

SUBSTITUTE FOR
SENATE BILL NO. 652

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 33, 39a, 40, 41, 42, 43, 44, 45, and 47 (MCL 24.233, 24.239a, 24.240, 24.241, 24.242, 24.243, 24.244, 24.245, and 24.247), sections 33 and 47 as amended and section 39a as added by 1999 PA 262, section 40 as amended by 2011 PA 243, sections 41 and 42 as amended by 2004 PA 491, section 43 as amended by 1989 PA 288, and sections 44 and 45 as amended by 2016 PA 513, and by adding sections 65 and 66.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) An agency shall promulgate rules describing its
2 organization and stating the general course and method of its
3 operations. ~~and THE AGENCY~~ may include ~~therein~~ **IN THE RULES** forms
4 with instructions. Sections 41, 42, 45, ~~and 45a~~, **AND 66** do not

1 apply to ~~such~~ **PROMULGATION OF THE** rules.

2 (2) An agency shall promulgate rules prescribing its
3 procedures available to the public and the methods by which the
4 public may obtain information and submit requests.

5 (3) An agency may promulgate rules ~~not inconsistent~~
6 **PRESCRIBING PROCEDURES FOR CONTESTED CASES. THE RULES MUST BE**
7 **CONSISTENT** with this act ~~or~~ **AND** other applicable statutes.
8 ~~prescribing procedures for contested cases.~~

9 Sec. 39a. (1) ~~An~~ **SUBJECT TO SECTION 66, AN** agency may publish
10 the notice of hearing under section 42 only if the office ~~of~~
11 ~~regulatory reform~~ has received draft proposed rules and has given
12 the agency approval to proceed with a public hearing.

13 (2) After a grant of approval to hold a public hearing by the
14 office ~~of regulatory reform~~ under subsection (1), the office ~~of~~
15 ~~regulatory reform~~ shall immediately provide a copy of the proposed
16 rules to the committee. The committee shall provide a copy of the
17 proposed rules, not later than the next business day after receipt
18 of the notice from the office, ~~of regulatory reform,~~ to members of
19 the committee and to members of the standing committees of the
20 senate and house of representatives that deal with the subject
21 matter of the proposed rule.

22 Sec. 40. (1) ~~When~~ **IF** an agency proposes to adopt a rule that
23 will apply to a small business and the rule will have a
24 disproportionate impact on small businesses because of the size of
25 those businesses, the agency shall consider exempting small
26 businesses and, if not exempted, the agency ~~proposing to adopt the~~
27 ~~rule~~ shall reduce the economic impact of the rule on small

1 businesses by doing all of the following ~~when~~ **IF** it is lawful and
2 feasible in meeting the objectives of the act authorizing the
3 promulgation of the rule:

4 (a) Identify and estimate the number of small businesses
5 affected by the proposed rule and its probable effect on small
6 businesses.

7 (b) Establish differing compliance or reporting requirements
8 or timetables for small businesses under the rule after projecting
9 the required reporting, record-keeping, and other administrative
10 costs.

11 (c) Consolidate, simplify, or eliminate the compliance and
12 reporting requirements for small businesses under the rule and
13 identify the skills necessary to comply with the reporting
14 requirements.

15 (d) Establish performance standards to replace design or
16 operational standards required in the proposed rule.

17 (2) The **AGENCY PROPOSING THE RULE SHALL SPECIFICALLY ADDRESS**
18 **THE** factors described in subsection (1)(a) to (d) ~~shall be~~
19 ~~specifically addressed in the~~ **A** small business impact statement.

20 (3) In reducing the disproportionate economic impact on small
21 business of a rule as provided in subsection (1), an agency shall
22 use the following classifications of small business:

23 (a) 0-9 full-time employees.

24 (b) 10-49 full-time employees.

25 (c) 50-249 full-time employees.

26 (4) For purposes of subsection (3), an agency may include a
27 small business with a greater number of full-time employees in a

1 classification that applies to a business with fewer full-time
2 employees.

3 (5) This section and section 45(3) do not apply to a ~~EITHER OF~~
4 **THE FOLLOWING:**

5 (A) A rule that is required by federal law and that an agency
6 promulgates without imposing standards more stringent than those
7 required by the federal law.

8 (B) **A RULE PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL**
9 **QUALITY.**

10 Sec. 41. (1) Except as provided in ~~section~~ **SECTIONS 44 AND 66,**
11 before the adoption of a rule, an agency, or the office, ~~of~~
12 ~~regulatory reform,~~ shall give notice of a public hearing and offer
13 a person an opportunity to present data, views, questions, and
14 arguments. The notice ~~shall~~ **MUST** be given within the time
15 prescribed by any applicable statute, or if none, in the manner
16 prescribed in section 42(1).

17 (2) The notice described in subsection (1) ~~shall~~ **MUST** include
18 all of the following:

19 (a) A reference to the statutory authority under which the
20 action is proposed.

21 (b) The time and place of the public hearing and a statement
22 of the manner in which data, views, questions, and arguments may be
23 submitted by a person to the agency at other times.

