

HOUSE BILL No. 6306

December 1, 1998, Introduced by Reps. Jellema, Byl, DeVuyst, Fitzgerald, LeTarte, Jelinek, Hammerstrom, Birkholz, Rocca, Sanborn, Schauer and Scranton and referred to the Committee on Urban Policy and Economic Development.

A bill to amend 1972 PA 230, entitled "State construction code act of 1972," by amending the title and sections 2, 3, 5, 14, 15, 24, and 30 (MCL 125.1502, 125.1503, 125.1505, 125.1514, 125.1515, 125.1524, and 125.1530), the title as amended by 1996 PA 270, section 2 as amended by 1998 PA 42, section 3 as amended by 1984 PA 189, and section 24 as amended by 1980 PA 371.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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An act to create a construction code commission and pre-

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scribe its functions; to authorize the commission to promulgate

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rules with recommendations from each affected board relating to

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the construction, alteration, demolition, occupancy, MAINTENANCE,

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and use of buildings and structures; to prescribe energy

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conservation standards for the construction of certain buildings;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (s) "Executive director" means the director of the bureau of
13 construction codes as set forth under section 7.

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

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

25 (v) "Other laws and ordinances" means other laws and ordi-
26 nances, whether enacted by this state or by a county, city,
27 village, or township and the rules issued thereunder.

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

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

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

18 (Z) "PROPERTY MAINTENANCE CODE" MEANS THE PROPERTY MAINTENANCE
19 CODE ESTABLISHED UNDER SECTION 5.

20 (AA) ~~(z)~~ "Structure" means that which is built or con-
21 structed, an edifice or building of any kind, or a piece of work
22 artificially built up or composed of parts joined together in
23 some definite manner. Structure does not include a structure
24 incident to the use for agricultural purposes of the land on
25 which the structure is located and does not include works of
26 heavy civil construction including without limitation, a highway,
27 bridge, dam, reservoir, lock, mine, harbor, dockside port

1 facility, an airport landing facility and facilities for the
2 generation or transmission, or distribution of electricity.
3 Structure shall be construed as though followed by the words "or
4 part or parts of the structure and all equipment in the
5 structure" unless the context clearly indicates otherwise.

6 (2) Unless the context clearly indicates otherwise, refer-
7 ences to this act, or to this act and the code, shall refer to
8 this act and rules promulgated pursuant to this act including the
9 code.

10 Sec. 3. (1) The state construction code commission is cre-
11 ated and consists of the state fire marshal or the state fire
12 marshal's designee and the chairpersons of the barrier free
13 design board, the electrical administrative board, the state
14 plumbing board, and the board of mechanical rules, who shall be
15 permanent members, and 12 residents of the state to be appointed
16 by the governor with the advice and consent of the senate.
17 Appointed members of the commission shall include 1 person from
18 each of the fields of industrial management, architecture, pro-
19 fessional engineering, building contracting, organized labor,
20 premanufactured building, and 3 members representing municipal
21 building inspection, 1 of whom enforces this act and the code, 1
22 of whom enforces the building officials and code administrators
23 building code, and 1 of whom enforces the international confer-
24 ence of building officials building code; 2 persons from the gen-
25 eral public; and a licensed residential builder. A member of the
26 commission shall be appointed for a term of 2 years, except that
27 a vacancy shall be filled for the unexpired portion of the term.

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2 COMMISSION SHALL CAUSE TO BE APPOINTED A SANITARIAN AS AN
3 ADVISORY MEMBER. A member of the commission may be removed from

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5 conduct or malfeasance in office. A member of the commission who
6 has a pecuniary interest in a matter before the commission shall

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8 matter, which disclosures shall be made a matter of record in its
9 official proceedings. Each member of the commission, except the

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11 receive compensation and actual expenses incurred by the member
12 in the performance of the duties as a member of the commission.

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14 reimbursement of expenses shall be established annually by the
15 legislature. An appointed member of the commission shall not

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17 (2) Nine members of the commission constitute a quorum.

18 Except as otherwise provided in the commission's bylaws, action

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20 bers present at a meeting. Meetings of the commission may be
21 called by the chairperson or by 3 members on 10 days' written

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23 quarter. A meeting of the commission may be held anywhere in
24 this state.

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26 another as vice-chairperson, and other officers as it determines
appropriate, for the terms and with the duties and powers as the

1 commission determines. The chairperson and vice-chairperson of
2 the commission shall be elected from those members appointed to
3 the commission by the governor.

4 (4) The commission shall be within the department of ~~labor~~
5 CONSUMER AND INDUSTRY SERVICES, but it shall exercise its statu-
6 tory functions independently of the head of the department,
7 except that budgeting, personnel, and procurement functions of
8 the commission shall be performed under the direction and super-
9 vision of the director of ~~labor~~ CONSUMER AND INDUSTRY
10 SERVICES.

