prepare a preliminary historic district study committee report that addresses at a minimum all of the following:

(i) The charge of the committee.

(ii) The composition of the committee membership.

(iii) The historic district or districts studied.

(iv) The boundaries for each proposed historic district in writing and on maps.

(v) The history of each proposed historic district.

(vi) The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.

(e) Transmit copies of the preliminary report for review and recommendations to the local planning body, to the bureau, to the Michigan historical commission, and to the state historic preservation review board.

(f) Make copies of the preliminary report available to the public pursuant to subsection (4).

(2) Not less than 60 calendar days after the transmittal of the preliminary report, the committee shall hold a public hearing in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the hearing shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended. Written notice shall be mailed by first-class mail not less than 14 calendar days before the hearing to the owners of properties within the proposed historic district, as listed on the tax rolls of the local unit.

(3) After the date of the public hearing, the committee and the legislative body of the local unit shall have not more than 1 year, unless otherwise authorized by the legislative body of the local unit, to take the following actions:

(a) The committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the local planning body to the legislative body of the local unit. If the recommendation is to establish a historic district or districts, the final report shall include a draft of a proposed ordinance or ordinances.

(b) After receiving a final report that recommends the establishment of a historic district or districts, the legislative body of the local unit, at its discretion, may introduce and pass or reject an ordinance or ordinances. If the local unit passes an ordinance or ordinances establishing 1 or more historic districts, the local unit shall file a copy of that ordinance or those ordinances, including a legal description of the property or properties located within the historic district or districts, with the register of deeds. A local unit shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.

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

Sec. 4. The legislative body of a local unit may establish by ordinance a commission to be called the historic district commission. The commission may be established at any time, but not later than the time the first historic district is established by the legislative body of the local unit. Each member of the commission shall reside within the local unit. The membership of the historic district commission in a local unit having a population of 5,000 or more individuals shall consist of not less than 7 or more than 9 members. The membership of the historic district commission in a local unit having a population of less than 5,000 individuals shall consist of not less than 5 or more than 7 members. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation. The members shall be appointed by the

township supervisor, village president, mayor, or chairperson of the board of commissioners, unless another method of appointment is provided in the ordinance creating the commission. Initial members shall be appointed within 6 months after the ordinance establishing the commission is enacted. Members shall be appointed for 3-year terms except the initial appointments of some of the members shall be for less than 3 years so that the initial appointments are staggered and that subsequent appointments do not recur at the same time. Members shall be eligible for reappointment. A vacancy on the commission shall be filled within 60 calendar days by an appointment made by the appointing authority. The ordinance creating the commission may provide procedures for terminating an appointment due to the acts or omissions of the member. The appointing authority of a local unit having a population of 25,000 or more individuals shall appoint at least 2 members from a list of citizens submitted by 1 or more duly organized local historic preservation organizations. A local unit having a population of more than 5,000 individuals but less than 25,000 individuals shall appoint at least 1 member from a list of citizens submitted by 1 or more duly organized local historic preservation organizations. The commission of all local units shall include as a member, if available, a graduate of an accredited school of architecture who has 2 years of architectural experience or who is an architect registered in this state. This section does not apply to historic district commissions established by charter or to historic district commissions established by ordinance before August 3, 1970.

Sec. 5. (1) A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district or, if required under subsection (4), work affecting the interior arrangements of a resource is performed within a historic district. The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings, the commission, or other duly delegated authority. If the inspector of buildings or other authority receives the application, the application shall be immediately referred together with all required supporting materials that make the application complete to the commission. A permit shall not be issued and proposed work shall not proceed until the commission has acted on the application by issuing a certificate of appropriateness or a notice to proceed as prescribed in this act. A local unit may charge a reasonable fee to process a permit application.

