

# SENATE BILL No. 1454

October 6, 2004, Introduced by Senator BIRKHOLZ and referred to the Committee on Government Operations.

A bill to amend 1970 PA 169, entitled "Local historic districts act," by amending sections 5, 9, and 11 (MCL 399.205, 399.209, and 399.211), section 5 as amended by 2004 PA 67, section 9 as amended by 2001 PA 67, and section 11 as amended by 1992 PA 96.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5. (1) A permit shall be obtained before any work  
2 affecting the exterior appearance of a resource is performed  
3 within a historic district or, if required under subsection (4),  
4 work affecting the interior arrangements of a resource is  
5 performed within a historic district. The person, individual,  
6 partnership, firm, corporation, organization, institution, or  
7 agency of government proposing to do that work shall file an  
8 application for a permit with the inspector of buildings, the  
9 commission, or other ~~duly~~ delegated authority. If the

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1 inspector of buildings or other **delegated** authority receives the  
2 application, the application shall be immediately referred **to the**  
3 **commission** together with all required supporting materials that  
4 make the application complete. ~~to the commission.~~ A permit  
5 shall not be issued and proposed work shall not proceed until the  
6 commission has acted on the application by issuing a certificate  
7 of appropriateness or a notice to proceed as prescribed in this  
8 act. A commission shall not issue a certificate of  
9 appropriateness unless the applicant certifies in the application  
10 that the property where work will be undertaken has, or will have  
11 before the proposed project completion date, a fire alarm system  
12 or a smoke alarm complying with the requirements of the  
13 Stille-DeRossett-Hale single state construction code act, 1972 PA  
14 230, MCL 125.1501 to 125.1531. A local unit may charge a  
15 reasonable fee to process a permit application.

16 (2) An applicant aggrieved by a decision of a commission  
17 concerning a permit application may file an appeal with the  
18 ~~state historic preservation review board within the department~~  
19 **legislative body of the local unit**. The appeal shall be filed  
20 within 60 days after the decision is furnished to the applicant.  
21 The appellant may submit all or part of the appellant's evidence  
22 and arguments in written form. The ~~review board~~ **legislative**  
23 **body of the local unit** shall consider an appeal at its first  
24 regularly scheduled meeting after receiving the appeal, but may  
25 not charge a fee for considering an appeal. The ~~review board~~  
26 **legislative body of the local unit** may affirm, modify, or set  
27 aside ~~a~~ **the** commission's decision and may order ~~a~~ **the**

1 commission to issue a certificate of appropriateness or a notice  
2 to proceed. A permit applicant aggrieved by the decision of the  
3 ~~state historic preservation review board~~ **legislative body of**  
4 **the local unit** may appeal the decision to the circuit court  
5 having jurisdiction over the historic district commission whose  
6 decision was appealed to the ~~state historic preservation review~~  
7 ~~board~~ **legislative body of the local unit.**

8 (3) In reviewing plans, the commission shall follow the  
9 United States secretary of the interior's standards for  
10 rehabilitation and guidelines for rehabilitating historic  
11 buildings, as set forth in 36 ~~C.F.R.~~ **CFR** part 67. Design review  
12 standards and guidelines that address special design  
13 characteristics of historic districts administered by the  
14 commission may be followed if they are equivalent in guidance to  
15 the secretary of interior's standards and guidelines and are  
16 established or approved by the department. The commission shall  
17 also consider all of the following:

18 (a) The historic or architectural value and significance of  
19 the resource and its relationship to the historic value of the  
20 surrounding area.

21 (b) The relationship of any architectural features of the  
22 resource to the rest of the resource and to the surrounding  
23 area.

24 (c) The general compatibility of the design, arrangement,  
25 texture, and materials proposed to be used.

26 (d) Other factors, such as aesthetic value, that the  
27 commission finds relevant.

1 (e) Whether the applicant has certified in the application  
2 that the property where work will be undertaken has, or will have  
3 before the proposed project completion date, a fire alarm system  
4 or a smoke alarm complying with the requirements of the  
5 Stille-DeRossett-Hale single state construction code act, 1972 PA  
6 230, MCL 125.1501 to 125.1531.

7 (4) The commission shall review and act upon only exterior  
8 features of a resource and, except for noting compliance with the  
9 requirement to install a fire alarm system or a smoke alarm,  
10 shall not review and act upon interior arrangements unless  
11 specifically authorized to do so by the ~~local~~ legislative body of  
12 **the local unit** or unless interior work will cause visible change  
13 to the exterior of the resource. The commission shall not  
14 disapprove an application due to considerations not prescribed in  
15 subsection (3).

