

SUBSTITUTE FOR
SENATE BILL NO. 886

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 71, 72, 80, 87, 115, and 122 (MCL 24.271, 24.272, 24.280, 24.287, 24.315, and 24.322), section 71 as amended by 1984 PA 28, section 80 as amended by 1984 PA 196, section 115 as amended by 1996 PA 489, and section 122 as amended by 2011 PA 247.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 71. (1) The parties in a contested case ~~shall~~**MUST** be
2 given an opportunity for a hearing without undue delay.

3 (2) The parties ~~shall~~**MUST** be given a reasonable notice of the
4 hearing ~~, which~~**IN A CONTESTED CASE. THE** notice ~~shall~~**MUST** include
5 **ALL OF THE FOLLOWING:**

6 (a) A statement of the date, hour, place, and nature of the

1 hearing. Unless otherwise specified in the notice the hearing ~~shall~~
2 **MUST** be held at the principal office of the agency.

3 (b) A statement of the legal authority and jurisdiction under
4 which the hearing is to be held.

5 (c) A reference to the particular sections of the statutes and
6 rules involved.

7 (d) A short and plain statement of the matters asserted. If
8 the agency or other party is unable to state the matters in detail
9 at the time the notice is given, the initial notice may state the
10 issues involved. Thereafter on application the agency or other
11 party shall furnish a more definite and detailed statement on the
12 issues.

13 (3) **A CONTESTED CASE IS COMMENCED BY GIVING NOTICE TO THE**
14 **PARTIES UNDER SUBSECTION (2).**

15 (4) ~~(3)~~—A member of the legislature ~~shall~~ **IS** not ~~be~~ privileged
16 from service of notice or other process ~~pursuant to~~ **UNDER** this
17 chapter except on a day on which there is a scheduled meeting of
18 the house of which he or she is a member. However, a member of the
19 legislature ~~shall~~ **IS** not ~~be~~ privileged from service of notice or
20 other process ~~pursuant to~~ **UNDER** this chapter on a day on which
21 there is a scheduled meeting of the house of which he or she is a
22 member, if ~~such~~ **THE** service of notice or process is executed by
23 certified mail, return receipt requested.

24 Sec. 72. (1) If a party fails to appear in a contested case
25 after proper service of notice, the agency, if ~~no~~ **AN** adjournment is
26 **NOT** granted, may proceed with the hearing and make its decision in
27 the absence of the party. **NOTICE IS PROPERLY SERVED IF IT IS MAILED**

1 TO THE PARTY OR THE REPRESENTATIVE OF RECORD OF THE PARTY AT THE
2 PARTY OR THE REPRESENTATIVE'S LAST KNOWN ADDRESS OF RECORD.

3 (2) A party who has been served with a notice of hearing may
4 file a written answer before the date set for hearing.

5 (3) The parties ~~shall~~**MUST** be given an opportunity to present
6 oral and written arguments on issues of law and policy and an
7 opportunity to present evidence and argument on issues of fact.

8 (4) A party may cross-examine a witness, including the author
9 of a document prepared by, on behalf of, or for use of the agency
10 and offered in evidence. A party may submit rebuttal evidence.

11 Sec. 80. (1) A presiding officer may do all of the following:

12 (a) Administer oaths and affirmations.

13 (b) Sign and issue subpoenas, ~~in the name of the agency,~~
14 requiring attendance and giving of testimony by witnesses and the
15 production of books, papers, and other documentary evidence.

16 (c) Provide for the taking of testimony by deposition.

17 (d) Regulate the course of the hearings, set the time and
18 place for continued hearings, and fix the time for filing of briefs
19 and other documents.

20 (e) Direct the parties to appear and confer to consider
21 simplification of the issues by consent of the parties.

22 (f) Act ~~upon~~**ON** an application for an award of costs and fees
23 under sections 121 to 127.

24 (2) ~~In order to~~**TO** assure adequate representation for the
25 people of this state, ~~when~~**IF** the presiding officer knows that a
26 party in a contested case is a member of the legislature of this
27 state, and the legislature is in session, the **PRESIDING OFFICER**

1 **SHALL CONTINUE THE** contested case ~~shall be continued by the~~
2 ~~presiding officer~~ to a nonmeeting day.

