



Senate Fiscal Agency  
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BILL ANALYSIS



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Senate Bills 275 and 277 (as enacted)  
House Bill 4042 (as enacted)  
Sponsor: Senator Tom Casperson (S.B. 275)  
Senator Dave Hildenbrand (S.B. 277)  
Representative Greg MacMaster  
Senate Committee: Economic Development  
House Committee: Regulatory Reform

**PUBLIC ACTS 246 & 248 of 2011**  
**PUBLIC ACT 236 of 2011**

Date Completed: 1-23-12

### **RATIONALE**

Some people believe that overregulation has impeded economic development and job growth in Michigan. In particular, these concerns have involved regulation under the Natural Resources and Environmental Protection Act (NREPA), which governs programs administered by the Department of Environmental Quality (DEQ) as well as the Department of Natural Resources and the Department of Agriculture and Rural Development. To ensure that programs under NREPA are administered effectively and fairly, and that permits are issued in a timely manner, various measures have been suggested. These include limiting a department's ability to require a permit applicant to furnish additional information, and requiring the DEQ to improve its permitting and regulatory processes, as well as set metrics.

**application is considered administratively complete, unless the request includes a detailed explanation of why the information is needed.**

- Provide that the applicant is not required to supply the requested information as a condition for approval of the permit.
- Allow a department to request an applicant to clarify, amplify, or correct information required for the application, after it is considered to be administratively complete.

**House Bill 4042 amended Part 13 of NREPA to:**

- Require a department, when denying a permit, to give the scientific information providing for basis for the denial.
- Require a department, if it failed meet the processing deadline for 10% or more of the applications for a particular permit during a fiscal year quarter, to devote resources from that program to eliminate any backlog and satisfy the processing requirement.
- Include permits for the removal of submerged logs among those that must be considered approved if the department fails to meet the processing deadline.

### **CONTENT**

**Senate Bill 275 amended Part 13 (Permits) of the Natural Resources and Environmental Protection Act to do the following:**

- Require a State department, upon request and without cost, to give a person a list specifying in detail the information required to complete a permit application.
- Prohibit a department from requesting from an applicant any information not on the list, after the

**Senate Bill 277 added Part 27 (Program Review) to NREPA to require the Department of Environmental Quality to do the following:**

- Complete process improvement of all major permit and regulatory programs administered by the DEQ under the Act.**
- Develop metrics for environmental impact, process performance, and a review of service practices.**
- Survey people regulated by each DEQ division and the general public concerning the division's service practices.**

Senate Bill 275 was tie-barred to House Bill 4042.

The House bill took effect on December 1, 2011. The Senate bills took effect on December 8, 2011.

**Senate Bill 275**

Permit Application

Part 13 of NREPA regulates the processing of applications for many permits (including operating licenses) issued under the Act. The "application period" begins when an application is submitted and ends when it is considered administratively complete and any applicable fee has been paid. A "processing period" of 20 to 150 days (depending on the type of permit) begins after the application period. A department is required to approve or deny an application by the "processing deadline", which is the last day of the processing period. Under Part 13, "department" means the department, agency, or officer authorized by NREPA to approve or deny an application for a particular permit.

Part 13 requires the department, upon request and without charge, to give a person a copy of a blank permit application form; any instructions necessary to complete the application; and a complete explanation of the permit review process. The bill also requires the department to give a list specifying in detail the information required to complete the permit application.

Previously, effective 30 days after the State received an application for a permit, the

application had to be considered to be administratively complete unless the department notified the applicant that the application was not administratively complete, specifying the information necessary to make it complete, or notified the applicant that a required fee had not been paid.

The bill instead specifies that, after a department receives a permit application, the department must determine whether the application is administratively complete. Unless the department notifies the applicant, within 30 days after receiving the application, that it is not administratively complete or that a fee has not been paid, the application must be considered administratively complete when the department makes that determination or 30 days after the State receives the application, whichever comes first.

Under Part 13, if, within the 30-day period after the department receives an application, the department notifies the applicant that the application is not administratively complete, specifying the needed information, or notifies the applicant that a required fee has not been paid, specifying the amount due, the running of the 30-day period is tolled until the applicant submits the specified information or fee amount.

The bill also provides that, after a permit application is considered to be administratively complete, the department may not request from the applicant any new or additional information that is not specified in the list provided by the department, unless the request includes a detailed explanation of why the information is needed. The applicant may not be required to provide the requested information as a condition for approval of the permit.

The department may, however, request the applicant to clarify, amplify, or correct the information required for the application, after a permit application is considered administratively complete. The applicant must provide the requested information.

Failure to Meet Processing Deadline

Part 13 requires the director of a department to submit a report by December

1 of each year to the Senate and House standing committees and appropriations subcommittees with primary responsibility for issues under the jurisdiction of that department.

Under the bill, if a department failed to approve or deny a permit application by the processing deadline with respect to 10% or more of the applications for a particular type of permit received during a quarter of the State fiscal year, the department's annual report must include the type of permit and percentage of applications for which the requirement was not met, how the department attempted to eliminate any backlog and satisfy the requirement with respect to new applications for that type of permit in the next fiscal quarter, and whether the department was successful.

### **House Bill 4042**

Previously, under Part 13, a denial of an application for a permit had to include an explanation of the reasons for the denial, and make a specific reference to provisions of NREPA or rules promulgated under it providing the basis for the denial.