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

24 (6) ~~Work~~ **The commission shall issue a notice to proceed**  
25 **authorizing work** within a historic district ~~shall be permitted~~  
26 ~~through the issuance of a notice to proceed by the commission~~ if  
27 any of the following conditions prevail and if the **commission**

1 **finds that the** proposed work ~~can be demonstrated by a finding of~~  
2 ~~the commission to be~~ **is** necessary to substantially improve or  
3 correct any of the following conditions:

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

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

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

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

21 (7) The business that the commission may perform shall be  
22 conducted at a public meeting of the commission held in  
23 compliance with the open meetings act, 1976 PA 267, MCL 15.261 to  
24 15.275. Public notice of the time, date, and place of the  
25 meeting shall be given in the manner required by the open  
26 meetings act, 1976 PA 267, MCL 15.261 to 15.275. A meeting  
27 agenda shall be part of the notice and shall ~~include a listing~~

1 ~~of~~ **list** each permit application to be reviewed or considered by  
2 the commission.

3 (8) The commission shall keep a record of its resolutions,  
4 proceedings, and actions. A writing prepared, owned, used, in  
5 the possession of, or retained by the commission in the  
6 performance of an official function shall be made available to  
7 the public in compliance with the freedom of information act,  
8 1976 PA 442, MCL 15.231 to 15.246.

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

12 (10) The commission may delegate the issuance of certificates  
13 of appropriateness for specified minor classes of work to its  
14 staff, ~~to~~ the inspector of buildings, or ~~to another~~ **other**  
15 delegated authority. The commission shall provide to ~~the~~ **its**  
16 **staff, the inspector of buildings, or other** delegated authority  
17 specific written standards for issuing certificates of  
18 appropriateness under this subsection. On at least a quarterly  
19 basis, the commission shall review the certificates of  
20 appropriateness, if any, issued for work by its staff, the  
21 inspector, or ~~another~~ **other delegated** authority to determine  
22 whether or not the delegated responsibilities should be  
23 continued.

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

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

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

11 (12) ~~When~~ **If** work has been done upon a resource without a  
12 permit ~~—~~ and the commission finds that the work does not  
13 qualify for a certificate of appropriateness, the commission may  
14 require an owner to restore the resource to the condition the  
15 resource was in before the inappropriate work or to modify the  
16 work so that it qualifies for a certificate of appropriateness.  
17 If the owner does not comply with the restoration or modification  
18 requirement within a reasonable time, the commission may seek an  
19 order from the circuit court to require the owner to restore the  
20 resource to its former condition or to modify the work so that it  
21 qualifies for a certificate of appropriateness. If the owner  
22 does not comply or cannot comply with the order of the **circuit**  
23 court, the commission or its agents may enter the property and  
24 conduct work necessary to restore the resource to its former  
25 condition or modify the work so that it qualifies for a  
26 certificate of appropriateness in accordance with the **circuit**  
27 court's order. The costs of the work shall be charged to the

1 owner ~~—~~ and may be levied by the local unit as a special  
2 assessment against the property. ~~When~~ **If** acting pursuant to an  
3 order of the circuit court, a commission or its agents may enter  
4 a property for purposes of this section.

5       Sec. 9. (1) The commission shall file certificates of  
6 appropriateness, notices to proceed, and denials of applications  
7 for permits with the inspector of buildings or other delegated  
8 authority. A permit shall not be issued until the commission has  
9 acted as prescribed ~~by~~ **under** this act. If a permit application  
10 is denied, the decision ~~shall be~~ **is** binding on the inspector **of**  
11 **buildings** or other **delegated** authority. A denial shall be  
12 accompanied with a written explanation by the commission of the  
13 reasons for denial and, if appropriate, a notice that an  
14 application may be resubmitted for commission review ~~when~~ **if**  
15 suggested changes ~~have been~~ **are** made. The denial shall also  
16 include notification of the applicant's rights of appeal to the  
17 ~~state historic preservation review board~~ **legislative body of**  
18 **the local unit** and to the circuit court. ~~The failure of~~ **If** the  
19 commission **fails** to act within 60 calendar days after the date a  
20 complete application is filed with the commission, unless an  
21 extension is agreed upon in writing by the applicant and the  
22 commission, **the permit application** shall be ~~considered to~~  
23 ~~constitute approval~~ **approved**.

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

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

7           Sec. 11. (1) ~~Any citizen or~~ **Except as otherwise provided**  
8 **in subsection (2), a citizen in the local unit, a** duly organized  
9 historic preservation organization in the local unit, ~~as well~~  
10 ~~as~~ **or 1 or more** resource property owners, jointly or severally  
11 aggrieved by a decision of the historic district commission may  
12 appeal the decision to the circuit court. ~~, except that a~~

13           (2) **A** permit applicant aggrieved by a decision rendered  
14 under section 5(1) may not appeal to the **circuit** court without  
15 first exhausting the right to appeal to the ~~state historic~~  
16 ~~preservation review board~~ **legislative body of the local unit**  
17 under section 5(2).