

# HOUSE BILL No. 5505

April 30, 2014, Introduced by Reps. Walsh and Kowall and referred to the Committee on Financial Liability Reform.

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~~ **OR UNDER SUBSECTION (2) SHALL** be  
3 commenced **ONLY** in the court of appeals. ~~, or in the circuit court~~  
4 ~~in the county in which venue is proper, at the option of the party~~  
5 ~~commencing the action.~~

6           (2) A LOCAL UNIT OF GOVERNMENT MAY BRING AN ACTION IN THE  
7 COURT OF APPEALS TO ENFORCE THE PROVISIONS OF SECTIONS 25 TO 31 OF  
8 ARTICLE IX OF THE STATE CONSTITUTION OF 1963.

1           (3) ~~(2)~~ The jurisdiction of the court of appeals shall be  
 2 **UNDER THIS SECTION IS** invoked by **A TAXPAYER OR A LOCAL UNIT OF**  
 3 **GOVERNMENT** filing an action by a taxpayer as plaintiff according to  
 4 the court rules governing procedure in the court of appeals.

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

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

20           ~~(5)~~ The court of appeals may refer an action to the circuit  
 21 court or to the tax tribunal to determine and report its findings  
 22 of fact if substantial fact finding is necessary to decide the  
 23 action.

24           (5) ~~(6)~~ A plaintiff who **IF THE TAXPAYER OR, IF A LOCAL UNIT OF**  
 25 **GOVERNMENT IS THE PLAINTIFF, THE LOCAL UNIT OF GOVERNMENT** prevails  
 26 in an action commenced under this section, shall receive from the  
 27 defendant **SHALL PAY THE TAXPAYER OR LOCAL UNIT OF GOVERNMENT** the

1 costs incurred by the ~~plaintiff~~ TAXPAYER OR LOCAL UNIT OF  
2 GOVERNMENT in maintaining the action.

3 SEC. 308B. (1) THE APPLICABLE UNIT OF GOVERNMENT SHALL BE  
4 NAMED AS DEFENDANT IN AN ACTION UNDER SECTION 308A. AN OFFICER OF  
5 ANY UNIT OF GOVERNMENT SHALL BE SUED IN HIS OR HER OFFICIAL  
6 CAPACITY ONLY AND SHALL BE DESCRIBED AS A PARTY BY HIS OR HER  
7 OFFICIAL TITLE AND NOT BY NAME. IF AN OFFICER DIES, RESIGNS, OR  
8 OTHERWISE CEASES TO HOLD OFFICE DURING THE PENDENCY OF THE ACTION,  
9 THE ACTION SHALL CONTINUE AGAINST THE UNIT OF GOVERNMENT AND THE  
10 OFFICER'S SUCCESSOR IN OFFICE.

11 (2) THE COURT SHALL NOT REQUIRE THE PLAINTIFF IN AN ACTION  
12 UNDER SECTION 308A TO STATE ALLEGATIONS IN THE COMPLAINT WITH ANY  
13 GREATER SPECIFICITY OR PARTICULARITY THAN IS REQUIRED OF A  
14 PLAINTIFF GENERALLY IN A CIVIL ACTION OR TO ATTACH TO THE COMPLAINT  
15 ANY DOCUMENT OR THING THAT WOULD NOT BE REQUIRED GENERALLY TO BE  
16 ATTACHED TO A COMPLAINT IN A CIVIL ACTION.

17 (3) THE PLAINTIFF IN AN ACTION UNDER SECTION 308A SHALL FILE  
18 ALL OF THE FOLLOWING WITH THE CLERK OF THE COURT OF APPEALS:

19 (A) FIVE COPIES OF THE COMPLAINT, 1 OF WHICH SHALL BE SIGNED.  
20 THE COMPLAINT SHALL INCLUDE A STATEMENT AS TO WHETHER THE PLAINTIFF  
21 BELIEVES THAT THE ACTION RAISES FACTUAL QUESTIONS THAT WILL REQUIRE  
22 RESOLUTION BY THE COURT.

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

26 (C) THE FILING FEE.

27 (4) A DEFENDANT NAMED IN AN ACTION UNDER SECTION 308A SHALL

1 FILE ALL OF THE FOLLOWING WITH THE CLERK OF THE COURT OF APPEALS  
2 WITHIN 21 DAYS AFTER THE COMPLAINT IS SERVED ON THE DEFENDANT:

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

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

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

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

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

23 (4) AFTER RECEIVING A REPORT FROM THE SPECIAL MASTER UNDER  
24 SUBSECTION (2) OR IF THE PANEL ELECTS NOT TO REFER THE ACTION TO  
25 THE SPECIAL MASTER, THE PANEL TO WHICH AN ACTION IS ASSIGNED UNDER  
26 SUBSECTION (1) SHALL ESTABLISH AND NOTIFY THE PARTIES OF A SCHEDULE  
27 FOR FILING BRIEFS IN RESPONSE TO THE SPECIAL MASTER'S REPORT OR

1 BASED ON THE ISSUES FRAMED IN THE PLEADINGS, AS APPLICABLE, AND FOR  
2 ORAL ARGUMENT.

3 SEC. 308D. (1) THE POSITION OF SPECIAL MASTER FOR ASSISTING  
4 THE COURT OF APPEALS IN CARRYING OUT ITS RESPONSIBILITIES UNDER  
5 SECTION 32 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 OR UNDER  
6 SECTION 308A(2) IS CREATED IN THE COURT OF APPEALS.