The bill, instead, requires a denial, to the extent practical, to state with specificity all of the reasons for the denial, including both of the following:

- A specific reference to provisions of NREPA or rules providing the basis for the denial.
- To the extent applicable, the scientific information providing the basis for the denial.

Also, under the bill, if a department fails to meet the processing deadline with respect to 10% or more of the applications for a particular type of permit received during a quarter of the State fiscal year, the department immediately must devote resources from that program to eliminate any backlog and satisfy the processing deadline requirement for new applications for that type of permit within the next fiscal quarter.

Under Part 13, for certain types of permits, if a department fails to meet the processing deadline, the permit application must be considered approved. (This applies to a

permit for construction of a disposal area, a license for the disposal of solid waste, and a permit for certain wetland activities.) The bill extends this requirement to permits for the removal of submerged logs from bottomlands.

### **Senate Bill 277**

#### Process Improvement

The bill requires the Department of Environmental Quality to complete process improvement of one major program by February 1, 2012, and two major programs each subsequent year until the DEQ has completed process improvement for all major programs. The DEQ is not required to repeat process improvement for a program, however, if process improvement for that program was completed before the bill's effective date. (The bill defines "program" as a permit program or regulatory program administered by the DEQ under NREPA.)

Process improvement must use process mapping and be conducted by a team that includes at least all of the following:

- Two certified facilitators, who must administer the process improvement.
- A representative of people regulated by the program.
- A representative of members of the general public affected by the program.

As part of process improvement, the DEQ must consider using peer reviews by other Environmental Protection Agency Region 5 states and benchmark analyses.

The Department must post on its website a description of the process improvements made for each major program.

#### Metrics

The bill requires the DEQ to develop metrics for environmental impacts, process performance, and a review of service practices affecting regulated people and the general public. For a permit program, process performance must include the following:

- A calculation of the DEQ's per-permit cost to administer the program.

-- A review of the timeliness of the permit process from receipt to approval or denial of a permit application.

The DEQ must post the metrics on its website.

### Survey

For each division of the DEQ, the bill requires the Department to survey people regulated by that division and the general public concerning the division's service practices. By February 1, 2012, the DEQ must complete the surveys and post on its website aggregate survey results for each division. The DEQ may not post information identifying a survey respondent.

MCL 324.1303 et al. (S.B. 275)  
324.2701-324.2707 (S.B. 277)  
324.1307 (H.B. 4042)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

When choosing a place to locate or expand, business executives consider the ease of obtaining permits and navigating regulatory procedures. A climate of overregulation can contribute to a perception that a state is unfriendly toward business. The bills address this in several ways.

Senate Bill 275 will ensure that the DEQ and other departments issuing permits under NREPA do not delay the review of permit applications by requesting additional information once an application has been submitted and is considered administratively complete. A department will have 30 days to decide whether an application is administratively complete and to request information necessary to make it complete. After that, the department still may request additional information but the applicant will not have to provide it as a condition of permit approval. House Bill 4042 also requires a department to devote resources from a program to meeting the processing deadline and eliminating its backlog, if the department fails to meet the deadline for 10% or more of permit applications for that program within a fiscal quarter. These

measures will help streamline the process for obtaining permits under NREPA.

Under Senate Bill 277, the DEQ must complete process improvement for all of its major permitting and regulatory programs over a period of time. By engaging in process improvement, the Department will have to take actions to identify, analyze, and improve existing processes in order to meet its objectives. Process improvement goes beyond making temporary fixes or managing crises, and is a way of making things better. The bill also requires the DEQ to develop metrics for environmental impact, process performance, and a review of service practices. Metrics are a set of measurements that quantify results, and will help the Department determine whether its programs are meeting their goals. For a permitting program, the metrics must include cost calculations and a review of timeliness. In addition, the bill requires the DEQ to conduct surveys regarding each division's service practices. The survey results may give the Department important feedback that will inform it of deficiencies as well as perceptions among those regulated and the general public. Together, these requirements will enhance the DEQ's ability to identify and correct problems and make needed improvements.

#### **Opposing Argument**

Senate Bill 275 unreasonably limits the ability of a department to obtain information needed to determine whether a NREPA permit should be approved or denied. Essentially, a department will have 30 days to request information that is not included in an application; although it may request information after that deadline, supplying the information cannot be a condition of approval. It is not always possible for a department such as the DEQ to process complex applications within a 30-day time frame, particularly in light of budgetary cuts and staff reductions. In some cases, applicants submit deficient applications and just wait for the department to tell them what is needed. In other cases, members of the public raise issues that the department did not anticipate in its initial review. Even though an application might be considered administratively complete, a department should have the ability to request additional information and deny a permit if the applicant fails to provide it.

Legislative Analyst: Suzanne Lowe

**FISCAL IMPACT**

**Senate Bill 275 & House Bill 4042**

The bills will have no fiscal impact on State or local government.

**Senate Bill 277**

The overall fiscal impact of this bill on State finances is indeterminate. The bill requires the DEQ to complete process improvements for each of its programs over a period of time. This will likely lead to increased administrative costs for the Department in the short term as it performs these processes. To the extent that process improvements make the DEQ more efficient, it is possible that long-term savings will be larger than the short-term costs. Additionally, each division is required to develop, administer, and post surveys of those regulated by that division as well as the general public. Administrative costs will be increased by an unknown amount as a result.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.