

# HOUSE BILL No. 5836

February 17, 2010, Introduced by Reps. Denby, Tyler, Kowall, Haines, Opsommer, Green, Bolger, Agema, Lori, Calley, Paul Scott, Proos, Daley, Pavlov, Crawford, Moore, Meltzer, Moss, Walsh, Lund and Rogers and referred to the Committee on Judiciary.

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 of the  
 2 state constitution of 1963 ~~may~~ **SHALL** be commenced **ONLY** in the court  
 3 of appeals. ~~, or in the circuit court in the county in which venue~~  
 4 ~~is proper, at the option of the party commencing the action.~~

5           (2) The jurisdiction of the court of appeals **UNDER THIS**  
 6 **SECTION** shall be invoked by **A TAXPAYER** filing an action ~~by a~~  
 7 ~~taxpayer~~ as plaintiff according to the court rules governing  
 8 procedure in the court of appeals.

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

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

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

20           (4) ~~(6) A plaintiff who~~ **IF THE TAXPAYER** prevails in an action  
21 commenced under this section, ~~shall receive from the defendant~~  
22 **SHALL PAY THE TAXPAYER** the costs incurred by the ~~plaintiff~~ **TAXPAYER**  
23 in maintaining the action.

24           **SEC. 308B. (1) THE APPLICABLE UNIT OF GOVERNMENT SHALL BE**  
25 **NAMED AS DEFENDANT IN AN ACTION UNDER SECTION 308A. AN OFFICER OF**  
26 **ANY UNIT OF GOVERNMENT SHALL BE SUED IN HIS OR HER OFFICIAL**  
27 **CAPACITY ONLY AND SHALL BE DESCRIBED AS A PARTY BY HIS OR HER**

1 OFFICIAL TITLE AND NOT BY NAME. IF AN OFFICER DIES, RESIGNS, OR  
2 OTHERWISE CEASES TO HOLD OFFICE DURING THE PENDENCY OF THE ACTION,  
3 THE ACTION SHALL CONTINUE AGAINST THE UNIT OF GOVERNMENT AND THE  
4 OFFICER'S SUCCESSOR IN OFFICE.

5 (2) THE COURT SHALL NOT REQUIRE THE TAXPAYER IN AN ACTION  
6 UNDER SECTION 308A TO STATE ALLEGATIONS IN THE COMPLAINT WITH ANY  
7 GREATER SPECIFICITY OR PARTICULARITY THAN IS REQUIRED OF A  
8 PLAINTIFF GENERALLY IN A CIVIL ACTION OR TO ATTACH TO THE COMPLAINT  
9 ANY DOCUMENT OR THING THAT WOULD NOT BE REQUIRED GENERALLY TO BE  
10 ATTACHED TO A COMPLAINT IN A CIVIL ACTION.

11 (3) THE TAXPAYER IN AN ACTION UNDER SECTION 308A SHALL FILE  
12 ALL OF THE FOLLOWING WITH THE CLERK OF THE COURT OF APPEALS:

13 (A) FIVE COPIES OF THE COMPLAINT, 1 OF WHICH SHALL BE SIGNED.  
14 THE COMPLAINT SHALL INCLUDE A STATEMENT AS TO WHETHER THE TAXPAYER  
15 BELIEVES THAT THE ACTION RAISES FACTUAL QUESTIONS THAT WILL REQUIRE  
16 RESOLUTION BY THE COURT.

17 (B) PROOF THAT A COPY OF THE COMPLAINT AND ANY OTHER DOCUMENTS  
18 FILED WITH THE COURT WERE SERVED ON EVERY NAMED DEFENDANT AND THE  
19 OFFICE OF THE ATTORNEY GENERAL.

20 (C) THE ENTRY FEE.