24 (c) A statement of the terms or substance of the proposed
25 rule, a description of the subjects and issues involved, and the
26 proposed effective date of the rule.

27 (3) The agency, or the office ~~of regulatory reform~~ acting on

1 behalf of an agency, shall transmit copies of the notice **DESCRIBED**
2 **IN SUBSECTION (1)** to each person who requested the agency in
3 writing or electronically for advance notice of proposed action
4 that may affect the person. If requested, the notice ~~shall~~**MUST** be
5 by mail, in writing, or electronically to the last address
6 specified by the person.

7 (4) The public hearing ~~shall~~**MUST** comply with any applicable
8 statute, but is not subject to the provisions governing a contested
9 case.

10 (5) The head of the promulgating agency or 1 or more persons
11 designated by the head of the agency who have knowledge of the
12 subject matter of the proposed rule shall be present at the public
13 hearing and shall participate in the discussion of the proposed
14 rule.

15 Sec. 42. (1) Except as provided in ~~section~~**SECTIONS 44 AND 66**,
16 at a minimum, an agency, or the office ~~of regulatory reform~~ acting
17 on behalf of the agency, shall publish the notice of public hearing
18 as prescribed in any applicable statute or, if none, the agency, or
19 the office ~~of regulatory reform~~ acting on behalf of the agency,
20 shall publish the notice not less than 10 days and not more than 60
21 days before the date of the public hearing in at least 3 newspapers
22 of general circulation in different parts of ~~the~~**THIS** state, 1 of
23 which ~~shall~~**MUST** be in the Upper Peninsula.

24 (2) Additional methods that may be employed ~~by the agency, or~~
25 ~~the office of regulatory reform acting on behalf of the agency,~~
26 ~~depending upon the circumstances,~~ **TO PROVIDE NOTICE OF THE PUBLIC**
27 **HEARING** include publication in trade, industry, governmental, or

1 professional publications or posting on the website of the agency
2 or the office. ~~of regulatory reform.~~

3 (3) In addition to the requirements of subsection (1) **AND**
4 **EXCEPT AS PROVIDED IN SECTION 66**, the agency shall electronically
5 submit a copy of the notice of public hearing to the office ~~of~~
6 ~~regulatory reform~~ for publication in the Michigan ~~register.~~
7 **REGISTER**. If the office ~~of regulatory reform~~ submitted the notice
8 of public hearing on behalf of the agency, the office ~~of regulatory~~
9 ~~reform~~ shall publish the notice of public hearing in the Michigan
10 ~~register.~~ **REGISTER**. An agency's notice shall **MUST** be published in
11 the Michigan ~~register~~ **REGISTER** before the public hearing and the
12 agency shall electronically file a copy of the notice of public
13 hearing with the office. ~~of regulatory reform.~~ Within 7 days after
14 receipt of the notice of public hearing **AND BEFORE THE PUBLIC**
15 **HEARING**, the office ~~of regulatory reform~~ shall do all of the
16 following: ~~before the public hearing.~~

17 (a) Electronically transmit a copy of the notice of public
18 hearing to the committee.

19 (b) Provide notice electronically through publicly accessible
20 internet media.

21 (4) After the office ~~of regulatory reform~~ electronically
22 transmits a copy of the notice of public hearing to the committee,
23 the committee shall electronically transmit copies of the notice of
24 public hearing, not later than the next business day after receipt
25 of the notice from the office, ~~of regulatory reform,~~ to each member
26 of the committee and to the members of the standing committees of
27 the senate and house of representatives that deal with the subject

1 matter of the proposed rule.

2 (5) After receipt of the notice of public hearing filed under
3 subsection (3), the committee may meet to consider the proposed
4 rule, take testimony, and provide the agency with the committee's
5 informal response to the rule.

6 Sec. 43. (1) Except ~~in the case of~~ **FOR** an emergency rule
7 promulgated in the manner described in section 48, a rule is not
8 valid unless **IT IS** processed in compliance with **SECTION 66, IF**
9 **APPLICABLE**, section 42, and ~~unless~~ in substantial compliance with
10 section 41(2), (3), (4), and (5).

11 (2) A proceeding to contest a rule on the ground of
12 noncompliance with the requirements of sections 41 and 42 ~~shall~~ **OR**
13 **SECTION 66 MUST** be commenced within 2 years after the effective
14 date of the rule.

15 Sec. 44. (1) Sections 41, ~~and~~ **AND 66** do not apply to an
16 amendment or rescission of a rule that is obsolete or superseded,
17 or that is required to make obviously needed corrections to make
18 the rule conform to an amended or new statute or to accomplish any
19 other solely formal purpose, if a statement to that effect is
20 included in the legislative service bureau certificate of approval
21 of the rule.

