

HOUSE BILL No. 4378

March 24, 2015, Introduced by Reps. Cole, Johnson, Lucido, Kelly, Glenn, Chatfield and Franz and referred to the Committee on Government Operations.

A bill to amend 1969 PA 306, entitled
"Administrative procedures act of 1969,"
by amending section 123 (MCL 24.323), as added by 1984 PA 196.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 123. (1) The presiding officer ~~that~~ WHO conducts a
2 contested case shall award to a prevailing party, other than an
3 agency, the costs and fees incurred by the party in connection with
4 ~~that~~ THE contested case. ~~, if the presiding officer finds that the~~
5 ~~position of the agency to the proceeding was frivolous. To find~~
6 ~~that an agency's position was frivolous, the presiding officer~~
7 ~~shall determine that at least 1 of the following conditions has~~
8 ~~been met.~~

9 ~~— (a) The agency's primary purpose in initiating the action was~~
10 ~~to harass, embarrass, or injure the prevailing party.~~

1 ~~_____ (b) The agency had no reasonable basis to believe that the~~
 2 ~~facts underlying its legal position were in fact true.~~

3 ~~_____ (c) The agency's legal position was devoid of arguable legal~~
 4 ~~merit.~~

5 (2) If the parties to a contested case do not agree on the
 6 awarding of costs and fees under this section, ~~AND IF A PARTY~~
 7 **REQUESTS A HEARING, THE PRESIDING OFFICER SHALL HOLD** a hearing
 8 ~~shall be held if requested by a party,~~ regarding the awarding of
 9 costs and fees. ~~and the amount thereof.~~ The party seeking an award
 10 of costs and fees ~~shall~~ **MUST** present evidence establishing all of
 11 the following:

12 ~~_____ (a) That the position of the agency was frivolous.~~

13 **(A)** ~~(b)~~ That the party is a prevailing party.

14 **(B)** ~~(c)~~ The amount of costs and fees sought. ~~including~~ **THE**
 15 **PARTY SHALL PRESENT** an itemized statement from any attorney, ~~OR~~
 16 agent, ~~or~~ **WHO REPRESENTED THE PARTY AND ANY** expert witness ~~who~~
 17 ~~represented the party~~ showing the rate at which the costs and fees
 18 were computed.

19 **(C)** ~~(d)~~ That the party is eligible to receive an award under
 20 this section. Financial records of a party ~~shall be~~ **ARE** exempt from
 21 public disclosure if ~~requested by the party~~ **SO REQUESTS** at the time
 22 the records are submitted ~~pursuant to~~ **UNDER** this section.

23 **(D)** ~~(e)~~ That a final order **THAT IS** not subject to further
 24 appeal other than ~~for~~ the judicial review of costs and fees
 25 provided for in section 125 has been entered in the contested case
 26 regarding the subject matter of the contested case.

27 (3) The presiding officer may reduce the amount of the costs

1 and fees to be awarded **UNDER THIS SECTION**, or deny an award, to the
2 extent that the party seeking the award engaged in conduct ~~which~~
3 **THAT** unduly and unreasonably protracted the contested case.

4 (4) The final action taken by the presiding officer under this
5 section in regard to costs and fees ~~shall~~**MUST** include written
6 findings as to ~~that~~**THE** action and the basis for the findings.

7 (5) Subject to subsection (6), the amount of costs and fees
8 awarded under this section ~~shall~~**MUST** include those reasonable and
9 necessary costs actually incurred by the party and any costs
10 allowed by law or by a rule promulgated under this act. Subject to
11 subsection (6), the amount of fees awarded under this section ~~shall~~
12 **MUST** be based upon the prevailing market rate for the kind and
13 quality of the services furnished, ~~subject to the following:~~

14 ~~—— (a) The~~**EXCEPT THAT THE** expenses paid for an expert witness
15 ~~shall~~**MUST** be reasonable and necessary as determined by the
16 presiding officer.

17 ~~—— (b) An attorney or agent fee shall not be awarded at a rate of~~
18 ~~more than \$75.00 per hour unless the presiding officer determines~~
19 ~~that special circumstances existed justifying a higher rate or an~~
20 ~~applicable rule promulgated by the agency provides for the payment~~
21 ~~of a higher rate because of special circumstances.~~

22 (6) The **PRESIDING OFFICER SHALL ONLY AWARD** costs and fees
23 ~~awarded~~ under this section ~~shall only be awarded~~ to the extent and
24 amount that the agency caused the prevailing party to incur those
25 costs and fees.

26 (7) This section does not apply to ~~any~~**AN** agency in its role
27 of hearing or adjudicating a case. Unless an agency has discretion

1 to proceed, this section does not apply to an agency acting ex rel
2 on the information and at the instigation of a nonagency person who
3 has a private interest in the matter ~~nor~~**OR** to an agency required
4 by law to commence a case upon the action or request of another
5 nonagency person.

6 (8) This section does not apply to an agency that has such a
7 minor role as a party in the case in comparison to other
8 nonprevailing parties ~~so~~ as to make its liability for costs and
9 fees under this section unreasonable, unjust, or unfair.

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