21 (4) A DEFENDANT NAMED IN AN ACTION UNDER SECTION 308A SHALL  
22 FILE ALL OF THE FOLLOWING WITH THE CLERK OF THE COURT OF APPEALS  
23 WITHIN 21 DAYS AFTER THE COMPLAINT IS SERVED ON THE DEFENDANT:

24 (A) FIVE COPIES OF AN ANSWER TO THE COMPLAINT, 1 OF WHICH IS  
25 SIGNED. THE ANSWER SHALL INCLUDE A STATEMENT AS TO WHETHER THE  
26 DEFENDANT BELIEVES THAT THE ACTION RAISES FACTUAL QUESTIONS THAT  
27 WILL REQUIRE RESOLUTION BY THE COURT.

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

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

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

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

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

24 SEC. 308D. (1) THE POSITION OF SPECIAL MASTER FOR ASSISTING  
25 THE COURT OF APPEALS IN CARRYING OUT ITS RESPONSIBILITIES UNDER  
26 SECTION 32 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 IS  
27 CREATED IN THE COURT OF APPEALS.

1           (2) THE SPECIAL MASTER SHALL, UPON ASSIGNMENT BY A PANEL OF  
2 THE COURT OF APPEALS UNDER SECTION 308C, TAKE EVIDENCE AND RECEIVE  
3 ARGUMENTS ON ISSUES OF LAW AND ISSUE A WRITTEN REPORT TO THE COURT  
4 RECOMMENDING THE DISPOSITION OF THE CASE. THE RULES FOR PROCEEDINGS  
5 BEFORE THE SPECIAL MASTER SHALL BE AS ESTABLISHED BY THE SUPREME  
6 COURT.

7           (3) THE SUPREME COURT SHALL APPOINT AN INDIVIDUAL TO SERVE AS  
8 THE SPECIAL MASTER. THE SPECIAL MASTER SHALL CONTINUE IN OFFICE AT  
9 THE PLEASURE OF THE SUPREME COURT.

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

17           SEC. 308E. (1) THE COURT OF APPEALS SHALL PROCESS AN ACTION  
18 UNDER SECTION 308A TO A DECISION AS RAPIDLY AS POSSIBLE, CONSISTENT  
19 WITH ACHIEVING JUSTICE AND ASSURING THE ENFORCEMENT OF THE INTENT  
20 OF THE ELECTORS OF THIS STATE AS EXPRESSED IN THE SECTION OF THE  
21 STATE CONSTITUTION OF 1963 THAT IS THE SUBJECT OF THE ACTION. THE  
22 COURT OF APPEALS SHALL GIVE THE ACTION PRIORITY OVER OTHER  
23 NONEMERGENCY MATTERS PENDING BEFORE THE COURT.

24           (2) IN AN ACTION UNDER SECTION 308A, THIS STATE OR THE  
25 RESPONSIBLE DEPARTMENT OR AGENCY OF THIS STATE HAS THE BURDEN OF  
26 PROVING COMPLIANCE WITH SECTIONS 25 TO 31 OF ARTICLE IX OF THE  
27 STATE CONSTITUTION OF 1963. COMPLIANCE SHALL NOT BE PRESUMED BUT

1 SHALL BE ESTABLISHED THROUGH EVIDENCE INTRODUCED BY THIS STATE OR  
2 THE RESPONSIBLE DEPARTMENT OR AGENCY.

3 SEC. 308F. (1) SECTION 9 OF THE 2010 ACT TO IMPLEMENT SECTION  
4 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 APPLIES IF THE  
5 ACTIVITY OR SERVICE REQUIRED IS THE SUBJECT OF AN ACTION UNDER  
6 SECTION 308A AND, WITHIN 6 MONTHS AFTER THE ACTION IS FILED, THE  
7 COURT OF APPEALS HAS NOT FINALLY ADJUDICATED BOTH OF THE FOLLOWING  
8 QUESTIONS:

9 (A) WHETHER, BASED ON THE CLAIMS ASSERTED IN THE COMPLAINT,  
10 THE SUBJECT ACTIVITY OR SERVICE IS REQUIRED BY STATE LAW WITHIN THE  
11 MEANING OF SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF  
12 1963.