22 (2) Sections 41 and 42 do not apply to a rule that is
23 promulgated under the Michigan occupational safety and health act,
24 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially
25 similar to an existing federal standard that has been adopted or
26 promulgated under the occupational safety and health act of 1970,
27 Public Law 91-596. However, notice of the proposed rule must be

1 published in the Michigan ~~register~~**REGISTER** at least 35 days before
2 ~~the submission of the rule to~~**IS FILED WITH** the secretary of state
3 under section 46(1). A reasonable period, not to exceed 21 days,
4 must be provided for the submission of written or electronic
5 comments and views following publication in the Michigan
6 ~~register~~**REGISTER**.

7 (3) Sections 41 and 42 do not apply to a change to a proposed
8 rule by an agency during processing of the rule if the office
9 determines under section 45c(3) that the regulatory impact and
10 impact on small businesses of the changed proposed rule are not
11 more burdensome than the regulatory impact and impact on small
12 businesses of the original proposed rule.

13 (4) For purposes of subsection (2), "substantially similar"
14 means identical, with the exception of style or format differences
15 needed to conform to this or other state laws, as determined by the
16 office.

17 Sec. 45. (1) Except as otherwise provided in this subsection,
18 an agency shall electronically submit a proposed rule to the
19 legislative service bureau for its formal certification. If
20 requested by the legislative service bureau, the office shall also
21 transmit up to 4 paper copies of the proposed rule. The legislative
22 service bureau shall promptly issue a certificate of approval
23 indicating whether the proposed rule is proper as to all matters of
24 form, classification, and arrangement. If the legislative service
25 bureau fails to issue a certificate of approval within 21 calendar
26 days after receipt of the submission for formal certification, the
27 office may issue a certificate of approval. If the legislative

1 service bureau returns the submission to the agency before the
2 expiration of the 21-calendar-day ~~time~~ period, the 21-calendar-day
3 ~~time~~ period is tolled until the rule is resubmitted by the agency.
4 After resubmission, the legislative service bureau has the
5 remainder of the 21-calendar-day ~~time~~ period or 6 calendar days,
6 whichever is longer, to consider the formal certification of the
7 rule. The office may approve a proposed rule if it considers the
8 proposed rule to be legal and appropriate.

9 (2) Except as provided in subsection (6), after notice is
10 given as provided in this act and before the agency proposing the
11 rule has formally adopted the rule, the agency shall prepare an
12 agency report containing a synopsis of the comments contained in
13 the public hearing record, a copy of the request for rule-making,
14 and the regulatory impact statement required under subsection (3).
15 In the report, the agency shall describe any changes in the
16 proposed rules that were made by the agency after the public
17 hearing. The office shall transmit by notice of transmittal to the
18 committee copies of the rule, the agency reports containing the
19 request for rule-making, a copy of the regulatory impact statement,
20 and certificates of approval from the legislative service bureau
21 and the office. The office shall also electronically submit to the
22 committee a copy of the rule, any agency reports required under
23 this subsection, any regulatory impact statements required under
24 subsection (3), and any certificates of approval required under
25 subsection (1). The agency shall electronically transmit to the
26 committee the records described in this subsection within 1 year
27 after the date of the last public hearing on the proposed rule.

1 (3) Except as provided in subsection (6), an agency shall
2 prepare and include with a notice of transmittal under subsection
3 (2) the request for rule-making and the response from the office, a
4 small business impact statement prepared under section 40, and a
5 regulatory impact statement. The regulatory impact statement must
6 contain all of the following information:

7 (a) A comparison of the proposed rule to parallel federal
8 rules or standards set by a state or national licensing agency or
9 accreditation association, if any exist.

10 (b) If requested by the office or the committee, a comparison
11 of the proposed rule to standards in similarly situated states,
12 based on geographic location, topography, natural resources,
13 commonalities, or economic similarities.

14 (c) An identification of the behavior and frequency of
15 behavior that the rule is designed to alter.

16 (d) An identification of the harm resulting from the behavior
17 that the rule is designed to alter and the likelihood that the harm
18 will occur in the absence of the rule.

19 (e) An estimate of the change in the frequency of the targeted
20 behavior expected from the rule.

21 (f) An identification of the businesses, groups, or
22 individuals who will be directly affected by, bear the cost of, or
23 directly benefit from the rule.

24 (g) An identification of any reasonable alternatives to
25 regulation pursuant to the proposed rule that would achieve the
26 same or similar goals.

27 (h) A discussion of the feasibility of establishing a

1 regulatory program similar to that proposed in the rule that would
2 operate through market-based mechanisms.

3 (i) An estimate of the cost of rule imposition on the agency
4 promulgating the rule.

5 (j) An estimate of the actual statewide compliance costs of
6 the proposed rule on individuals.

7 (k) A demonstration that the proposed rule is necessary and
8 suitable to achieve its purpose in proportion to the burdens it
9 places on individuals.

10 (l) An estimate of the actual statewide compliance costs of
11 the proposed rule on businesses and other groups.

12 (m) An identification of any disproportionate impact the
13 proposed rule may have on small businesses because of their size.

14 (n) An identification of the nature of any report required and
15 the estimated cost of its preparation by small businesses required
16 to comply with the proposed rule.

