



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 393 (as passed by the Senate)
Senate Bill 394 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Rosemary Bayer
Committee: Regulatory Affairs

Date Completed: 8-6-24

RATIONALE

The Environmental Permit Review Commission (EPRC) consists of individuals appointed by the Governor to serve as experts in contested case hearings for environmental permits. Similarly, the Environmental Science Advisory Board (Board) advised the Governor on issues affecting natural resources and their management in the State.¹ According to testimony before the Senate Committee on Regulatory Affairs, each EPRC meeting includes at least seven staff members from the Department of Environment, Great Lakes, and Energy (EGLE), assistance from the Michigan Office of Administrative Hearings and Rules (MOAHR), and averages 109 days before a ruling is made. Some people are concerned that the EPRC, like the Board, is unnecessary for the effective management of natural resources and environmental standards in the State and that the funding and time it uses in its work could be used more productively. Therefore, it has been suggested that the EPRC be abolished to save time and avoid redundancy in the permit process.

CONTENT

Senate Bill 393 would repeal Part 26 (Environmental Science Advisory Board) of the Natural Resources and Environmental Protection Act (NREPA), which established the Board to advise the Governor and any State office, agency, or department on issues affecting the protection of the environment or management of natural resources in the State, upon request of the Governor.

Senate Bill 394 (S-2) would repeal Sections 1313 through 1317 of Part 13 (Permits) of NREPA, which generally establish the EPRC and prescribe the process by which the EPRC must advise the Director of EGLE on disputes related to permits and permit applications. The bill also would delete a reference to these Sections within Part 13 and repeal Section 88 of the Administrative Procedures Act, which prescribes the procedures of a contested case described above.

Senate Bill 394 is described in greater detail below.

Specifically, the EPRC may review petitions for permit application review and petitions for review of a final permit decision by the Director of EGLE. The Director may call a panel of three Commission members, based on areas of expertise, to form an environmental permit panel to review and advise on permit applications. In a contested case regarding a permit, an administrative law judge must preside, make the final decision, and issue the final decision and order for EGLE. The bill would repeal this language.

¹ Executive Order 2019-06 abolished the Board.

Under NREPA, the Director of EGLE must submit a report on permit applications to the standing committees and appropriations subcommittees of the Senate and House of Representatives with primary responsibilities concerning EGLE's jurisdiction by December 1 of each year. The bill would modify this date to January 15 of each year.

MCL 324.2602-324.2611 (repealed)
324.1301 et al. (S.B. 394)

BACKGROUND

The Board was abolished in Executive Order 2019-6, which reorganized the Department of Environmental Quality into EGLE.² Instead, science review boards can now be created to advise EGLE and the Governor on scientific issues relating to the authorities, powers, duties, functions, and responsibilities of EGLE. The EPRC was created by Public Act 268 of 2018 to advise EGLE's Director on disputes related to permits and permit applications. The EPRC may review petitions for permit application review and petitions for review of final decisions in a contested case. On July 18, 2024, Governor Whitmer issued Executive Reorganization Order 2024-5, which abolished the EPRC effective September 17, 2024.

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

The EPRC should be abolished because it takes time and resources away from EGLE's already effective permitting process. According to testimony before the Senate Committee on Regulatory Affairs, the EPRC's rulings often affirm that EGLE has adequately protected Michigan's environment and public health; however, the EPRC delays the permitting process in many ways. In a pre-application appeal, initiated if EGLE and an applicant cannot informally resolve a dispute concerning information or analysis within the application, the EPRC may be called upon to review the issues arising to the dispute. All work that EGLE does on an application stops until the EPRC can review the application and issue a recommendation to the Director and applicant. The Director reviews the EPRC's recommendation and either agrees or disagrees with it, and then the application process may continue.

Similarly, after a final decision for a permit is made, the EPRC is involved in any contested case hearing concerning that decision. The EPRC's involvement adds redundancy that does not contribute value to this appeals process. Contested permit applications go through local EGLE permit staff, the permit supervisor, their district supervisor, EGLE staff in Lansing, sometimes other State or Federal staff, and an administrative law judge. Despite this comprehensive process, three EPRC panel members may reconsider all previous decision-makers and possibly recommend that EGLE overturn years of review and the rulings of an administrative law judge, which adds significant time to the contested case process.

All EPRC involvement described above is an expensive use of taxpayer funds. Each EPRC meeting includes at least seven staff from EGLE and other branches, including senior agency staff and an attorney. It takes an average of 100 hours of staff time per petition to compile up to 10,000 pages of administrative record per review. It also takes a lot of time for panel members to read the review. Additionally, each contested case requires two to three meetings, and all staff are compensated for that time. These significant costs are not recuperated because petitioners are not required to pay for an EPRC appeal process. Given

² Executive Order 2019-6

the time and resources used in an EPRC process that does not often change the outcome of environmental permitting, the EPRC should be abolished.

Supporting Argument

The EPRC is not good governance. During contested cases, the three EPRC panel members are sometimes required to rule on matters beyond their qualifications. Members are qualified in their technical, scientific fields but may be asked to rule on specific matters of law beyond their expertise. For example, EPRC panelists with backgrounds in geology or ecology may be asked to reconsider an administrative law judge's or staff attorney's position on land use law. Cases of scientific experts questioning legal experts on matters of law do not constitute good governance and not abolishing the EPRC could lead to uninformed recommendations and decisions in the permitting process.

Supporting Argument

According to testimony before to the Senate Committee on Regulatory Affairs, the EPRC and the Board were created to slow down or halt EGLE in its mission to protect the environment and public health. Testimony also indicates that these bodies are comprised of individuals representing private sector businesses and allow regulated industries a chance to work around rules protecting Michigan's environment. The bill should be passed to remove a tool that regulated industries can use to prioritize their own desires over the environmental and public health needs of Michigan residents.

Opposing Argument

The EPRC and the Board provide scientific review and transparency, which benefits Michigan businesses and policymakers. According to testimony before the Senate Committee on Regulatory Affairs, this was one of the original reasons for the EPRC's and the Board's creations. They give businesses confidence to invest and reinvest in Michigan and ensure that permits and rules are not subject to political preference of whichever party holds power. Instead of abolishing these regulatory bodies, efforts should be made to reorient their work to provide stakeholders an opportunity to participate in permitting processes.

Opposing Argument

According to testimony before the Senate Committee on Regulatory Affairs, complying with regulations costed small businesses an average of \$12,000 per employee in 2017. The amount per employee continues to increase as more State-specific regulations are added. Eliminating the Board and the EPRC would remove an opportunity for public input that could either push back on or justify a regulation.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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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.