

SENATE BILL No. 390

June 9, 2015, Introduced by Senators ROBERTSON, CASPERSON, KOWALL, MARLEAU, COLBECK and BRANDENBURG and referred to the Committee on Government Operations.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 308a (MCL 600.308a), as added by 1980 PA 110,
and by adding sections 308b, 308c, 308d, 308e, 308f, and 308g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 308a. (1) An action under section 32 of article ~~9~~**IX** of
2 the state constitution of 1963 ~~may~~**OR UNDER SUBSECTION (2) MAY** be
3 commenced **ONLY** in the court of appeals. ~~, or in the circuit court~~
4 ~~in the county in which venue is proper, at the option of the party~~
5 ~~commencing the action.~~

6 (2) A LOCAL UNIT OF GOVERNMENT MAY BRING AN ACTION IN THE
7 COURT OF APPEALS TO ENFORCE THE PROVISIONS OF SECTIONS 25 TO 31 OF
8 ARTICLE IX OF THE STATE CONSTITUTION OF 1963.

9 (3) ~~(2)~~The jurisdiction of the court of appeals ~~shall be~~
10 **UNDER THIS SECTION IS** invoked by A TAXPAYER OR A LOCAL UNIT OF

1 **GOVERNMENT** filing an action ~~by a taxpayer~~ as plaintiff according to
 2 the court rules governing procedure in the court of appeals.

3 ~~(4) (3) A taxpayer shall not bring or maintain an~~ **AN** action
 4 under this section ~~unless the action is~~ **SEEKING MONEY DAMAGES FOR**
 5 **THIS STATE'S FAILURE TO ADEQUATELY FUND A STATE-REQUIRED ACTIVITY**
 6 **OR SERVICE MUST BE** commenced within 1 year after the cause of
 7 action ~~accrued.~~ **ACCRUES. AN ACTION UNDER THIS SECTION SEEKING A**
 8 **DECLARATORY JUDGMENT MAY BE COMMENCED AT ANY TIME THAT SECTIONS 25**
 9 **TO 31 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 ARE BEING**
 10 **VIOLATED AS ALLEGED IN THE COMPLAINT.**

11 ~~—— (4) The unit of government shall be named as defendant. An~~
 12 ~~officer of any governmental unit shall be sued in his or her~~
 13 ~~official capacity only and shall be described as a party by his or~~
 14 ~~her official title and not by name. If an officer dies, resigns, or~~
 15 ~~otherwise ceases to hold office during the pendency of the action,~~
 16 ~~the action shall continue against the governmental unit and the~~
 17 ~~officer's successor in office.~~

18 ~~—— (5) The court of appeals may refer an action to the circuit~~
 19 ~~court or to the tax tribunal to determine and report its findings~~
 20 ~~of fact if substantial fact finding is necessary to decide the~~
 21 ~~action.~~

22 ~~(5) (6) A plaintiff who~~ **IF THE TAXPAYER OR, IF A LOCAL UNIT OF**
 23 **GOVERNMENT IS THE PLAINTIFF, THE LOCAL UNIT OF GOVERNMENT** prevails
 24 in an action commenced under this section, ~~shall receive from the~~
 25 defendant **SHALL PAY THE TAXPAYER OR LOCAL UNIT OF GOVERNMENT** the
 26 costs incurred by the ~~plaintiff~~ **TAXPAYER OR LOCAL UNIT OF**
 27 **GOVERNMENT** in maintaining the action.

1 SEC. 308B. (1) A TAXPAYER WHO COMMENCES AN ACTION UNDER
2 SECTION 308A(1) SHALL NAME THE APPLICABLE LOCAL UNIT OF GOVERNMENT
3 AS DEFENDANT IN THE ACTION. AN OFFICER OF A LOCAL UNIT OF
4 GOVERNMENT MUST BE SUED IN HIS OR HER OFFICIAL CAPACITY ONLY AND
5 MUST BE DESCRIBED AS A PARTY BY HIS OR HER OFFICIAL TITLE AND NOT
6 BY NAME. IF AN OFFICER DIES, RESIGNS, OR OTHERWISE CEASES TO HOLD
7 OFFICE DURING THE PENDENCY OF THE ACTION, THE ACTION CONTINUES
8 AGAINST THE LOCAL UNIT OF GOVERNMENT AND THE OFFICER'S SUCCESSOR IN
9 OFFICE.