17 (o) An analysis of the costs of compliance for all small
18 businesses affected by the proposed rule, including costs of
19 equipment, supplies, labor, and increased administrative costs.

20 (p) An identification of the nature and estimated cost of any
21 legal consulting and accounting services that small businesses
22 would incur in complying with the proposed rule.

23 (q) An estimate of the ability of small businesses to absorb
24 the costs estimated under subdivisions (n) to (p) without suffering
25 economic harm and without adversely affecting competition in the
26 marketplace.

27 (r) An estimate of the cost, if any, to the agency of

1 administering or enforcing a rule that exempts or sets lesser
2 standards for compliance by small businesses.

3 (s) An identification of the impact on the public interest of
4 exempting or setting lesser standards of compliance for small
5 businesses.

6 (t) A statement describing the manner in which the agency
7 reduced the economic impact of the rule on small businesses or a
8 statement describing the reasons such a reduction was not feasible.

9 (u) A statement describing how the agency has involved small
10 businesses in the development of the rule.

11 (v) An estimate of the primary and direct benefits of the
12 rule.

13 (w) An estimate of any cost reductions to businesses,
14 individuals, groups of individuals, or governmental units as a
15 result of the rule.

16 (x) An estimate of any increase in revenues to state or local
17 governmental units as a result of the rule.

18 (y) An estimate of any secondary or indirect benefits of the
19 rule.

20 (z) An identification of the sources the agency relied on in
21 compiling the regulatory impact statement, including the
22 methodology utilized in determining the existence and extent of the
23 impact of a proposed rule and a cost-benefit analysis of the
24 proposed rule.

25 (aa) A detailed recitation of the efforts of the agency to
26 comply with the mandate to reduce the disproportionate impact of
27 the rule ~~upon~~ **ON** small businesses as described in section 40(1)(a)

1 to (d).

2 (bb) Any other information required by the office.

3 (4) The agency shall electronically transmit the regulatory
4 impact statement required under subsection (3) to the office at
5 least 28 days before the public hearing required under section 41.
6 The agency shall not hold the public hearing until the regulatory
7 impact statement has been reviewed and approved by the office. The
8 agency shall also electronically transmit a copy of the regulatory
9 impact statement to the committee before the public hearing and the
10 agency shall make copies available to the public at the public
11 hearing. The agency shall publish the regulatory impact statement
12 on its website at least 10 days before the date of the public
13 hearing.

14 (5) The committee shall electronically transmit to the senate
15 fiscal agency and the house fiscal agency a copy of each rule and
16 regulatory impact statement filed with the committee and a copy of
17 the agenda identifying the proposed rules to be considered by the
18 committee. The senate fiscal agency and the house fiscal agency
19 shall analyze each proposed rule for possible fiscal implications
20 that, if the rule were adopted, would result in additional
21 appropriations in the current fiscal year or commit the legislature
22 to an appropriation in a future fiscal year. The senate fiscal
23 agency and the house fiscal agency shall electronically report
24 their findings to the senate and house appropriations committees
25 and to the committee before the date of consideration of the
26 proposed rule by the committee.

27 (6) Subsections (2), (3), and (4) do not apply to a rule that

1 is promulgated under section 33, ~~or 48~~, **OR 66** or a rule to which
2 sections 41 and 42 do not apply as provided in section 44.

3 Sec. 47. (1) Except ~~in case of~~ **FOR** a rule processed under
4 section 48, a rule becomes effective on the date fixed in the rule,
5 which ~~shall~~ **MUST** not be earlier than 7 days after the date of ~~its~~
6 promulgation, or, if a date is not ~~so~~ fixed then **IN THE RULE**, 7
7 days after the date of promulgation.

8 (2) Except ~~in case of~~ **FOR** a rule processed under section 48 **OR**
9 **66**, an agency may withdraw a promulgated rule ~~which~~ **THAT** has not
10 become effective by filing a written request stating reasons for
11 withdrawal to the secretary of state on or before the last day for
12 filing rules for the interim period in which the rules were first
13 filed, or by filing a written request for withdrawal to the
14 secretary of state and the office, ~~of regulatory reform~~, within a
15 reasonable time, as determined by the office, ~~of regulatory reform~~,
16 after the last day for filing and before publication of the rule in
17 the next supplement to the code. In any other ~~case~~ **CIRCUMSTANCES**,
18 an agency may abrogate its rule only by rescission. ~~When~~ **IF** an
19 agency has withdrawn a promulgated rule, it shall give notice,
20 stating reasons, to the committee that the rule has been withdrawn.

21 (3) Sections 45 and 45a apply to rules for which a public
22 hearing has not been held by April 1, 2000.

