

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 652

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 33, 39a, 41, 42, 43, 44, 47, and 48 (MCL 24.233, 24.239a, 24.241, 24.242, 24.243, 24.244, 24.247, and 24.248), sections 33 and 47 as amended and section 39a as added by 1999 PA 262, sections 41 and 42 as amended by 2004 PA 491, section 43 as amended by 1989 PA 288, section 44 as amended by 2016 PA 513, and section 48 as amended by 2012 PA 181, and by adding sections 65, 66, and 88.

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

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

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

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

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

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

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

3 (a) A reference to the statutory authority under which the
4 action is proposed.

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

8 (c) A statement of the terms or substance of the proposed
9 rule, a description of the subjects and issues involved, and the
10 proposed effective date of the rule.

11 (3) The agency, or the office ~~of regulatory reform~~ acting on
12 behalf of an agency, shall transmit copies of the notice **DESCRIBED**
13 **IN SUBSECTION (1)** to each person who requested the agency in
14 writing or electronically for advance notice of proposed action
15 that may affect the person. If requested, the notice ~~shall~~**MUST** be
16 by mail, in writing, or electronically to the last address
17 specified by the person.

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

21 (5) The head of the promulgating agency or 1 or more persons
22 designated by the head of the agency who have knowledge of the
23 subject matter of the proposed rule shall be present at the public
24 hearing and shall participate in the discussion of the proposed
25 rule.

26 Sec. 42. (1) Except as provided in ~~section~~**SECTIONS 44 AND 66,**
27 at a minimum, an agency, or the office ~~of regulatory reform~~ acting

1 on behalf of the agency, shall publish the notice of public hearing
 2 as prescribed in any applicable statute or, if none, the agency, or
 3 the office ~~of regulatory reform~~ acting on behalf of the agency,
 4 shall publish the notice not less than 10 days and not more than 60
 5 days before the date of the public hearing in at least 3 newspapers
 6 of general circulation in different parts of ~~the~~ **THIS** state, 1 of
 7 which shall ~~shall~~ **MUST** be in the Upper Peninsula.

8 (2) Additional methods that may be employed ~~by the agency, or~~
 9 ~~the office of regulatory reform acting on behalf of the agency,~~
 10 ~~depending upon the circumstances,~~ **TO PROVIDE NOTICE OF THE PUBLIC**
 11 **HEARING** include publication in trade, industry, governmental, or
 12 professional publications or posting on the website of the agency
 13 or the office. ~~of regulatory reform.~~

14 (3) In addition to the requirements of subsection (1) **AND**
 15 **EXCEPT AS PROVIDED IN SECTION 66**, the agency shall electronically
 16 submit a copy of the notice of public hearing to the office ~~of~~
 17 ~~regulatory reform~~ for publication in the Michigan ~~register.~~
 18 **REGISTER**. If the office ~~of regulatory reform~~ submitted the notice
 19 of public hearing on behalf of the agency, the office ~~of regulatory~~
 20 ~~reform~~ shall publish the notice of public hearing in the Michigan
 21 ~~register.~~ **REGISTER**. An agency's notice shall ~~shall~~ **MUST** be published in
 22 the Michigan ~~register~~ **REGISTER** before the public hearing and the
 23 agency shall electronically file a copy of the notice of public
 24 hearing with the office. ~~of regulatory reform.~~ Within 7 days after
 25 receipt of the notice of public hearing **AND BEFORE THE PUBLIC**
 26 **HEARING**, the office ~~of regulatory reform~~ shall do all of the
 27 following: ~~before the public hearing:~~

1 (a) Electronically transmit a copy of the notice of public
2 hearing to the committee.

3 (b) Provide notice electronically through publicly accessible
4 internet media.

5 (4) After the office ~~of regulatory reform~~ electronically
6 transmits a copy of the notice of public hearing to the committee,
7 the committee shall electronically transmit copies of the notice of
8 public hearing, not later than the next business day after receipt
9 of the notice from the office, ~~of regulatory reform,~~ to each member
10 of the committee and to the members of the standing committees of
11 the senate and house of representatives that deal with the subject
12 matter of the proposed rule.