(2) An applicant aggrieved by a decision of a commission concerning a permit application may file an appeal with the state historic preservation review board of the Michigan historical commission within the department of state. The appeal shall be filed within 60 days after the decision is furnished to the applicant. The appellant may submit all or part of the appellant's evidence and arguments in written form. The review board shall consider an appeal at its first regularly scheduled meeting after receiving the appeal, but may not charge a fee for considering an appeal. The review board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. A permit applicant aggrieved by the decision of the state historic preservation review board may appeal the decision to the circuit court having jurisdiction over the historic district commission whose decision was appealed to the state historic preservation review board.

(3) In reviewing plans, the commission shall follow the U.S. secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the bureau. The commission shall also consider all of the following:

- (a) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.
- (b) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.
- (c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.
- (d) Other factors, such as aesthetic value, that the commission finds relevant.

(4) The commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the local legislative body or unless interior work will cause visible change to the exterior of the resource. The commission shall not disapprove an application due to considerations not prescribed in subsection (3).

(5) If an application is for work that will adversely affect the exterior of a resource the commission considers valuable to the local unit, state, or nation, and the commission determines that the alteration or loss of that resource will adversely affect the public purpose of the local unit, state, or nation, the commission shall attempt to establish with the owner of the resource an economically feasible plan for preservation of the resource.

(6) Work within a historic district shall be permitted through the issuance of a notice to proceed by the commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the commission to be necessary to substantially improve or correct any of the following conditions:

(a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.

(b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

(c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.

(d) Retaining the resource is not in the interest of the majority of the community.

(7) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended. A meeting agenda shall be part of the notice and shall include a listing of each permit application to be reviewed or considered by the commission.

(8) The commission shall keep a record of its resolutions, proceedings, and actions. A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(9) The commission shall adopt its own rules of procedure and shall adopt design review standards and guidelines for resource treatment to carry out its duties under this act.

(10) The commission may delegate the issuance of certificates of appropriateness for specified minor classes of work to its staff, to the inspector of buildings, or to another delegated authority. The commission shall provide to the delegated authority specific written standards for issuing certificates of appropriateness under this subsection. On at least a quarterly basis, the commission shall review the certificates of appropriateness, if any, issued for work by its staff, the inspector, or another authority to determine whether or not the delegated responsibilities should be continued.

(11) Upon a finding by a commission that a historic resource within a historic district or a proposed historic district subject to its review and approval is threatened with demolition by neglect, the commission may do either of the following:

(a) Require the owner of the resource to repair all conditions contributing to demolition by neglect.

(b) If the owner does not make repairs within a reasonable time, the commission or its agents may enter the property and make such repairs as are necessary to prevent demolition by neglect. The costs of the work shall be charged to the owner, and may be levied by the local unit as a special assessment against the property. The commission or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court.

(12) When work has been done upon a resource without a permit, and the commission finds that the work does not qualify for a certificate of appropriateness, the commission may require an owner to restore the resource to the condition the resource was in before the inappropriate work or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply with the restoration or modification requirement within a reasonable time, the commission may seek an order from the circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply or cannot comply with the order of the court, the commission or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a certificate of appropriateness in accordance with the court's order. The costs of the work shall be charged to the owner, and may be levied by the local unit as a special assessment against the property. When acting pursuant to an order of the circuit court, a commission or its agents may enter a property for purposes of this section.

Sec. 6. The legislative body of a local unit may accept state or federal grants for historic preservation purposes, may participate in state and federal programs that benefit historic preservation, and may accept public or private gifts for historic preservation purposes. The legislative body may make the historic district commission, a standing committee, or other agency its duly appointed agent to accept and administer grants, gifts, and program responsibilities.

