

# HOUSE BILL No. 5292

October 11, 2007, Introduced by Reps. Stakoe, Knollenberg, Stahl, Pearce, Spade, Nitz, Booher, Steil, Nofs, Meekhof, Gaffney, David Law and Polidori and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9947) by adding section 2977.

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

1           SEC. 2977. (1) IN A CIVIL ACTION PENDING IN CIRCUIT COURT IN  
2 WHICH THE COMPLAINT OR COUNTERCLAIM ASSERTS A CLAIM ARISING UNDER  
3 THE MICHIGAN ZONING ENABLING ACT, 2006 PA 110, MCL 125.3101 TO  
4 125.3702, THE COURT MAY DESIGNATE A REFEREE TO CONDUCT A HEARING AS  
5 PROVIDED IN THIS SECTION IN ORDER TO ESTABLISH THE EVIDENTIARY  
6 BASIS FOR THE COURT'S SUBSEQUENT DECISION IN THE CASE. THE COURT  
7 SHALL NOT DESIGNATE A REFEREE UNDER THIS SECTION UNLESS IT  
8 DETERMINES THAT IT WOULD BE IN THE INTEREST OF THE PARTIES.

9           (2) THE ORDER DESIGNATING THE REFEREE SHALL SPECIFY WHETHER  
10 THE REFEREE IS TO MAKE PROPOSED FINDINGS AND RECOMMENDATIONS TO THE  
11 COURT AS PART OF THE RECORD IN THE CASE.

1           (3) IF A CASE IS ORDERED FOR A HEARING BY A REFEREE UNDER THIS  
2 SECTION, ANY PARTY MAY PETITION THE COURT FOR REMOVAL FROM THE  
3 HEARING OF ANY CLAIM UNRELATED TO ZONING, OR FOR OTHER MODIFICATION  
4 OR ADDITION OF THE ORDER.

5           (4) THE PARTIES MAY STIPULATE TO THE SELECTION OF A REFEREE. A  
6 REFEREE SELECTED BY AGREEMENT OF THE PARTIES NEED NOT MEET THE  
7 QUALIFICATIONS LISTED IN SECTION 2978. IF THE COURT DETERMINES THAT  
8 A CASE IS APPROPRIATE FOR APPLICATION UNDER THIS SECTION, THE COURT  
9 MUST APPOINT A REFEREE STIPULATED TO BY THE PARTIES, IF THAT  
10 INDIVIDUAL IS WILLING TO SERVE WITHIN A PERIOD THAT WOULD NOT  
11 INTERFERE WITH THE COURT'S SCHEDULING OF THE CASE FOR TRIAL.

12           (5) IF THE ORDER REFERRING THE CASE FOR THE ESTABLISHMENT OF A  
13 RECORD BY A REFEREE DOES NOT SPECIFY THE IDENTITY OF A REFEREE, THE  
14 ORDER SHALL SET THE DATE BY WHICH THE PARTIES ARE TO HAVE CONFERRED  
15 ON THE SELECTION OF A REFEREE. IF THE PARTIES DO NOT ADVISE THE  
16 COURT CLERK OF THE REFEREE AGREED UPON BY THAT DATE, THE COURT  
17 SHALL APPOINT ONE AS PROVIDED IN SUBSECTION (6).

18           (6) THE PROCEDURE FOR SELECTING A REFEREE FROM THE APPROVED  
19 LIST OF REFEREES MUST BE ESTABLISHED BY THE JUDGES OF EACH JUDICIAL  
20 CIRCUIT. THE COURT CLERK SHALL ASSIGN REFEREES IN A ROTATING MANNER  
21 THAT ASSURES AS NEARLY AS POSSIBLE THAT EACH REFEREE ON THE LIST IS  
22 ASSIGNED APPROXIMATELY THE SAME NUMBER OF CASES OVER A PERIOD OF  
23 TIME. IF A SUBSTITUTE REFEREE MUST BE ASSIGNED, THE SAME OR SIMILAR  
24 ASSIGNMENT PROCEDURE SHALL BE USED TO SELECT THE SUBSTITUTE.

