

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)

Act 306 of 1969

CHAPTER 8

24.321 Meanings of words and phrases.

Sec. 121. For the purposes of this chapter, the words and phrases described in section 122 have the meanings ascribed to them in that section.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.322 Definitions.

Sec. 122. (1) "Contested case" means a contested case as defined in section 3 but does not include a case that is settled or in which a consent agreement is entered into or a proceeding for establishing a rate or approving, disapproving, or withdrawing approval of a form.

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

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

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

(c) Reasonable and necessary attorney or agent fees including those for purposes of appeal.

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

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

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

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

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

(4) "Presiding officer" means an agency, 1 or more members of the agency, a person designated by statute to conduct a contested case, or a hearing officer designated and authorized by the agency to conduct a contested case.

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

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

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

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984;—Am. 2011, Act 247, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.323 Awarding costs and fees; finding; hearing; evidence; reduction or denial of award; final action; amount of costs and fees; applicability of section.

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

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

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

(c) The agency's legal position was devoid of arguable legal merit.

(2) If the parties to a contested case do not agree on the awarding of costs and fees under this section, a hearing shall be held if requested by a party, regarding the awarding of costs and fees and the amount thereof.

The party seeking an award of costs and fees shall present evidence establishing all of the following:

- (a) That the position of the agency was frivolous.
- (b) That the party is a prevailing party.
- (c) The amount of costs and fees sought including an itemized statement from any attorney, agent, or expert witness who represented the party showing the rate at which the costs and fees were computed.
- (d) That the party is eligible to receive an award under this section. Financial records of a party shall be exempt from public disclosure if requested by the party at the time the records are submitted pursuant to this section.

(e) That a final order not subject to further appeal other than for the judicial review of costs and fees provided for in section 125 has been entered in the contested case regarding the subject matter of the contested case.

(3) The presiding officer may reduce the amount of the costs and fees to be awarded, or deny an award, to the extent that the party seeking the award engaged in conduct which unduly and unreasonably protracted the contested case.

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

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

(a) The expenses paid for an expert witness shall be reasonable and necessary as determined by the presiding officer.

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

(6) The costs and fees awarded under this section shall only be awarded to the extent and amount that the agency caused the prevailing party to incur those costs and fees.

(7) This section does not apply to any agency in its role of hearing or adjudicating a case. Unless an agency has discretion to proceed, this section does not apply to an agency acting ex rel on the information and at the instigation of a nonagency person who has a private interest in the matter nor to an agency required by law to commence a case upon the action or request of another nonagency person.

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

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.324 Delaying entry of final order prohibited.

Sec. 124. An application for costs and fees and the awarding thereof under this chapter shall not delay the entry of a final order in a contested case.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.325 Judicial review; modification of final action; making award pursuant to MCL 600.2421d.

Sec. 125. (1) A party that is dissatisfied with the final action taken by the presiding officer under section 123 in regard to costs and fees may seek judicial review of that action pursuant to chapter 6.

(2) The court reviewing the final action of a presiding officer pursuant to subsection (1) may modify that action only if the court finds that the failure to make an award or the making of an award was an abuse of discretion, or that the calculation of the amount of the award was not based on substantial evidence.

(3) An award of costs and fees made by a court under this section shall only be made pursuant to section 2421d of Act No. 236 of the Public Acts of 1961, being section 600.2421d of the Michigan Compiled Laws.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.326 Annual report; payment of costs and fees.

Sec. 126. (1) The director of the department of management and budget shall report annually to the legislature regarding the amount of costs and fees paid by the state under this chapter during the preceding fiscal year. The report shall describe the number, nature, and amount of the awards; the claims involved; and any other relevant information which would aid the legislature in evaluating the scope and impact of the awards. Each agency shall provide the director of the department of management and budget with information as is necessary for the director to comply with the requirements of this section.

(2) If costs and fees are awarded under this chapter to a prevailing party, the agency or agencies over which the party prevailed shall pay those costs and fees.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.327 Recovery of same costs under other law prohibited.

Sec. 127. If a prevailing party recovers costs and fees under this chapter in a contested case, the prevailing party is not entitled to recover those same costs for that contested case under any other law.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.328 Applicability of MCL 24.321 to 24.327 to contested cases.

Sec. 128. Sections 121 to 127 shall apply to contested cases commenced after September 30, 1984.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989.

Popular name: Act 306

Popular name: APA