10 (2) THE COURT SHALL NOT REQUIRE THE PLAINTIFF IN AN ACTION
11 UNDER SECTION 308A TO STATE ALLEGATIONS IN THE COMPLAINT WITH ANY
12 GREATER SPECIFICITY OR PARTICULARITY THAN IS REQUIRED OF A
13 PLAINTIFF GENERALLY IN A CIVIL ACTION OR TO ATTACH TO THE COMPLAINT
14 ANY DOCUMENT OR THING THAT WOULD NOT BE REQUIRED GENERALLY TO BE
15 ATTACHED TO A COMPLAINT IN A CIVIL ACTION.

16 (3) THE PLAINTIFF IN AN ACTION UNDER SECTION 308A SHALL FILE
17 ALL OF THE FOLLOWING WITH THE CLERK OF THE COURT OF APPEALS:

18 (A) FIVE COPIES OF THE COMPLAINT, 1 OF WHICH MUST BE SIGNED.
19 THE COMPLAINT MUST INCLUDE A STATEMENT AS TO WHETHER THE PLAINTIFF
20 BELIEVES THAT THE ACTION RAISES FACTUAL QUESTIONS THAT WILL REQUIRE
21 RESOLUTION BY THE COURT.

22 (B) PROOF THAT A COPY OF THE COMPLAINT AND ANY OTHER DOCUMENTS
23 FILED WITH THE COURT WERE SERVED ON EVERY NAMED DEFENDANT AND THE
24 DEPARTMENT OF ATTORNEY GENERAL.

25 (C) THE FILING FEE.

26 (4) A DEFENDANT NAMED IN AN ACTION UNDER SECTION 308A SHALL
27 FILE ALL OF THE FOLLOWING WITH THE CLERK OF THE COURT OF APPEALS

1 WITHIN 21 DAYS AFTER THE COMPLAINT IS SERVED ON THE DEFENDANT:

2 (A) FIVE COPIES OF AN ANSWER TO THE COMPLAINT, 1 OF WHICH IS
3 SIGNED. THE ANSWER MUST INCLUDE A STATEMENT AS TO WHETHER THE
4 DEFENDANT BELIEVES THAT THE ACTION RAISES FACTUAL QUESTIONS THAT
5 WILL REQUIRE RESOLUTION BY THE COURT.

6 (B) PROOF THAT A COPY OF THE ANSWER AND ANY OTHER DOCUMENTS
7 FILED WITH THE COURT WERE SERVED ON EVERY NAMED PARTY.

8 SEC. 308C. (1) AFTER AN ANSWER IS FILED UNDER SECTION 308B,
9 THE CHIEF JUDGE OF THE COURT OF APPEALS SHALL PROMPTLY ASSIGN A
10 PANEL OF THE COURT TO COMMENCE PROCEEDINGS IN THE ACTION.

11 (2) A PANEL TO WHICH AN ACTION IS ASSIGNED UNDER SUBSECTION
12 (1) MAY REFER THE ACTION TO THE SPECIAL MASTER CREATED UNDER
13 SECTION 308D TO CONDUCT PRETRIAL PROCEEDINGS AND A TRIAL TO RECEIVE
14 EVIDENCE AND ARGUMENTS OF LAW AND TO ISSUE A WRITTEN REPORT FOR THE
15 COURT THAT CONTAINS FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE
16 SPECIAL MASTER SHALL CONDUCT THE PROCEEDINGS AS EXPEDITIOUSLY AS
17 DUE CONSIDERATION OF THE FACTS AND ISSUES OF LAW REQUIRES.

18 (3) IF A PANEL TO WHICH AN ACTION IS ASSIGNED UNDER SUBSECTION
19 (1) DETERMINES THAT THE ISSUES FRAMED IN THE PLEADINGS ONLY PRESENT
20 QUESTIONS OF LAW, THE PANEL MAY ELECT NOT TO REFER THE ACTION TO
21 THE SPECIAL MASTER.

22 (4) AFTER RECEIVING A REPORT FROM THE SPECIAL MASTER UNDER
23 SUBSECTION (2) OR IF THE PANEL ELECTS NOT TO REFER THE ACTION TO
24 THE SPECIAL MASTER, THE PANEL TO WHICH AN ACTION IS ASSIGNED UNDER
25 SUBSECTION (1) SHALL ESTABLISH AND NOTIFY THE PARTIES OF A SCHEDULE
26 FOR FILING BRIEFS IN RESPONSE TO THE SPECIAL MASTER'S REPORT OR
27 BASED ON THE ISSUES FRAMED IN THE PLEADINGS, AS APPLICABLE, AND FOR

1 ORAL ARGUMENT.

2 SEC. 308D. (1) THE POSITION OF SPECIAL MASTER FOR ASSISTING
3 THE COURT OF APPEALS IN CARRYING OUT ITS RESPONSIBILITIES UNDER
4 SECTION 32 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 OR UNDER
5 SECTION 308A(2) IS CREATED IN THE COURT OF APPEALS.