25           (7) THE RULE FOR DISQUALIFICATION OF A REFEREE DESIGNATED  
26 UNDER THIS SECTION IS THE SAME AS THAT PROVIDED IN THE MICHIGAN  
27 COURT RULES FOR THE DISQUALIFICATION OF A JUDGE. THE REFEREE MUST

1 PROMPTLY DISCLOSE ANY POTENTIAL BASIS FOR DISQUALIFICATION.

2 (8) THE CONTENTS OF THE ORDER APPOINTING THE REFEREE SHALL  
3 INCLUDE THE FOLLOWING:

4 (A) WHETHER THE REFEREE IS TO MAKE PROPOSED FINDINGS AND  
5 RECOMMENDATIONS AS PART OF THE RECORD MADE, AND, IF SO, THE  
6 PROCEDURE AND TIMING FOR EACH PARTY TO OBJECT TO SUCH FINDINGS AND  
7 RECOMMENDATIONS.

8 (B) THE CIRCUMSTANCES, IF ANY, IN WHICH THE REFEREE MAY  
9 COMMUNICATE EX PARTE WITH THE COURT OR A PARTY.

10 (C) THE TIME WITHIN WHICH THE HEARING IS TO BE COMPLETED.

11 (D) THE MANNER IN WHICH THE REFEREE IS TO BE COMPENSATED.

12 (E) WHETHER THE REFEREE HAS BEEN APPOINTED BY STIPULATION OR  
13 BY COURT ASSIGNMENT.

14 (F) ANY DIRECTIONS AND AUTHORITY FOR THE REFEREE WITH REGARD  
15 TO THE TIMING AND COMPLETION OF DISCOVERY, AND ANY PARTICIPATION OF  
16 THE REFEREE IN CONNECTION WITH THE RESOLUTION OF DISPUTES WITH  
17 REGARD TO DISCOVERY.

18 (G) AUTHORITY, IF ANY, OF THE REFEREE TO ENTER ORDERS, AND THE  
19 PROCESS TO BE USED FOR THAT PURPOSE.

20 (H) ANY OTHER TERMS THE COURT DEEMS RELEVANT.

21 (9) THE COURT CLERK SHALL SEND A COPY OF THE ORDER APPOINTING  
22 THE REFEREE TO EACH PARTY AND TO THE REFEREE SELECTED. UPON RECEIPT  
23 OF THE COURT'S ORDER, THE REFEREE SHALL PROMPTLY CONFER WITH THE  
24 PARTIES TO SCHEDULE THE HEARING IN ACCORDANCE WITH THE ORDER. AFTER  
25 CONFERRING WITH THE PARTIES, THE REFEREE MAY MAKE A RECOMMENDATION  
26 TO THE COURT FOR ENTRY OF AN ORDER SPECIFYING THE TIMING AND MEANS  
27 FOR THE COMPLETION OF DISCOVERY. HOWEVER, BEFORE ENTRY OF AN ORDER

1 BY THE COURT, THE PARTIES SHALL HAVE THE OPPORTUNITY TO NOTICE A  
2 MOTION FOR HEARING OBJECTING TO ENTRY OF AN ORDER IN THE FORM  
3 RECOMMENDED BY THE REFEREE, WITH THE HEARING DATE ON SUCH MOTION TO  
4 BE NOT MORE THAN 21 DAYS FOLLOWING THE DATE OF THE REFEREE'S  
5 RECOMMENDATION.

6 (10) THE REFEREE SHALL PREPARE AND SERVE ON THE PARTIES, AND  
7 FILE WITH THE COURT IN CONNECTION WITH THE CASE, A NOTICE  
8 CONTAINING ALL OF THE FOLLOWING:

9 (A) THE IDENTITY OF ALL PARTIES WHO WILL PARTICIPATE IN THE  
10 HEARING.

11 (B) THE ISSUES TO BE PRESENTED AT THE HEARING, AND A  
12 SPECIFICATION OF ALL UNRESOLVED ISSUES IN THE CASE THAT WILL NOT BE  
13 PRESENTED AT THE HEARING BEFORE THE REFEREE.

14 (C) THE SCHEDULE FOR CONDUCTING THE HEARING.

15 (D) ALL DOCUMENTS TO BE SUBMITTED TO THE REFEREE, AND A  
16 SCHEDULE FOR THAT SUBMISSION, INCLUDING, WITHOUT LIMITATION,  
17 DOCUMENTS OR SUMMARIES PROVIDING INFORMATION ABOUT THE CASE IN  
18 ADVANCE OF THE HEARING.

19 (11) THE REFEREE SHALL CONDUCT THE HEARING IN ACCORDANCE WITH  
20 THE MICHIGAN COURT RULES AND RULES OF EVIDENCE APPLICABLE TO AND  
21 CUSTOMARY IN NONJURY TRIALS.