7 (2) THE SPECIAL MASTER SHALL, UPON ASSIGNMENT BY A PANEL OF  
8 THE COURT OF APPEALS UNDER SECTION 308C, TAKE EVIDENCE AND RECEIVE  
9 ARGUMENTS ON ISSUES OF LAW AND ISSUE A WRITTEN REPORT TO THE COURT  
10 RECOMMENDING THE DISPOSITION OF THE CASE. THE SUPREME COURT SHALL  
11 ESTABLISH THE RULES FOR PROCEEDINGS BEFORE THE SPECIAL MASTER.

12 (3) THE SUPREME COURT SHALL APPOINT AN INDIVIDUAL TO SERVE AS  
13 THE SPECIAL MASTER. THE SPECIAL MASTER SHALL CONTINUE IN OFFICE AT  
14 THE PLEASURE OF THE SUPREME COURT.

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

22 SEC. 308E. (1) THE COURT OF APPEALS SHALL PROCESS AN ACTION  
23 UNDER SECTION 308A TO A DECISION AS RAPIDLY AS POSSIBLE, CONSISTENT  
24 WITH ACHIEVING JUSTICE AND ASSURING THE ENFORCEMENT OF THE INTENT  
25 OF THE ELECTORS OF THIS STATE AS EXPRESSED IN THE SECTION OF THE  
26 STATE CONSTITUTION OF 1963 THAT IS THE SUBJECT OF THE ACTION. THE  
27 COURT OF APPEALS SHALL GIVE THE ACTION PRIORITY OVER OTHER

1 NONEMERGENCY MATTERS PENDING BEFORE THE COURT.

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

8 SEC. 308F. (1) SECTION 5(3) OF THE PAUL HARVEY TRANSPARENCY  
9 ACT APPLIES IF THE ACTIVITY OR SERVICE REQUIRED IS THE SUBJECT OF  
10 AN ACTION UNDER SECTION 308A AND, WITHIN 6 MONTHS AFTER THE ACTION  
11 IS FILED, THE COURT OF APPEALS HAS NOT FINALLY ADJUDICATED BOTH OF  
12 THE FOLLOWING QUESTIONS:

13 (A) WHETHER, BASED ON THE CLAIMS ASSERTED IN THE COMPLAINT,  
14 THE SUBJECT ACTIVITY OR SERVICE IS REQUIRED BY STATE LAW WITHIN THE  
15 MEANING OF SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF  
16 1963.

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

24 (2) IF THE COURT OF APPEALS OR, FOLLOWING AN APPEAL, THE  
25 SUPREME COURT ADJUDICATES IN AN ACTION UNDER SECTION 308A THAT THIS  
26 STATE HAS NOT MET ITS FUNDING OBLIGATION UNDER SECTION 29 OF  
27 ARTICLE IX OF THE STATE CONSTITUTION OF 1963, SECTION 5(3) OF THE

1 PAUL HARVEY TRANSPARENCY ACT APPLIES UNTIL THE LEGISLATURE DOES 1  
2 OF THE FOLLOWING:

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

6 (B) ELIMINATES OR RESCINDS THE SUBJECT REQUIREMENT.

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

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

23 (2) WHILE AN APPLICATION OR APPEAL UNDER THIS SECTION IS  
24 PENDING BEFORE THE SUPREME COURT, THE COURT SHALL STAY THE  
25 OBLIGATION OF LOCAL UNITS TO COMPLY WITH THE SUBJECT REQUIRED  
26 ACTIVITY OR SERVICE PENDING FINAL ADJUDICATION BY THE COURT. IF THE  
27 SUPREME COURT DETERMINES THAT THE PLAINTIFF IS NOT LIKELY TO

1 PREVAIL ON THE MERITS, A STAY UNDER THIS SUBSECTION IS NOT  
2 MANDATORY, BUT MAY BE ISSUED IN THE DISCRETION OF THE COURT.

3 Enacting section 1. This amendatory act does not take effect  
4 unless Senate Bill No. \_\_\_\_ or House Bill No. 5503 (request no.  
5 01160'13 \*) of the 97th Legislature is enacted into law.