6 (2) THE SPECIAL MASTER SHALL, UPON ASSIGNMENT BY A PANEL OF
7 THE COURT OF APPEALS UNDER SECTION 308C, TAKE EVIDENCE AND RECEIVE
8 ARGUMENTS ON ISSUES OF LAW AND ISSUE A WRITTEN REPORT TO THE COURT
9 RECOMMENDING THE DISPOSITION OF THE CASE. THE SUPREME COURT SHALL
10 ESTABLISH THE RULES FOR PROCEEDINGS BEFORE THE SPECIAL MASTER.

11 (3) THE SUPREME COURT SHALL APPOINT AN INDIVIDUAL TO SERVE AS
12 THE SPECIAL MASTER. THE SPECIAL MASTER SHALL CONTINUE IN OFFICE AT
13 THE PLEASURE OF THE SUPREME COURT.

14 (4) THE SUPREME COURT SHALL ESTABLISH THE QUALIFICATIONS
15 REQUIRED TO SERVE AS SPECIAL MASTER. THE QUALIFICATIONS MUST
16 INCLUDE, AT A MINIMUM, THAT THE INDIVIDUAL BE AN ATTORNEY WHO HAS
17 EXPERIENCE IN THE OPERATIONS OF LOCAL UNITS OF GOVERNMENT THAT
18 WOULD ENABLE THE INDIVIDUAL TO ASSIST THE COURT OF APPEALS IN
19 EXPEDITIOUSLY AND MEANINGFULLY PROCESSING CLAIMS IN ACTIONS UNDER
20 SECTION 308A.

21 SEC. 308E. (1) THE COURT OF APPEALS SHALL PROCESS AN ACTION
22 UNDER SECTION 308A TO A DECISION AS RAPIDLY AS POSSIBLE, CONSISTENT
23 WITH ACHIEVING JUSTICE AND ASSURING THE ENFORCEMENT OF THE INTENT
24 OF THE ELECTORS OF THIS STATE AS EXPRESSED IN THE SECTION OF THE
25 STATE CONSTITUTION OF 1963 THAT IS THE SUBJECT OF THE ACTION. THE
26 COURT OF APPEALS SHALL GIVE THE ACTION PRIORITY OVER OTHER CASES
27 PENDING BEFORE THE COURT, EXCEPT CASES THAT HAVE A HIGHER PRIORITY

1 UNDER RULES ADOPTED BY THE SUPREME COURT.

2 (2) BOTH OF THE FOLLOWING APPLY IN AN ACTION UNDER SECTION
3 308A:

4 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), THIS STATE OR THE
5 RESPONSIBLE DEPARTMENT OR AGENCY OF THIS STATE HAS THE BURDEN OF
6 PROVING COMPLIANCE WITH SECTIONS 25 TO 31 OF ARTICLE IX OF THE
7 STATE CONSTITUTION OF 1963. THERE IS NO PRESUMPTION OF COMPLIANCE.
8 COMPLIANCE MUST BE ESTABLISHED THROUGH EVIDENCE INTRODUCED BY THIS
9 STATE OR THE RESPONSIBLE DEPARTMENT OR AGENCY.

10 (B) IF THE PLAINTIFF IS A LOCAL UNIT OF GOVERNMENT THAT HAS
11 TWICE BROUGHT AND LOST ACTIONS UNDER SECTION 308A, THERE IS A
12 PRESUMPTION THAT THIS STATE OR THE RESPONSIBLE DEPARTMENT OR AGENCY
13 HAS COMPLIED WITH SECTIONS 25 TO 31 OF ARTICLE IX OF THE STATE
14 CONSTITUTION OF 1963. THE LOCAL UNIT OF GOVERNMENT HAS THE BURDEN
15 OF PROVING NONCOMPLIANCE.