22 (12) WITHIN 21 DAYS AFTER THE COMPLETION OF THE HEARING, AND  
23 PRODUCTION OF THE RECORD, THE REFEREE SHALL SEND A NOTICE TO THE  
24 COURT FOR FILING IN THE CASE, WITH A COPY TO THE JUDGE ASSIGNED TO  
25 THE CASE, STATING THAT THE HEARING HAS BEEN CONDUCTED. WITHIN 28  
26 DAYS OF THE FILING OF THE NOTICE, THE ENTIRE RECORD, INCLUDING ANY  
27 FINDINGS AND CONCLUSIONS MADE BY THE REFEREE, IF APPLICABLE, AND

1 ALL EXHIBITS, SHALL BE FORWARDED TO THE COURT FOR FILING IN THE  
2 CASE, AFTER WHICH A STATUS CONFERENCE SHALL BE HELD WITH THE COURT  
3 FOR DETERMINATION OF AN ORDER DIRECTING FURTHER PROCEEDINGS LEADING  
4 TO THE FINALIZATION OF THE ISSUES THAT WERE THE SUBJECT OF THE  
5 HEARING BEFORE THE REFEREE.

6 (13) IF THE CASE IS SETTLED DURING THE HEARING PROCESS, THE  
7 ATTORNEYS SHALL PREPARE AND SUBMIT TO THE COURT WITHIN 21 DAYS THE  
8 APPROPRIATE DOCUMENTS TO CONCLUDE THE CASE. UPON MOTION OF THE  
9 PARTIES, THE COURT MAY EXTEND THE TIME FOR SUCH SUBMISSION.

10 (14) A VERBATIM RECORD OF THE HEARING SHALL BE MADE BY A COURT  
11 REPORTER OR RECORDER. IN ADDITION, ANY PARTY SHALL BE PERMITTED, AT  
12 HIS, HER, OR ITS EXPENSE, TO MAKE A VIDEO RECORD OF ANY WITNESSES,  
13 OR OF ANY SITE RELEVANT TO THE ISSUES IN THE HEARING. THE REFEREE  
14 SHALL TAKE REASONABLE STEPS TO ENSURE THAT ANY VIDEO RECORDING OF A  
15 SITE IS FAIR AND IMPARTIAL IN ITS PRESENTATION.

16 (15) A REFEREE IS ENTITLED TO REASONABLE COMPENSATION BASED ON  
17 AN HOURLY RATE COMMENSURATE WITH THE REFEREE'S EXPERIENCE AND USUAL  
18 CHARGES FOR SERVICES PERFORMED.

19 (16) THE COST OF THE REFEREE AND OF CONDUCTING THE PROCEEDINGS  
20 BEFORE THE REFEREE SHALL BE DIVIDED BETWEEN THE PARTIES ON A PRO  
21 RATA BASIS UNLESS OTHERWISE AGREED BY THE PARTIES OR ORDERED BY THE  
22 COURT. THE REFEREE'S FEE SHALL BE PAID NO LATER THAN THE EARLIER OF  
23 THE FOLLOWING:

24 (A) FORTY-TWO DAYS AFTER THE HEARING PROCESS IS CONCLUDED.

25 (B) THE ENTRY OF JUDGMENT.

26 (C) THE DISMISSAL OF THE ACTION.

27 (17) SUBJECT TO OBJECTION OF THE REFEREE, THE COURT MAY ORDER

1 AN ARRANGEMENT FOR THE PAYMENT OF THE REFEREE'S FEE OTHER THAN THAT  
2 PROVIDED IN SUBSECTION (16).

3 (18) THE REFEREE'S FEE IS DEEMED A COST OF THE ACTION, AND THE  
4 COURT MAY MAKE AN APPROPRIATE ORDER TO ENFORCE THE PAYMENT OF THE  
5 FEE.

6 (19) IF A PARTY OBJECTS TO THE TOTAL FEE OF THE REFEREE, THE  
7 MATTER MAY BE SCHEDULED BEFORE THE TRIAL JUDGE FOR DETERMINATION OF  
8 THE REASONABLENESS OF THE FEE.

9 Enacting section 1. This amendatory act does not take effect  
10 unless Senate Bill No. \_\_\_\_ or House Bill No. 5293 (request no.  
11 00353'07 \*) of the 94th Legislature is enacted into law.