3 (3) ~~In order to~~ **TO** assure adequate representation for the
4 people of this state, ~~when~~ **IF** the presiding officer knows that a
5 party to a contested case is a member of the legislature of this
6 state who serves on a legislative committee, subcommittee,
7 commission, or council that is scheduled to meet during the
8 legislative session while the legislature is temporarily adjourned,
9 or that is scheduled to meet during the interim between legislative
10 sessions after the legislature has adjourned sine die, or ~~when~~ **IF**
11 the partisan caucus of which the legislator is a member is
12 scheduled to meet, the **PRESIDING OFFICER SHALL CONTINUE THE**
13 contested case ~~shall be continued~~ to a nonmeeting day.

14 (4) ~~In order to~~ **TO** assure adequate representation for the
15 people of this state, ~~when~~ **IF** the presiding officer knows that a
16 witness in a contested case is a member of the legislature of this
17 state, and the legislature is in session, or the member is serving
18 on a legislative committee, subcommittee, commission, or council
19 that is scheduled to meet during the legislative session while the
20 legislature is temporarily adjourned or during the interim between
21 legislative sessions after the legislature has adjourned sine die,
22 or ~~when~~ **IF** the partisan caucus of which the legislator is a member
23 is scheduled to meet, the contested case need not be continued, but
24 the **PRESIDING OFFICER SHALL POSTPONE THE** taking of the legislator's
25 testimony, as a witness, ~~shall be postponed~~ to the earliest
26 practicable nonmeeting day.

27 (5) The presiding officer shall notify all parties to the

1 contested case, and their attorneys, of any continuance granted
2 ~~pursuant to~~ **UNDER** this section.

3 (6) As used in this section, "nonmeeting day" means a day on
4 which there is not a scheduled meeting of the house of which the
5 party or witness is a member, ~~nor~~ a legislative committee meeting
6 or public hearing scheduled by a committee, subcommittee,
7 commission, or council of which ~~he or she~~ **THE PARTY OR WITNESS** is a
8 member, ~~nor~~ **OR** a scheduled partisan caucus of the members of the
9 house of which ~~he or she~~ **THE PARTY OR WITNESS** is a member.

10 Sec. 87. (1) An agency **OR PRESIDING OFFICER** may order a
11 rehearing **OR RECONSIDERATION** in a contested case on ~~its~~ **THE**
12 **AGENCY'S OR OFFICER'S** own motion or on **THE** request of a party.

13 (2) ~~Where~~ **IF THE AGENCY OR PRESIDING OFFICER FINDS** for
14 justifiable reasons **THAT** the record of testimony made at the
15 hearing is ~~found by the agency to be~~ inadequate for purposes of
16 judicial review, the agency **OR PRESIDING OFFICER**, on ~~its~~ **THE**
17 **AGENCY'S OR OFFICER'S** own motion or on **THE** request of a party,
18 shall order a rehearing.

19 (3) A request for a rehearing ~~shall~~ **MUST** be filed within the
20 time fixed by this act for instituting proceedings for judicial
21 review. A rehearing ~~shall~~ **MUST** be noticed and conducted in the same
22 manner as an original hearing. The evidence received at the
23 rehearing ~~shall~~ **MUST** be included in the record for agency
24 reconsideration and for judicial review. A decision or order may be
25 amended or vacated after the rehearing.

26 Sec. 115. (1) Chapters 4 and 6 do not apply to proceedings
27 conducted under the worker's disability compensation act of 1969,

1 ~~Act No. 317 of the Public Acts of 1969, being sections 418.101 to~~
2 ~~418.941 of the Michigan Compiled Laws.1969 PA 317, MCL 418.101 TO~~
3 ~~418.941.~~

4 (2) Chapters 4 and 8 do not apply to a hearing conducted by
5 the department of corrections ~~pursuant to~~ **UNDER** chapter IIIA of ~~Act~~
6 ~~No. 232 of the Public Acts of 1953, being sections 791.251 to~~
7 ~~791.256 of the Michigan Compiled Laws.~~ **THE CORRECTIONS CODE OF 1953,**
8 **1953 PA 232, MCL 791.251 TO 791.256, OR TO PROCEEDINGS BEFORE THE**
9 **PAROLE BOARD ESTABLISHED UNDER SECTION 31A OF CHAPTER III OF THE**
10 **CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.231A.**

11 (3) Chapter 8 does not apply to any of the following:

12 (a) A contested case or other proceeding regarding the
13 granting or renewing of an operator's or chauffeur's license by the
14 secretary of state.