16 SEC. 308F. (1) SECTION 5(3) OF THE PAUL HARVEY TRANSPARENCY
17 ACT APPLIES IF THE ACTIVITY OR SERVICE REQUIRED IS THE SUBJECT OF
18 AN ACTION UNDER SECTION 308A AND, WITHIN 6 MONTHS AFTER THE ACTION
19 IS FILED, THE COURT OF APPEALS HAS NOT FINALLY ADJUDICATED BOTH OF
20 THE FOLLOWING QUESTIONS:

21 (A) WHETHER, BASED ON THE CLAIMS ASSERTED IN THE COMPLAINT,
22 THE SUBJECT ACTIVITY OR SERVICE IS REQUIRED BY STATE LAW WITHIN THE
23 MEANING OF SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF
24 1963.

25 (B) IF THE ADJUDICATION UNDER SUBDIVISION (A) IS THAT THE
26 ACTIVITY OR SERVICE IS REQUIRED BY STATE LAW, WHETHER THE
27 LEGISLATURE HAS APPROPRIATED AND DISBURSED SUFFICIENT FUNDING

1 NECESSARY TO PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR ANY
2 NECESSARY INCREASED COSTS OF THE REQUIRED ACTIVITIES AND SERVICES,
3 AS REQUIRED BY SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION
4 OF 1963.

5 (2) IF THE COURT OF APPEALS OR, FOLLOWING AN APPEAL, THE
6 SUPREME COURT ADJUDICATES IN AN ACTION UNDER SECTION 308A THAT THIS
7 STATE HAS NOT MET ITS FUNDING OBLIGATION UNDER SECTION 29 OF
8 ARTICLE IX OF THE STATE CONSTITUTION OF 1963, SECTION 5(3) OF THE
9 PAUL HARVEY TRANSPARENCY ACT APPLIES UNTIL THE LEGISLATURE DOES 1
10 OF THE FOLLOWING:

11 (A) APPROPRIATES AND DISBURSES SUFFICIENT FUNDING TO MEET ITS
12 RESPONSIBILITIES TO THE AFFECTED LOCAL UNITS OF GOVERNMENT UNDER
13 SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963.

14 (B) ELIMINATES OR RESCINDS THE SUBJECT REQUIREMENT.

15 (C) CHANGES OR MODIFIES THE SUBJECT REQUIREMENT TO REDUCE THE
16 COST OF PROVIDING THE ACTIVITY OR SERVICE AND APPROPRIATES AND
17 PROVIDES FOR THE DISBURSEMENT OF SUFFICIENT FUNDING NECESSARY TO
18 PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR THE COST OF
19 PROVIDING THE ACTIVITY OR SERVICE UNDER THE CHANGED OR MODIFIED
20 REQUIREMENTS AS REQUIRED BY SECTION 29 OF ARTICLE IX OF THE STATE
21 CONSTITUTION OF 1963.

22 SEC. 308G. (1) IF, FOLLOWING A FINAL ADJUDICATION BY THE COURT
23 OF APPEALS OF THE QUESTIONS DESCRIBED IN SECTION 308F(1) THAT IS
24 ADVERSE TO THE PLAINTIFF, AN APPLICATION FOR LEAVE TO APPEAL TO THE
25 SUPREME COURT IS FILED BY THE PLAINTIFF, THE SUPREME COURT SHALL
26 MAKE A RAPID DECISION ON THE APPLICATION. THE SUPREME COURT SHALL
27 GIVE THE APPLICATION PRIORITY OVER NONEMERGENCY MATTERS PENDING

1 BEFORE THE COURT. IF THE APPLICATION IS GRANTED, THE COURT'S REVIEW
2 OF THE MERITS OF THE APPEAL SHALL BE GIVEN PRIORITY OVER OTHER
3 NONEMERGENCY MATTERS PENDING BEFORE THE COURT.

4 (2) WHILE AN APPLICATION OR APPEAL UNDER THIS SECTION IS
5 PENDING BEFORE THE SUPREME COURT, THE COURT SHALL STAY THE
6 OBLIGATION OF LOCAL UNITS TO COMPLY WITH THE SUBJECT REQUIRED
7 ACTIVITY OR SERVICE PENDING FINAL ADJUDICATION BY THE COURT.
8 HOWEVER, IF THE SUPREME COURT DETERMINES THAT THE PLAINTIFF IS NOT
9 LIKELY TO PREVAIL ON THE MERITS, A STAY UNDER THIS SUBSECTION IS
10 NOT MANDATORY, BUT MAY BE ISSUED IN THE DISCRETION OF THE COURT.

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.

13 Enacting section 2. This amendatory act does not take effect
14 unless Senate Bill No. 388

15 of the 98th Legislature is enacted into law.