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BILL ANALYSIS



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Senate Bill 886 (as introduced 4-14-16)
Sponsor: Senator Tom Casperson
Committee: Elections and Government Reform

Date Completed: 4-27-16

CONTENT

The bill would amend the Administrative Procedures Act to exclude Parole Board proceedings from provisions of the Act governing contested cases. The bill also would make several changes regarding contested case procedures.

The bill is tie-barred to Senate Bills 189 and 190, which would amend the Revised Judicature Act and the Administrative Procedures Act (APA), respectively, to delete requirements that a prevailing party in a civil action or a contested case establish that the position of the State or a State agency was frivolous, in order for costs and fees to be awarded to the party.

Senate Bill 886 would take effect 90 days after enactment.

Parole Board Proceedings

Chapter 4 of the APA governs contested case procedures. (The APA defines "contested case" as a proceeding in which a determination of the legal rights, duties, or privileges of a named party is required to be made by an agency after an opportunity for an evidentiary hearing. An "agency" is a State department, bureau, division, section, board, commission, trustee, authority, or officer, created by the Constitution, statute, or agency action.)

Chapter 8 of the APA governs the award of costs and fees to a prevailing party in a contested case.

The APA states that Chapters 4 and 8 do not apply to a hearing conducted by the Department of Corrections under Chapter IIIA of the Corrections Code (which provides for prisoner hearings conducted by a hearings division within the Department).

Under the bill, Chapters 4 and 8 also would not apply to proceedings before the Parole Board established under Chapter III of the Corrections Code (which governs paroles and pardons).

Contested Case Amendments

The APA requires the parties in a contested case to be given an opportunity for a hearing without undue delay, and to be given reasonable notice of the hearing. The bill states that a contested case would be commenced by giving the required notice.

Currently, if a party fails to appear in a contested case after proper service of notice, the agency, if an adjournment is not granted, may proceed with the hearing and make its decision in the absence of the party. Under the bill, notice would be properly served if it were mailed

to the party or the representative of record of the party at the party's or representative's last known address of record.

The APA authorizes a presiding officer to take certain actions, which include signing and issuing subpoenas in the name of the agency. The bill would delete "in the name of the agency".

The APA permits an agency to order a rehearing in a contested case on its own motion or on the request of a party. Under the bill, an agency or presiding officer could order a rehearing or reconsideration on the agency's or officer's own motion or on the request of a party.

The APA requires an agency to order a rehearing, on its own motion or a party's request, if the agency finds for justifiable reasons that the record of testimony made at the hearing is inadequate for purposes of judicial review. The bill would require an agency or a presiding officer to order a rehearing under these circumstances.

MCL 24.271 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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