23 **SEC. 65. (1) THE ENVIRONMENTAL RULES REVIEW COMMITTEE IS**
24 **CREATED AS AN INDEPENDENT BODY IN THE OFFICE.**

25 **(2) THE ENVIRONMENTAL RULES REVIEW COMMITTEE CONSISTS OF THE**
26 **DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, OR HIS OR HER**
27 **DESIGNEE, THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND HUMAN**

1 SERVICES, OR HIS OR HER DESIGNEE, AND THE CHIEF EXECUTIVE OFFICER
2 OF THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION, OR HIS OR HER
3 DESIGNEE, ALL OF WHOM SERVE AS NONVOTING MEMBERS, AND THE FOLLOWING
4 VOTING MEMBERS APPOINTED BY THE GOVERNOR BY AND WITH THE ADVICE AND
5 CONSENT OF THE SENATE:

6 (A) ONE INDIVIDUAL WHO REPRESENTS THE SOLID WASTE MANAGEMENT
7 INDUSTRY.

8 (B) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE MANUFACTURING
9 ORGANIZATION.

10 (C) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE ORGANIZATION
11 THAT REPRESENTS SMALL BUSINESSES.

12 (D) ONE INDIVIDUAL WHO REPRESENTS PUBLIC UTILITIES THAT ENGAGE
13 IN THE GENERATION, TRANSMISSION, OR DISTRIBUTION OF ELECTRICITY.

14 (E) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE ENVIRONMENTAL
15 ORGANIZATION.

16 (F) ONE INDIVIDUAL WHO REPRESENTS THE OIL AND GAS INDUSTRY.

17 (G) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE AGRICULTURAL
18 ORGANIZATION.

19 (H) ONE INDIVIDUAL WHO REPRESENTS LOCAL GOVERNMENTS.

20 (I) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE LAND CONSERVANCY
21 ORGANIZATION.

22 (J) ONE INDIVIDUAL WHO REPRESENTS THE GENERAL PUBLIC.

23 (K) ONE INDIVIDUAL WHO IS A MEDICAL PROFESSIONAL.

24 (3) A VOTING MEMBER OF THE ENVIRONMENTAL RULES REVIEW
25 COMMITTEE MUST POSSESS KNOWLEDGE, EXPERIENCE, OR EDUCATION THAT
26 QUALIFIES HIM OR HER TO REPRESENT THE REPRESENTED CONSTITUENCY.

27 (4) AN INDIVIDUAL MAY NOT SERVE AS A VOTING MEMBER OF THE

1 ENVIRONMENTAL RULES REVIEW COMMITTEE IF ANY OF THE FOLLOWING APPLY:

2 (A) THE INDIVIDUAL IS A CURRENT EMPLOYEE OF ANY OFFICE,
3 DEPARTMENT, OR AGENCY OF THIS STATE.

4 (B) THE INDIVIDUAL WAS EMPLOYED BY THE DEPARTMENT OF
5 ENVIRONMENTAL QUALITY WITHIN THE PRECEDING 3 YEARS.

6 (5) AN INDIVIDUAL WHO IS A LOBBYIST AGENT UNDER 1978 PA 472,
7 MCL 4.411 TO 4.431, MAY SERVE AS A MEMBER OF THE ENVIRONMENTAL
8 RULES REVIEW COMMITTEE ONLY IF THE INDIVIDUAL DOES NOT
9 SIMULTANEOUSLY RECEIVE COMPENSATION OR REIMBURSEMENT OF ACTUAL
10 EXPENSES FOR LOBBYING FROM MORE THAN 1 PERSON WHILE SERVING AS A
11 MEMBER OF THE COMMITTEE.

12 (6) NOT MORE THAN 6 OF THE VOTING MEMBERS OF THE ENVIRONMENTAL
13 RULES REVIEW COMMITTEE MAY BE MEMBERS OF THE SAME POLITICAL PARTY.

14 (7) SUBJECT TO SUBSECTION (8), A VOTING MEMBER OF THE
15 ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL SERVE A TERM OF 4 YEARS,
16 EXCEPT THAT OF THE MEMBERS FIRST APPOINTED, 4 SHALL EACH SERVE A
17 TERM OF 4 YEARS, 4 SHALL EACH SERVE A TERM OF 3 YEARS, AND 3 SHALL
18 EACH SERVE A TERM OF 2 YEARS. A VOTING MEMBER OF THE ENVIRONMENTAL
19 RULES REVIEW COMMITTEE MUST NOT BE APPOINTED TO SERVE MORE THAN 3
20 CONSECUTIVE 4-YEAR TERMS BUT MAY BE APPOINTED AGAIN AFTER NOT
21 SERVING ON THE ENVIRONMENTAL RULES REVIEW COMMITTEE FOR 1 FULL
22 TERM.

23 (8) THE TERM OF A VOTING MEMBER OF THE ENVIRONMENTAL RULES
24 REVIEW COMMITTEE CONTINUES UNTIL A SUCCESSOR IS APPOINTED.

25 (9) THE GOVERNOR MAY REMOVE A VOTING MEMBER OF THE
26 ENVIRONMENTAL RULES REVIEW COMMITTEE FOR CAUSE. CAUSE INCLUDES, BUT
27 IS NOT LIMITED TO, REPEATED FAILURE TO ATTEND MEETINGS.