15 (b) Proceedings conducted by the Michigan employment relations
16 commission.

17 (c) Worker's disability compensation proceedings under ~~Act No.~~
18 ~~317 of the Public Acts of 1969.~~ **THE WORKER'S DISABILITY COMPENSATION**
19 **ACT OF 1969, 1969 PA 317, MCL 418.101 TO 418.941.**

20 (d) Unemployment compensation hearings under the Michigan
21 employment security act, ~~Act No. 1 of the Public Acts of the Extra~~
22 ~~Session of 1936, being sections 421.1 to 421.75 of the Michigan~~
23 ~~Compiled Laws.1936 (EX SESS) PA 1, MCL 421.1 TO 421.75.~~

24 (e) ~~Family independence agency public~~ **PUBLIC** assistance
25 hearings under section 9 of the social welfare act, ~~Act No. 280 of~~
26 ~~the Public Acts of 1939, being section 400.9 of the Michigan~~
27 ~~Compiled Laws.1939 PA 280, MCL 400.9.~~

1 (4) Chapter 6 does not apply to final decisions or orders
2 rendered under article 15 of the public health code, ~~Act No. 368 of~~
3 ~~the Public Acts of 1978, being sections 333.16101 to 333.18838 of~~
4 ~~the Michigan Compiled Laws. 1978 PA 368, MCL 333.16101 TO 333.18838.~~

5 (5) ~~Chapters~~ **AFTER AUGUST 14, 1996, CHAPTERS 2, 3, and 5** do
6 not apply to the municipal employees retirement system and
7 retirement board created by the municipal employees retirement act
8 of 1984, ~~Act No. 427 of the Public Acts of 1984, being sections~~
9 ~~38.1501 to 38.1555 of the Michigan Compiled Laws, on and after~~
10 ~~August 15, 1996.~~ **1984 PA 427, MCL 38.1501 TO 1555.**

11 (6) ~~Until the expiration of 12 months after the effective date~~
12 ~~of the amendatory act that added this subsection,~~ **APRIL 1, 1998,**
13 chapters 2, 3, and 5 do not apply to the establishment,
14 implementation, administration, operation, investment, or
15 distribution of a Tier 2 retirement plan established pursuant to
16 **UNDER** section 401(k) of the internal revenue code **OF 1986, 26 USC**
17 **401,** under the state employees' retirement act, ~~Act No. 240 of the~~
18 ~~Public Acts of 1943, being sections 38.1 to 38.69 of the Michigan~~
19 ~~Compiled Laws. Upon the expiration of 12 months after the effective~~
20 ~~date of the amendatory act that added this subsection,~~ **1943 PA 240,**
21 **MCL 38.1 TO 38.69. AFTER MARCH 31, 1998,** rules and guidelines
22 promulgated or processed ~~under~~ **FOR THE PURPOSES DESCRIBED IN** this
23 subsection are not effective and binding unless promulgated and
24 processed in accordance with this act.

25 (7) ~~Until the expiration of 12 months after the effective date~~
26 ~~of the amendatory act that added this subsection,~~ **APRIL 1, 1998,**
27 chapters 2, 3, and 5 do not apply to the establishment,

1 implementation, administration, operation, investment, or
 2 distribution of a Tier 2 retirement plan established pursuant to
 3 **UNDER** section 403(b) of the internal revenue code **OF 1986, 26 USC**
 4 **403**, under the public school employees retirement act of 1979, ~~Act~~
 5 ~~No. 300 of the Public Acts of 1980, being sections 38.1301 to~~
 6 ~~38.1437 of the Michigan Compiled Laws. Upon the expiration of 12~~
 7 ~~months after the effective date of the amendatory act that added~~
 8 ~~this subsection, 1980 PA 300, MCL 38.1301 TO 38.1437. AFTER MARCH~~
 9 ~~31, 1998, rules and guidelines promulgated or processed under~~ **FOR**
 10 **THE PURPOSES DESCRIBED IN** this subsection are not effective and
 11 binding unless promulgated and processed in accordance with this
 12 act.