11 (5) The business which the commission may perform shall be
12 conducted at a public meeting of the commission held in compli-
13 ance with the open meetings act, ~~Act No. 267 of the Public Acts~~
14 ~~of 1976, as amended, being sections 15.261 to 15.275 of the~~
15 ~~Michigan Compiled Laws~~ 1976 PA 267, MCL 15.261 TO 15.275.
16 Public notice of the time, date, and place of the meeting shall
17 be given in the manner required by ~~Act No. 267 of the Public~~
18 ~~Acts of 1976, as amended~~ THE OPEN MEETINGS ACT, 1976 PA 267, MCL
19 15.261 TO 15.275.

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

26 Sec. 5. (1) The commission has all powers necessary or
27 convenient to carry out and effectuate the purposes and

1 provisions of this act, including, without limitation, the powers
2 hereinafter set forth.

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

7 (3) The commission may promulgate, amend, and rescind rules
8 necessary, desirable, or proper to carry out its powers and
9 duties under this act and relating to the administration and
10 enforcement of the code by enforcing agencies and relating to the
11 qualifications and licensing of persons making inspections pro-
12 vided for under this act.

13 (4) The commission may encourage, support, or conduct,
14 either by itself or in cooperation with enforcing agencies, asso-
15 ciations of building code officials, or any other persons, educa-
16 tional and training programs for employees, agents, and inspec-
17 tors of enforcing agencies.

18 (5) The commission may study the effect of the code, THE
19 PROPERTY MAINTENANCE CODE, and other related laws, to ascertain
20 their effect on the cost of building construction and mainte-
21 nance, and the effectiveness of their provisions for insuring the
22 health, safety, and welfare of the people of this state.

23 (6) The commission may determine after testing and evalu-
24 ation whether a material, product, method of manufacture, or
25 method of construction or installation is acceptable under the
26 code; issue certificates of such acceptability; and establish
27 procedures for the testing of such devices, materials, fixtures,

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2 existing testing laboratory for such testing.

(7) The commission may take testimony and hold hearings

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5 or enforcement of this act. In the enforcement of this act, it
may issue subpoenas to compel the attendance of witnesses and the

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8 ~~or~~

9 report thereon to the commission.

(8) THE COMMISSION SHALL ADOPT THOSE PROVISIONS OF THE 1998

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12 NATIONAL CODE COUNCIL, AS IT DETERMINES APPROPRIATE. THE ADOP-
TION SHALL BE BY RULES PROMULGATED UNDER THE ADMINISTRATIVE PRO-

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15 MISSION SHALL CONSIDER UPDATING THE PROPERTY MAINTENANCE CODE AS
CYCLICAL CHANGES OCCUR TO THE INTERNATIONAL PROPERTY MAINTENANCE

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18 Sec. 14. (1) A construction board of appeals for each gov-
ernmental subdivision enforcing the code AND THE PROPERTY MAINTEN-

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21 more than 7 members, as determined by the governing body of the
governmental subdivision. Unless otherwise provided by local law

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24 appointed for 2-year terms by the chief executive officer of a
city, village, or township and the chairperson of the county

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27 appeals shall be qualified by experience or training to perform

1 the duties of members of the board of appeals. A person may
2 serve on the board of appeals of more than 1 governmental
3 subdivision. If an enforcing agency refuses to grant an applica-
4 tion for a building permit, or if the enforcing agency makes any
5 other decision pursuant or related to this act, THE PROPERTY
6 MAINTENANCE CODE, or the code, an interested person, or the
7 person's authorized agent, may appeal in writing to the board of
8 appeals. The board of appeals shall hear the appeal and render
9 and file its decision with a statement of reasons for the deci-
10 sion with the enforcing agency from whom the appeal was taken not
11 more than 30 days after submission of the appeal. Failure by the
12 board of appeals to hear an appeal and file a decision within the
13 time limit is a denial of the appeal for purposes of authorizing
14 the institution of an appeal to the commission. A copy of the
15 decision and statement of the reasons for the decision shall be
16 delivered or mailed, before filing, to the party taking the
17 appeal.

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

25 (3) The business which the board of appeals may perform
26 shall be conducted at a public meeting of the board of appeals
27 held in compliance with ~~Act No. 267 of the Public Acts of 1976~~

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

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

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

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

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

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

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

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

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

18 Enacting section 1. This amendatory act does not take
19 effect unless Senate Bill No. _____ or House Bill No. _____
20 (request no. 04722'97 *) of the 89th Legislature is enacted into
21 law.