1 (10) THE GOVERNOR SHALL APPOINT, BY AND WITH THE ADVICE AND
2 CONSENT OF THE SENATE, A MEMBER TO FILL A VACANCY IN THE VOTING
3 MEMBERSHIP OF THE ENVIRONMENTAL RULES REVIEW COMMITTEE CREATED BY
4 EITHER OF THE FOLLOWING:

5 (A) THE DEATH, RESIGNATION, OR REMOVAL OF A MEMBER BEFORE THE
6 MEMBER'S TERM HAS EXPIRED. A MEMBER APPOINTED UNDER THIS
7 SUBDIVISION SHALL SERVE FOR THE REMAINDER OF THE UNEXPIRED TERM.

8 (B) THE EXPIRATION OF A MEMBER'S TERM.

9 (11) THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL NOT
10 CONDUCT ANY BUSINESS OR PERFORM ANY DUTIES WHILE THERE IS A VACANCY
11 IN THE VOTING MEMBERSHIP OF THE COMMITTEE.

12 (12) THE VOTING MEMBERS OF THE ENVIRONMENTAL RULES REVIEW
13 COMMITTEE SHALL SERVE WITHOUT COMPENSATION BUT MAY BE REIMBURSED BY
14 THE OFFICE FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE
15 PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS.

16 (13) THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY
17 AND THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
18 SHALL EACH SELECT A SCIENCE ADVISOR TO PARTICIPATE IN MEETINGS OF
19 THE ENVIRONMENTAL RULES REVIEW COMMITTEE AND PROVIDE EXPERT ADVICE
20 TO ENVIRONMENTAL RULES REVIEW COMMITTEE MEMBERS ON RELEVANT
21 SCIENCE-BASED ISSUES THAT COME BEFORE THE ENVIRONMENTAL RULES
22 REVIEW COMMITTEE. TO SERVE AS AN ENVIRONMENTAL RULES REVIEW
23 COMMITTEE SCIENCE ADVISOR, AN INDIVIDUAL MUST POSSESS THE PROPER
24 EDUCATIONAL CREDENTIALS AND BACKGROUND TO PROVIDE SCIENCE-BASED
25 EXPERT ADVICE. AN INDIVIDUAL MAY NOT SERVE AS A SCIENCE ADVISOR IF
26 HE OR SHE IS A STATE EMPLOYEE OR CONTRACT EMPLOYEE OF THIS STATE.

27 (14) THE BUSINESS THAT THE ENVIRONMENTAL RULES REVIEW

1 COMMITTEE MAY PERFORM MUST BE CONDUCTED AT A PUBLIC MEETING OF THE
2 ENVIRONMENTAL RULES REVIEW COMMITTEE HELD IN COMPLIANCE WITH THE
3 OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

4 (15) NINE VOTING MEMBERS OF THE ENVIRONMENTAL RULES REVIEW
5 COMMITTEE CONSTITUTE A QUORUM. A QUORUM MUST BE PRESENT TO TRANSACT
6 ANY BUSINESS AT A MEETING OF THE COMMITTEE. DECISIONS BY THE
7 ENVIRONMENTAL RULES REVIEW COMMITTEE AT A MEETING MUST BE MADE BY A
8 MAJORITY VOTE OF THE MEMBERS PRESENT AT THE MEETING.

9 (16) THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL SELECT A
10 CHAIRPERSON AND VICE-CHAIRPERSON FROM ITS VOTING MEMBERS. THE
11 CHAIRPERSON SHALL PRESIDE OVER ALL MEETINGS OF THE COMMITTEE AND
12 ENSURE THAT THE DECISIONS OF THE COMMITTEE ARE IMPLEMENTED. THE
13 VICE-CHAIRPERSON SHALL PERFORM THE DUTIES OF THE CHAIRPERSON IN THE
14 CHAIRPERSON'S ABSENCE. THE CHAIRPERSON AND VICE-CHAIRPERSON SHALL
15 SERVE FOR A TERM OF 2 YEARS AND MAY BE SELECTED TO SERVE FOR
16 ADDITIONAL TERMS.

17 (17) THE CHAIRPERSON OR A MAJORITY OF THE MEMBERS OF THE
18 ENVIRONMENTAL RULES REVIEW COMMITTEE MAY CALL A MEETING OF THE
19 COMMITTEE. HOWEVER, A MEETING MAY NOT BE CALLED ON LESS THAN 10
20 DAYS' NOTICE UNLESS ALL THE VOTING MEMBERS OF THE ENVIRONMENTAL
21 RULES REVIEW COMMITTEE AGREE IN WRITING OR BY ELECTRONIC MEANS TO A
22 SHORTER NOTICE PERIOD.