13 (8) ~~Until the expiration of 12 months after the effective date~~
 14 ~~of the amendatory act that added this subsection, APRIL 1, 1998,~~
 15 chapters 2, 3, and 5 do not apply to the establishment,
 16 implementation, administration, operation, investment, or
 17 distribution of a Tier 2 retirement plan established pursuant to
 18 **UNDER** the internal revenue code **OF 1986, 26 USC 1 TO 9834**, under
 19 the Michigan legislative retirement system act, ~~Act No. 261 of the~~
 20 ~~Public Acts of 1957, being sections 38.1001 to 38.1080 of the~~
 21 ~~Michigan Compiled Laws. Upon the expiration of 12 months after the~~
 22 ~~effective date of the amendatory act that added this~~
 23 ~~subsection, 1957 PA 261, MCL 38.1001 TO 38.1080. AFTER MARCH 31,~~
 24 ~~1998, rules and guidelines promulgated or processed under~~ **FOR THE**
 25 **PURPOSES DESCRIBED IN** this subsection are not effective and binding
 26 unless promulgated and processed in accordance with this act.

27 Sec. 122. (1) "Contested case" means a contested case as

1 defined in section 3, but does not include a case that is settled
2 or in which a consent agreement is entered into or a proceeding for
3 establishing a rate or approving, disapproving, or withdrawing
4 approval of a form.

5 (2) "Costs and fees" means the normal costs incurred, after a
6 party has received notice of an initial hearing under section 71,
7 in being a party in a contested case under this act, and include
8 all of the following:

9 (a) The reasonable and necessary expenses of expert witnesses
10 as determined by the presiding officer.

11 (b) The reasonable cost of any study, analysis, engineering
12 report, test, or project that is determined by the presiding
13 officer to have been necessary for the preparation of ~~a~~ **THE** party's
14 case.

15 (c) ~~Reasonable~~ **A REASONABLE** and necessary attorney or agent
16 fees ~~FEE~~, including those ~~A FEE~~ for purposes of ~~ANY~~ appeal.

17 (3) "Party" means a party as defined in section 5. ~~, but does~~
18 ~~not include any of the following:~~

19 ~~—— (a) An individual whose net worth was more than \$500,000.00 at~~
20 ~~the time the contested case was initiated.~~

21 ~~—— (b) The sole owner of an unincorporated business or any~~
22 ~~partnership, corporation, association, or organization whose net~~
23 ~~worth exceeded \$3,000,000.00 at the time the contested case was~~
24 ~~initiated and that is not either exempt from taxation pursuant to~~
25 ~~section 501(c)(3) of the internal revenue code, 26 USC 501, or a~~
26 ~~cooperative association as defined in section 15(a) of the~~
27 ~~agricultural marketing act, 12 USC 1141j(a).~~

1 ~~—— (c) The sole owner of an unincorporated business or any~~
2 ~~partnership, corporation, association, or organization that had~~
3 ~~more than 250 full time equivalent employees, as determined by the~~
4 ~~total number of employees multiplied by their working hours divided~~
5 ~~by 40, at the time the contested case was initiated.~~

6 ~~—— (d) As used in this subsection "net worth" means the amount~~
7 ~~remaining after the deduction of liabilities from assets as~~
8 ~~determined according to generally accepted accounting principles.~~

9 (4) "Presiding officer" means an agency, 1 or more members of
10 the agency, ~~a person~~ **AN INDIVIDUAL** designated by statute to conduct
11 a contested case, or a hearing officer designated and authorized by
12 the agency to conduct a contested case.

13 (5) "Prevailing party" means either of the following, as
14 applicable:

15 (a) In an action involving several remedies, or issues or
16 counts that state different causes of ~~actions~~ **ACTION** or defenses,
17 the party prevailing as to each remedy, issue, or count.

18 (b) In an action involving only 1 issue or count stating only
19 1 cause of action or defense, the party prevailing on the entire
20 record.

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

23 Enacting section 2. This amendatory act does not take effect
24 unless all of the following bills of the 98th Legislature are
25 enacted into law:

26 (a) Senate Bill No. 189.

27 (b) Senate Bill No. 190.