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

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

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

26 Sec. 44. (1) Sections 41, ~~and~~ 42, **AND 66** do not apply to an
27 amendment or rescission of a rule that is obsolete or superseded,

1 or that is required to make obviously needed corrections to make
2 the rule conform to an amended or new statute or to accomplish any
3 other solely formal purpose, if a statement to that effect is
4 included in the legislative service bureau certificate of approval
5 of the rule.

6 (2) Sections 41 and 42 do not apply to a rule that is
7 promulgated under the Michigan occupational safety and health act,
8 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially
9 similar to an existing federal standard that has been adopted or
10 promulgated under the occupational safety and health act of 1970,
11 Public Law 91-596. However, notice of the proposed rule must be
12 published in the Michigan ~~register~~**REGISTER** at least 35 days before
13 ~~the submission of the rule to~~**IS FILED WITH** the secretary of state
14 under section 46(1). A reasonable period, not to exceed 21 days,
15 must be provided for the submission of written or electronic
16 comments and views following publication in the Michigan
17 ~~register~~**REGISTER**.

18 (3) Sections 41 and 42 do not apply to a change to a proposed
19 rule by an agency during processing of the rule if the office
20 determines under section 45c(3) that the regulatory impact and
21 impact on small businesses of the changed proposed rule are not
22 more burdensome than the regulatory impact and impact on small
23 businesses of the original proposed rule.

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

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

6 (2) Except ~~in case of~~ **FOR** a rule processed under section 48 **OR**
7 **66**, an agency may withdraw a promulgated rule ~~which~~ **THAT** has not
8 become effective by filing a written request stating reasons for
9 withdrawal to the secretary of state on or before the last day for
10 filing rules for the interim period in which the rules were first
11 filed, or by filing a written request for withdrawal to the
12 secretary of state and the office, ~~of regulatory reform,~~ within a
13 reasonable time, as determined by the office, ~~of regulatory reform,~~
14 after the last day for filing and before publication of the rule in
15 the next supplement to the code. In any other ~~case~~ **CIRCUMSTANCES**,
16 an agency may abrogate its rule only by rescission. ~~When~~ **IF** an
17 agency has withdrawn a promulgated rule, it shall give notice,
18 stating reasons, to the committee that the rule has been withdrawn.

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

21 Sec. 48. (1) If an agency finds that preservation of the
22 public health, safety, or welfare requires promulgation of an
23 emergency rule without following the notice and participation
24 procedures required by sections 41 and 42 and states in the rule
25 the agency's reasons for that finding, and the governor concurs in
26 the finding of emergency, the agency may dispense with all or part
27 of the procedures and file in the office of the secretary of state

1 the copies prescribed by section 46 endorsed as an emergency rule,
2 to 3 of which copies ~~shall~~**MUST** be attached the certificates
3 prescribed by section 45 and the governor's certificate concurring
4 in the finding of emergency. The emergency rule is effective on
5 filing and remains in effect until a date fixed in the rule or 6
6 months after the date of its filing, whichever is earlier. The rule
7 may be extended once for not more than 6 months by the filing of a
8 governor's certificate of the need for the extension with the
9 office of the secretary of state before expiration of the emergency
10 rule. **ANY PERIOD OR EXTENSION DURING WHICH AN EMERGENCY RULE IS**
11 **EFFECTIVE UNDER THIS SUBSECTION IS TOLLED FROM THE DATE THAT THE**
12 **ENVIRONMENTAL RULES REVIEW COMMITTEE MAKES A DETERMINATION AS TO A**
13 **SIMILAR RULE UNDER SECTION 66(5) (C) UNTIL THE DATE A PUBLIC HEARING**
14 **IS HELD ON THE RULE UNDER SECTION 66(7) .**

15 (2) If the director of the department of ~~community health~~ **AND**
16 **HUMAN SERVICES** determines that an imminent danger to the health or
17 lives of individuals in this state can be prevented or controlled
18 by scheduling a substance as a controlled substance under section
19 2251(4) of the public health code, 1978 PA 368, MCL 333.2251, and
20 the administrator determines that the substance should be scheduled
21 or rescheduled as a controlled substance, the department of
22 licensing and regulatory affairs may dispense with all or part of
23 the procedures required by sections 41 and 42 and file in the
24 office of the secretary of state the copies prescribed by section
25 46 endorsed as an emergency rule, to 3 of which copies ~~shall~~**MUST**
26 be attached the certificate of approval and the director of the
27 department of ~~community health's~~**HEALTH AND HUMAN SERVICES'S**