23 (18) THE ENVIRONMENTAL RULES REVIEW COMMITTEE MAY ENGAGE
24 ADMINISTRATIVE, TECHNICAL, OR LEGAL CONSULTANTS, IN ADDITION TO
25 ADVISORS SELECTED UNDER SUBSECTION (13), TO ASSIST THE COMMITTEE IN
26 THE PERFORMANCE OF ITS DUTIES. IF REQUESTED BY THE ENVIRONMENTAL
27 RULES REVIEW COMMITTEE, A DEPARTMENT, AGENCY, OR OFFICE OF THIS

1 STATE MAY PROVIDE ADMINISTRATIVE, TECHNICAL, OR LEGAL STAFF, IN
2 ADDITION TO ADVISORS SELECTED UNDER SUBSECTION (13), TO ASSIST THE
3 ENVIRONMENTAL RULES REVIEW COMMITTEE IN THE PERFORMANCE OF ITS
4 DUTIES.

5 (19) THE PURPOSE OF THE ENVIRONMENTAL RULES REVIEW COMMITTEE
6 IS TO OVERSEE ALL RULE-MAKING OF THE DEPARTMENT OF ENVIRONMENTAL
7 QUALITY AS PROVIDED IN THIS ACT. FOR PURPOSES OF THIS ACT, THE
8 DEPARTMENT OF ENVIRONMENTAL QUALITY INCLUDES ANY DEPARTMENT,
9 AGENCY, COMMISSION, OR OTHER PERSON TO WHOM THE RULE-MAKING
10 AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY ON THE
11 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IS
12 TRANSFERRED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
13 ADDED THIS SECTION.

14 SEC. 66. (1) THE OFFICE SHALL PROMPTLY TRANSMIT TO THE
15 ENVIRONMENTAL RULES REVIEW COMMITTEE ELECTRONIC COPIES OF A REQUEST
16 FOR RULE-MAKING SUBMITTED TO THE OFFICE BY THE DEPARTMENT OF
17 ENVIRONMENTAL QUALITY. THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS
18 STRONGLY ENCOURAGED TO CREATE A STAKEHOLDER REVIEW PROCESS BEFORE
19 BEGINNING THE RULE PROMULGATION PROCESS TO ENSURE THAT ALL
20 VIEWPOINTS ARE ADEQUATELY REPRESENTED IN THE PROPOSED RULE.

21 (2) IF 6 VOTING MEMBERS OF THE ENVIRONMENTAL RULES REVIEW
22 COMMITTEE VOTE THAT A REQUEST FOR RULE-MAKING SHOULD NOT BE
23 REQUIRED TO PROCEED UNDER SUBSECTIONS (3) TO (11), SUBSECTIONS (3)
24 TO (11) DO NOT APPLY TO THE REQUEST FOR RULE-MAKING.

25 (3) THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL PROVIDE
26 COPIES OF DRAFT PROPOSED RULES TO THE OFFICE AND THE ENVIRONMENTAL
27 RULES REVIEW COMMITTEE.

1 (4) AFTER RECEIVING DRAFT PROPOSED RULES UNDER SUBSECTION (3),
2 THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL MEET 1 OR MORE TIMES
3 TO DETERMINE WHETHER THE DRAFT PROPOSED RULES MEET ALL OF THE
4 FOLLOWING CRITERIA:

5 (A) THE DRAFT PROPOSED RULES DO NOT EXCEED THE RULE-MAKING
6 DELEGATION CONTAINED IN THE STATUTE AUTHORIZING THE RULE-MAKING.

7 (B) THE DRAFT PROPOSED RULES REASONABLY IMPLEMENT AND APPLY
8 THE STATUTE AUTHORIZING THE RULE-MAKING AND ARE CONSISTENT WITH ALL
9 OTHER APPLICABLE LAW.

10 (C) THE DRAFT PROPOSED RULES ARE NECESSARY AND SUITABLE TO
11 ACHIEVE THEIR PURPOSES IN PROPORTION TO THE BURDENS THEY PLACE ON
12 INDIVIDUALS AND BUSINESSES.

13 (D) THE DRAFT PROPOSED RULES ARE AS CLEAR AND UNAMBIGUOUS AS
14 REASONABLY APPROPRIATE CONSIDERING THE SUBJECT MATTER OF THE
15 PROPOSED RULES AND THE INDIVIDUALS AND BUSINESSES THAT WILL BE
16 REQUIRED TO COMPLY WITH THE PROPOSED RULES.

17 (E) THE DRAFT PROPOSED RULES ARE BASED ON SOUND AND OBJECTIVE
18 SCIENTIFIC REASONING.

19 (5) THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY SUBMIT REVISED
20 DRAFT PROPOSED RULES TO THE OFFICE AND THE ENVIRONMENTAL RULES
21 REVIEW COMMITTEE.

22 (6) IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE DETERMINES
23 THAT DRAFT PROPOSED RULES DO NOT MEET THE CRITERIA IN SUBSECTION
24 (4), THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL NOT PROCEED WITH
25 THE REQUEST FOR RULE-MAKING.

