

REPEAL REQUIREMENTS FOR CERTAIN REVIEW BODIES FROM NREPA

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Senate Bills 393 and 394 (S-2) as reported from House committee
Sponsor: Sen. Rosemary Bayer
**House Committee: Natural Resources, Environment, Tourism,
and Outdoor Recreation**
Senate Committee: Regulatory Affairs
Complete to 6-24-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bills 393 and 394 would amend the Natural Resources and Environmental Protection Act (NREPA) by repealing the sections that created the Environmental Science Advisory Board and the Environmental Permit Review Commission and established the corresponding duties of each body. The bills would also amend other sections that reference the board and commission and make other complementary changes.

Senate Bill 393 would repeal Part 26 of NREPA, which contains provisions relating to the Environmental Science Advisory Board. The board was originally established within the Department of Technology, Management, and Budget (DTMB),¹ but was moved to the Department of Environment, Great Lakes, and Energy (EGLE) and abolished by Executive Reorganization Order 2019-1.²

MCL 324.2601 to 324.2611 (repealed)

Senate Bill 394 would repeal sections 1313 to 1317 of NREPA, along with section 88 of the Administrative Procedures Act (APA). The sections of NREPA proposed for repeal relate to the Environmental Permit Review Commission, which is housed in EGLE. Section 88 of the APA addresses contested cases for a permit issued by EGLE and subject to the review commission.

The bill would amend three other sections of NREPA as follows:

Sections 1301 and 1307 would be amended to remove references to definitions or substantive provisions relevant to the sections that would be repealed by SB 394.

Section 1311 would be amended to change the date by which the director of the Department of Natural Resources (DNR) must submit an annual report to the standing committees and appropriations subcommittees of the House and Senate with jurisdiction over issues overseen by the department. This report contains information about the number and types of permits applied for and granted by the department, as

¹ Public Act 269 of 2018: <https://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0652-E214064B.pdf>

² ERO 2019-1: <http://legislature.mi.gov/doc.aspx?mcl-324-99923>

well as information on reasons for denial of permits. The bill would change the deadline for the report's submission from December 1 to January 15.

MCL 324.1301, 324.1307, and 324.1311 (amended)
MCL 324.1313 to 324.1317 and 24.288 (repealed)

BRIEF DISCUSSION:

According to testimony presented by EGLE, the Permit Review Commission is viewed as a significant use of resources that slows down the permitting process without adding value for the department, industry stakeholders, or the public. The department estimates that each petition received by the commission results in over 100 hours of staff time dedicated to its review so the commission can make a decision.

Additional testimony from an individual who served on the review commission noted that petitions often ask the commission to make a judgment on one or more technical issues that are beyond the scope of the commissioners' collective expertise and knowledge. Individuals who serve on the review commission also do so without compensation, and the process takes up hours of their time. The former review commission member testified that, for the petitions the commission received, none resulted in the commission's disagreeing with EGLE's initial decision that was the basis for the permit review request.

By EGLE's account, for the majority of cases for predecision review, the commission agreed with the department actions. For appeals filed after a contested case hearing, the commission is asked to weigh in on legal issues where they do not have the expertise to properly assess the validity of the decision that is the subject of the petition. While the three-person panel decision becomes the final decision of department, if that decision is still unsatisfactory to the petitioner, the petitioner can still appeal a legal issue to circuit court, meaning that the panel decision did not achieve any resolution of the issue.

Because EGLE approves more than 99% of permits submitted, and (according to testimony from a review commission member concerning the cases they served on) the committee did not overrule EGLE's decisions, existence of the permit review commission appeared to be only slowing a final decision. Since the law creating the commission went into effect, there have been 40 predecision cases and 15 in the post-administrative law judge category. An additional 25% were determined to be ineligible for the process.

Supporters of the bills say that the review panels were unnecessary when created in 2018 and that the testimony presented by EGLE during committee hearings confirms this. Repealing the bills would enable the department to issue final decisions on permit requests faster, while also allowing applicants to move complaints about the permitting process to the judicial system to find a final remedy.

Opponents of the repeal include business and industry groups that had required representation on the review panels and believe that the review panels' decisions are irrelevant to gauging their impact. The purpose of the panels, they say, is to require review by interests that have not historically been part of the department's decision-making process. Doing this adds needed transparency to the permitting process.

FISCAL IMPACT:

Senate Bills 393 and 394 are unlikely to affect costs or revenues for EGLE or local governments.

POSITIONS:

Representatives of the following testified in support of the bills (1-25-24):

- Department of Environment, Great Lakes, and Energy
- Michigan Chapter of the Sierra Club

The following entities indicated support for the bills (1-25-24):

- Michigan Environmental Council
- Michigan League of Conservation Voters
- Upper Peninsula Environmental Coalition
- Michigan Lakes and Streams Association
- For Love of Water

The following entities indicated opposition to the bills (1-25-24):

- Michigan Aquatic Managers Association
- National Federation of Independent Business
- Michigan Farm Bureau
- Mackinac Center for Public Policy

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.