13 (B) IF THE ADJUDICATION UNDER SUBDIVISION (A) IS THAT THE  
14 ACTIVITY OR SERVICE IS REQUIRED BY STATE LAW, WHETHER THE  
15 LEGISLATURE HAS APPROPRIATED AND DISBURSED SUFFICIENT FUNDING  
16 NECESSARY TO PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR ANY  
17 NECESSARY INCREASED COSTS OF THE REQUIRED ACTIVITIES AND SERVICES,  
18 AS REQUIRED BY SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION  
19 OF 1963.

20 (2) IF THE COURT OF APPEALS OR, FOLLOWING AN APPEAL, THE  
21 SUPREME COURT ADJUDICATES IN AN ACTION UNDER SECTION 308A THAT THIS  
22 STATE HAS NOT MET ITS FUNDING OBLIGATION UNDER SECTION 29 OF  
23 ARTICLE IX OF THE STATE CONSTITUTION OF 1963, SECTION 9 OF THE 2010  
24 ACT TO IMPLEMENT SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION  
25 OF 1963 APPLIES UNTIL THE LEGISLATURE DOES 1 OF THE FOLLOWING:

26 (A) APPROPRIATES AND DISBURSES SUFFICIENT FUNDING TO MEET ITS  
27 RESPONSIBILITIES TO THE AFFECTED LOCAL UNITS OF GOVERNMENT UNDER

1 SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963.

2 (B) ELIMINATES OR RESCINDS THE SUBJECT REQUIREMENT.

3 (C) CHANGES OR MODIFIES THE SUBJECT REQUIREMENT TO REDUCE THE  
4 COST OF PROVIDING THE ACTIVITY OR SERVICE AND APPROPRIATES AND  
5 PROVIDES FOR THE DISBURSEMENT OF SUFFICIENT FUNDING NECESSARY TO  
6 PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR THE COST OF  
7 PROVIDING THE ACTIVITY OR SERVICE UNDER THE CHANGED OR MODIFIED  
8 REQUIREMENTS AS REQUIRED BY SECTION 29 OF ARTICLE IX OF THE STATE  
9 CONSTITUTION OF 1963.

10 SEC. 308G. (1) IF, FOLLOWING A FINAL ADJUDICATION BY THE COURT  
11 OF APPEALS OF THE QUESTIONS DESCRIBED IN SECTION 308F(1) (A) AND (B)  
12 THAT IS ADVERSE TO THE TAXPAYER, AN APPLICATION FOR LEAVE TO APPEAL  
13 TO THE SUPREME COURT IS FILED BY THE TAXPAYER, THE SUPREME COURT  
14 SHALL MAKE A RAPID DECISION ON THE APPLICATION. THE SUPREME COURT  
15 SHALL GIVE THE APPLICATION PRIORITY OVER NONEMERGENCY MATTERS  
16 PENDING BEFORE THE COURT. IF THE APPLICATION IS GRANTED, THE  
17 COURT'S REVIEW OF THE MERITS OF THE APPEAL SHALL BE GIVEN PRIORITY  
18 OVER OTHER NONEMERGENCY MATTERS PENDING BEFORE THE COURT.

19 (2) WHILE AN APPLICATION OR APPEAL UNDER THIS SECTION IS  
20 PENDING BEFORE THE SUPREME COURT, THE COURT MAY STAY THE OBLIGATION  
21 OF LOCAL UNITS TO COMPLY WITH THE SUBJECT REQUIRED ACTIVITY OR  
22 SERVICE PENDING FINAL ADJUDICATION BY THE COURT.

23 Enacting section 1. This amendatory act does not take effect  
24 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5797 (request no.  
25 05801'10) of the 95th Legislature is enacted into law.