26 (7) IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE DETERMINES
27 THAT DRAFT PROPOSED RULES MEET THE CRITERIA IN SUBSECTION (4), THE

1 PUBLIC HEARING UNDER SECTIONS 41 AND 42 MUST BE HELD, EXCEPT THAT
2 THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL GIVE NOTICE OF AND
3 CONDUCT THE PUBLIC HEARING, AND THE DEPARTMENT OF ENVIRONMENTAL
4 QUALITY IS NOT REQUIRED TO PREPARE A SMALL BUSINESS IMPACT
5 STATEMENT UNDER SECTION 40(2) OR A REGULATORY IMPACT STATEMENT
6 UNDER SECTION 45(3).

7 (8) AFTER A PUBLIC HEARING CONDUCTED BY THE ENVIRONMENTAL
8 RULES REVIEW COMMITTEE UNDER SUBSECTION (7), THE ENVIRONMENTAL
9 RULES REVIEW COMMITTEE SHALL MEET 1 OR MORE TIMES TO DISCUSS
10 COMMENTS MADE AND TESTIMONY GIVEN AT THE PUBLIC HEARING AND
11 DETERMINE IF ANY REVISIONS TO THE DRAFT PROPOSED RULES ARE
12 APPROPRIATE. AT THAT MEETING, THE DIRECTOR OF THE DEPARTMENT OF
13 ENVIRONMENTAL QUALITY OR HIS OR HER DESIGNEE SHALL PROVIDE A
14 SYNOPSIS OF THE COMMENTS CONTAINED IN THE PUBLIC HEARING RECORD. IF
15 THE ENVIRONMENTAL RULES REVIEW COMMITTEE DETERMINES THAT REVISIONS
16 ARE NOT APPROPRIATE, THE DRAFT PROPOSED RULES MUST BE PROCESSED AS
17 PROVIDED IN SUBSECTION (10). IF THE ENVIRONMENTAL RULES REVIEW
18 COMMITTEE DETERMINES THAT 1 OR MORE REVISIONS ARE APPROPRIATE, THE
19 ENVIRONMENTAL RULES REVIEW COMMITTEE MAY APPROVE THE DRAFT PROPOSED
20 RULES SUBJECT TO THE REVISIONS BEING MADE. THE LEGISLATIVE SERVICE
21 BUREAU SHALL DRAFT THE REVISIONS TO THE DRAFT PROPOSED RULES.

22 (9) IF FEWER THAN 6 VOTING MEMBERS OF THE ENVIRONMENTAL RULES
23 REVIEW COMMITTEE OBJECT TO THE PROPOSED REVISIONS DRAFTED BY THE
24 LEGISLATIVE SERVICE BUREAU, THE RULES MUST BE PROCESSED AS PROVIDED
25 IN SUBSECTION (10). IF 6 OR MORE VOTING MEMBERS OF THE
26 ENVIRONMENTAL RULES REVIEW COMMITTEE OBJECT TO THE PROPOSED
27 REVISIONS, THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL MEET 1 OR

1 MORE TIMES TO APPROVE REVISIONS TO THE DRAFT PROPOSED RULES.

2 (10) IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE APPROVES
3 DRAFT PROPOSED RULES, THE OFFICE SHALL TRANSMIT BY NOTICE OF
4 TRANSMITTAL TO THE COMMITTEE COPIES OF THE RULES, THE REQUEST FOR
5 RULE-MAKING, THE SYNOPSIS OF THE COMMENTS CONTAINED IN THE PUBLIC
6 HEARING RECORD, A DESCRIPTION OF ANY REVISIONS TO THE PROPOSED
7 RULES THAT WERE MADE BY THE ENVIRONMENTAL RULES REVIEW COMMITTEE
8 AFTER THE PUBLIC HEARING, AND CERTIFICATES OF APPROVAL FROM THE
9 LEGISLATIVE SERVICE BUREAU AND THE OFFICE. THE OFFICE SHALL ALSO
10 ELECTRONICALLY SUBMIT TO THE ENVIRONMENTAL RULES REVIEW COMMITTEE A
11 COPY OF THE RULE AND ANY CERTIFICATES OF APPROVAL FROM THE
12 LEGISLATIVE SERVICE BUREAU AND THE OFFICE. THE OFFICE SHALL
13 ELECTRONICALLY TRANSMIT TO THE ENVIRONMENTAL RULES REVIEW COMMITTEE
14 THE INFORMATION DESCRIBED IN THIS SUBSECTION WITHIN 1 YEAR AFTER
15 THE DATE OF THE LAST PUBLIC HEARING.

16 (11) THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL MAKE A
17 FINAL DECISION REGARDING DRAFT PROPOSED RULES AND ANY REVISIONS TO
18 DRAFT PROPOSED RULES WITHIN 12 CALENDAR MONTHS AFTER RECEIVING
19 ELECTRONIC COPIES OF THE REQUEST FOR RULE-MAKING SUBMITTED BY THE
20 DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE OFFICE UNDER SUBSECTION
21 (1).

22 Enacting section 1. This amendatory act takes effect January
23 1, 2018.