

SENATE BILL No. 1143

February 23, 2010, Introduced by Senator GLEASON and referred to the Committee on Local, Urban and State Affairs.

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, and 308e.

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~~ **SHALL** be commenced **ONLY** in the
 3 court of appeals. ~~, or in the circuit court in the county in which~~
 4 ~~venue 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.

9 (3) ~~A taxpayer shall not bring or maintain an~~ **AN** action under

1 this section ~~unless the action is~~ **SEEKING MONEY DAMAGES FOR THIS**
2 **STATE'S FAILURE TO ADEQUATELY FUND A STATE-REQUIRED ACTIVITY OR**
3 **SERVICE SHALL BE** commenced within 1 year after the cause of action
4 ~~accrued~~ **ACCRUES. AN ACTION UNDER THIS SECTION SEEKING A DECLARATORY**
5 **JUDGMENT MAY BE COMMENCED AT ANY TIME THAT SECTIONS 25 TO 31 OF**
6 **ARTICLE IX OF THE STATE CONSTITUTION OF 1963 ARE BEING VIOLATED AS**
7 **ALLEGED IN THE COMPLAINT.**

8 (4) The **APPLICABLE** unit of government shall be named as
9 defendant. An officer of any ~~governmental unit~~ **OF GOVERNMENT** shall
10 be sued in his or her official capacity only and shall be described
11 as a party by his or her official title and not by name. If an
12 officer dies, resigns, or otherwise ceases to hold office during
13 the pendency of the action, the action shall continue against the
14 ~~governmental unit~~ **OF GOVERNMENT** and the officer's successor in
15 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 (5) ~~(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 COURT OF APPEALS MAY REFER AN ACTION UNDER**
25 **SECTION 308A TO THE SPECIAL MASTER CREATED UNDER SUBSECTION (2) TO**
26 **CONDUCT PRETRIAL PROCEEDINGS AND A TRIAL TO RECEIVE EVIDENCE AND**
27 **ARGUMENTS OF LAW AND TO ISSUE A WRITTEN REPORT FOR THE COURT THAT**

1 CONTAINS FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE RULES FOR
2 PROCEEDINGS BEFORE THE SPECIAL MASTER SHALL BE AS ESTABLISHED BY
3 THE SUPREME COURT.

4 (2) THE POSITION OF SPECIAL MASTER FOR ASSISTING THE COURT OF
5 APPEALS IN CARRYING OUT ITS RESPONSIBILITIES UNDER SECTION 32 OF
6 ARTICLE IX OF THE STATE CONSTITUTION OF 1963 IS CREATED IN THE
7 COURT OF APPEALS.

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

11 (4) THE SUPREME COURT SHALL ESTABLISH THE QUALIFICATIONS
12 REQUIRED TO SERVE AS SPECIAL MASTER.

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

20 (2) IN AN ACTION UNDER SECTION 308A, THIS STATE OR THE
21 RESPONSIBLE DEPARTMENT OR AGENCY OF THIS STATE HAS THE BURDEN OF
22 PROVING COMPLIANCE WITH SECTIONS 25 TO 31 OF ARTICLE IX OF THE
23 STATE CONSTITUTION OF 1963. COMPLIANCE SHALL NOT BE PRESUMED BUT
24 SHALL BE ESTABLISHED THROUGH EVIDENCE INTRODUCED BY THIS STATE OR
25 THE RESPONSIBLE DEPARTMENT OR AGENCY.

26 SEC. 308D. (1) SECTION 9 OF THE 2010 ACT TO IMPLEMENT SECTION
27 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 APPLIES IF THE

1 ACTIVITY OR SERVICE REQUIRED IS THE SUBJECT OF AN ACTION UNDER
2 SECTION 308A AND, WITHIN 6 MONTHS AFTER THE ACTION IS FILED, THE
3 COURT OF APPEALS HAS NOT FINALLY ADJUDICATED BOTH OF THE FOLLOWING
4 QUESTIONS:

5 (A) WHETHER, BASED ON THE CLAIMS ASSERTED IN THE COMPLAINT,
6 THE SUBJECT ACTIVITY OR SERVICE IS REQUIRED BY STATE LAW WITHIN THE
7 MEANING OF SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF
8 1963.

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

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

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

25 (B) ELIMINATES OR RESCINDS THE SUBJECT REQUIREMENT.

26 (C) CHANGES OR MODIFIES THE SUBJECT REQUIREMENT TO REDUCE THE
27 COST OF PROVIDING THE ACTIVITY OR SERVICE AND APPROPRIATES AND

1 PROVIDES FOR THE DISBURSEMENT OF SUFFICIENT FUNDING NECESSARY TO
2 PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR THE COST OF
3 PROVIDING THE ACTIVITY OR SERVICE UNDER THE CHANGED OR MODIFIED
4 REQUIREMENTS AS REQUIRED BY SECTION 29 OF ARTICLE IX OF THE STATE
5 CONSTITUTION OF 1963.

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

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

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. 1141

21 of the 95th Legislature is enacted into law.