Sec. 7. If all efforts by the historic district commission to preserve a resource fail, or if it is determined by the local legislative body that public ownership is most suitable, the local legislative body, if considered to be in the public interest, may acquire the resource using public funds, public or private gifts, grants, or proceeds

from the issuance of revenue bonds. The acquisition shall be based upon the recommendation of the commission or standing committee. The commission or standing committee is responsible for maintaining publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the local legislative body. Upon recommendation of the commission or standing committee, the local unit may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

Sec. 8. The jurisdiction of a county shall be the same as that provided in Act No. 183 of the Public Acts of 1943, as amended, being sections 125.201 to 125.232 of the Michigan Compiled Laws, or as otherwise provided by contract entered into between the county and a city, village or township. If a county historic district commission is in existence, coordination between the county historic district commission and township and municipality historic district commissions shall be maintained. The overall historic preservation plans of cities, villages and townships shall be submitted to the county historic district commission for review, and county plans submitted to cities, villages, and townships having historic district commissions. Day-to-day activities of a commission shall not be reviewed unless the activities affect resources of importance to another commission.

Sec. 9. (1) The commission shall file certificates of appropriateness, notices to proceed, and denials of applications for permits with the inspector of buildings or other delegated authority. A permit shall not be issued until the commission has acted as prescribed by this act. If a permit application is denied, the decision shall be binding on the inspector or other authority. A denial shall be accompanied with a written explanation by the commission of the reasons for denial and, if appropriate, a notice that an application may be resubmitted for commission review when suggested changes have been made. The denial shall also include notification of the applicant's rights of appeal to the state historic preservation review board and to the circuit court. The failure of the commission to act within 60 calendar days after the date a complete application is filed with the commission, unless an extension is agreed upon in writing by the applicant and the commission, shall be considered to constitute approval.

(2) Local public officials and employees shall provide information and records to committees, commissions, and standing committees, and shall meet with those bodies upon request to assist with their activities.

(3) The bureau shall cooperate with and assist local units, committees, commissions, and standing committees in carrying out the purposes of this act and may establish or approve standards, guidelines, and procedures that encourage uniform administration of this act in this state but that are not legally binding on any individual or other legal entity.

Sec. 10. Nothing in this act shall be construed to prevent ordinary maintenance or repair of a resource within a historic district, or to prevent work on any resource under a permit issued by the inspector of buildings or other duly delegated authority before the ordinance was enacted.

Sec. 11. Any citizen or duly organized historic preservation organization in the local unit, as well as resource property owners, jointly or severally aggrieved by a decision of the historic district commission may appeal the decision to the circuit court, except that a permit applicant aggrieved by a decision rendered under section 5(1) may not appeal to the court without first exhausting the right to appeal to the state historic preservation review board under section 5(2).

Sec. 14. (1) A local unit may at any time establish by ordinance additional historic districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before establishing, modifying, or eliminating a historic district, a historic district study committee appointed by the legislative body of the local unit shall, except as provided in subsection (2), comply with the procedures set forth in section 3 and shall consider any previously written committee reports pertinent to the proposed action. To conduct these activities, local units may retain the initial committee, establish a standing committee, or establish a committee to consider only specific proposed districts and then be dissolved.

(2) If considering elimination of a historic district, a committee shall follow the procedures set forth in section 3 for issuing a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing 1 or more of the following:

- (i) The historic district has lost those physical characteristics that enabled establishment of the district.
- (ii) The historic district was not significant in the way previously defined.
- (iii) The historic district was established pursuant to defective procedures.

(3) Upon receipt of substantial evidence showing the presence of historic, architectural, archaeological, engineering, or cultural significance of a proposed historic district, the legislative body of a local unit may, at its discretion, adopt a resolution requiring that all applications for permits within the proposed historic district

be referred to the commission as prescribed in sections 5 and 9. The commission shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district. The review may continue in the proposed historic district for not more than 1 year, or until such time as the local unit approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

(4) If the legislative body of a local unit determines that pending work will cause irreparable harm to resources located within an established historic district or a proposed historic district, the legislative body may by resolution declare an emergency moratorium of all such work for a period not to exceed 6 months. The legislative body may extend the emergency moratorium for an additional period not to exceed 6 months upon finding that the threat of irreparable harm to resources is still present. Any pending permit application concerning a resource subject to an emergency moratorium may be summarily denied.

Sec. 15. (1) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act is responsible for a civil violation and may be fined not more than \$5,000.00.

(2) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated, or demolished.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.