

# HOUSE BILL No. 5512

January 28, 1998, Introduced by Rep. Profit and referred to the Committee on Tax Policy.

A bill to implement section 32 of article IX of the state constitution of 1963; to prescribe the time limits for the disposition of actions brought by taxpayers of the state to enforce the provisions of sections 25 to 31 of article IX of the state constitution of 1963; to provide for the priority of those actions; to require certain reports regarding compliance with the time limits for disposition of those actions; and to repeal acts and parts of acts.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. (1) A taxpayer of the state who brings an action in  
2 the court of appeals pursuant to section 32 of article IX of the  
3 state constitution of 1963, to enforce the provisions of sections  
4 25 to 31 of article IX of the state constitution of 1963, shall  
5 be afforded a prompt adjudication of that action by the court of  
6 appeals. As used in this subsection, "prompt adjudication" means

1 that, absent delay warranted by a good faith inability of the  
2 parties to the action to secure financial or other factual infor-  
3 mation necessary for the court to render an informed decision,  
4 the issues raised in the action, including the resolution of any  
5 disputed facts, shall be finally adjudicated by the court within  
6 1 year after the action was filed.

7       (2) An application for leave to appeal to the supreme court  
8 from decisions of the court of appeals in actions described in  
9 subsection (1) shall be afforded a prompt decision by the court.  
10 As used in this subsection, "prompt decision" means that a deci-  
11 sion shall be rendered by the supreme court on an application for  
12 leave to appeal within 90 days following the time a party oppos-  
13 ing the application must file an opposing brief or application  
14 for leave to cross-appeal.

15       (3) If an application to appeal is granted in an appeal  
16 described in subsection (2), the supreme court shall render a  
17 decision on that appeal or cross-appeal within 180 days after the  
18 parties have filed their respective briefs on appeal or within 90  
19 days after the oral arguments on that appeal or cross-appeal,  
20 whichever is sooner.

21       Sec. 2. The court of appeals and supreme court shall give  
22 priority to actions brought by taxpayers of the state pursuant to  
23 section 32 of article IX of the state constitution of 1963, or  
24 appeals from decisions involving those actions, in order to meet  
25 the requirements of this act. The supreme court shall promptly  
26 adopt and implement rules that permit adjudications by the court

1 of appeals and the supreme court within the time limits  
2 prescribed by this act.

3       Sec. 3. The clerk of the court of appeals and the clerk of  
4 the supreme court shall report to the legislature on December 31  
5 and June 30 of each year concerning their respective court's com-  
6 pliance with the requirements of this act. The reports shall  
7 identify the individual actions or appeals that are pending and  
8 the filing and decision dates with respect to each action or  
9 appeal.

10       Sec. 4. (1) The attorney general and all administrative  
11 agencies of this state and its political subdivisions, including  
12 units of local government as that term is defined in section 33  
13 of article IX of the state constitution of 1963, shall fully  
14 cooperate and otherwise act expeditiously in locating and produc-  
15 ing financial and other information necessary for the courts to  
16 make decisions in conformance with the time requirements imposed  
17 by this act. If the court of appeals or supreme court is pre-  
18 vented from complying with the time requirements imposed by this  
19 act by virtue of the failure by officers or employees of state or  
20 local government to produce financial and other forms of informa-  
21 tion necessary to permit a decision by the courts on a taxpayer's  
22 action, the courts may impose a default judgment against the  
23 state or against the unit of local government that is the  
24 defendant in the taxpayer's action consistent with the  
25 well-pleaded allegations of the taxpayer's complaint.

26       (2) Any noncompliance by the department of management and  
27 budget, the director of the department of management and budget,

1 the legislature, the governor, or a state department or agency  
2 with obligations or responsibilities imposed by this act to  
3 implement compliance with section 29 of article IX of the state  
4 constitution of 1963 shall result in the presumption in any  
5 action brought by a taxpayer pursuant to section 32 of article IX  
6 of the state constitution of 1963 that the state has breached its  
7 responsibilities under the section and article of the constitu-  
8 tion of 1963 that is the subject of the alleged breach in the  
9 action. This presumption may only be overcome by clear and com-  
10 pelling evidentiary showing to the contrary produced in the  
11 taxpayer's action. The costs for the proceedings undertaken to  
12 make the evidentiary showing shall be awarded to the taxpayer in  
13 double the amount incurred without regard for whether the state  
14 succeeds in making the evidentiary showing.

15       Sec. 5. (1) Upon the filing of an action by a taxpayer  
16 against the state in the court of appeals pursuant to section 32  
17 of article IX of the state constitution of 1963, the attorney  
18 general, within 28 days after receiving a summons and complaint  
19 in that action shall conduct an investigation into the subject of  
20 the action, and shall submit to the legislature a report evaluat-  
21 ing the merits of the taxpayer's claim in the action. The attor-  
22 ney general's evaluation shall be undertaken in the interest of  
23 enforcing the will of the people of the state of Michigan as  
24 expressed in sections 25 to 34 of article IX of the state consti-  
25 tution of 1963, and not from the perspective of simply promoting  
26 the interests of government in continuing its challenged  
27 practices or actions.

1       (2) If the attorney general's evaluation is that the  
2 taxpayer's claim in the action has merit, in part or in whole,  
3 the attorney general shall recommend to the legislature that a  
4 resolution of the claim be devised and implemented, consistent  
5 with enforcing the will of the people as expressed in sections 25  
6 to 34 of article IX of the state constitution of 1963, in settle-  
7 ment of those meritorious claims.

8       (3) If the attorney general's evaluation is that the  
9 taxpayer's claim is without merit, the attorney general shall  
10 defend the interests of the state in the action but shall fully  
11 cooperate in achieving an expeditious conclusion of the action,  
12 consistent with the time constraints prescribed in this act.

13       Enacting section 1. 1979 PA 101, MCL 21.231 to 21.244, is  
14 repealed.