1 notification under section 2251(4) of the public health code, 1978
2 PA 368, MCL 333.2251. The office ~~of regulatory reinvention~~ shall
3 submit the emergency rule draft language to the legislative service
4 bureau for its formal certification within 7 business days ~~of~~ **AFTER**
5 receipt from the department of licensing and regulatory affairs.
6 The legislative service bureau shall issue a certificate of
7 approval indicating whether the proposed rule is proper as to all
8 matters of form, classification, and arrangement within 7 business
9 days after receiving the submission and return the rule to the
10 office. ~~of regulatory reinvention.~~ If the legislative service
11 bureau fails to issue a certificate of approval within 7 business
12 days after receipt of the submission for formal certification, the
13 office ~~of regulatory reinvention~~ may issue a certificate of
14 approval. If the legislative service bureau returns the submission
15 to the office ~~of regulatory reinvention~~ before the expiration of
16 the 7-business-day time period, the 7-business-day time period is
17 tolled until the rule is returned by the office. ~~of regulatory~~
18 ~~reinvention.~~ The legislative service bureau ~~shall have~~ **HAS** the
19 remainder of the 7-business-day time period to consider the formal
20 certification of the rule. ~~Upon~~ **ON** receipt from the legislative
21 service bureau, the office ~~of regulatory reinvention~~ shall, within
22 7 business days, approve the proposed rule if it considers the
23 proposed rule to be legal and appropriate. An emergency rule
24 adopted under this subsection remains in effect until the earlier
25 date of the following:

26 (a) An identical or similar rule is promulgated.
27 (b) An identical or similar bill is enacted into law.

1 (c) The administrator determines that the emergency rule is no
2 longer necessary.

3 (d) Six months after the date of its filing, which may be
4 extended for not more than 6 months by the administrator ~~upon~~**ON**
5 filing a certificate of extension with the office of **THE** secretary
6 of state before the expiration of 6 months after the date of its
7 filing.

8 (3) An emergency rule ~~shall~~**MUST** not be numbered and ~~shall~~
9 **MUST** not be compiled in the Michigan ~~administrative code,~~
10 **ADMINISTRATIVE CODE**, but ~~shall~~**MUST** be noted in the annual
11 supplement to the code. The emergency rule ~~shall~~**MUST** be published
12 in the Michigan register ~~pursuant to~~**UNDER** section 8.

13 (4) If the agency desires to promulgate an identical or
14 similar rule with an effectiveness beyond the final effective date
15 of an emergency rule, the agency shall comply with the procedures
16 prescribed by this act for the processing of a rule ~~which~~**THAT** is
17 not an emergency rule. The rule ~~shall~~**MUST** be published in the
18 Michigan register and in the code.

19 (5) As used in this section, "administrator" means that term
20 as defined in section 7103 of the public health code, 1978 PA 368,
21 MCL 333.7103.

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

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

1 AGRICULTURE AND RURAL DEVELOPMENT, OR HIS OR HER DESIGNEE, AND THE
2 DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES, 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) TWO INDIVIDUALS WHO REPRESENT THE GENERAL PUBLIC.

23 (K) ONE INDIVIDUAL WHO IS A PUBLIC HEALTH 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 AN EMPLOYEE OF ANY OFFICE, DEPARTMENT,
3 OR AGENCY OF THIS STATE.

4 (B) THE INDIVIDUAL IS A PARTY TO 1 OR MORE CONTRACTS WITH THE
5 DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE COMPENSATION PAID UNDER
6 THOSE CONTRACTS IN ANY OF THE PRECEDING 3 YEARS REPRESENTED MORE
7 THAN 5% OF THE INDIVIDUAL'S ANNUAL GROSS INCOME IN THAT PRECEDING
8 YEAR.

9 (C) THE INDIVIDUAL IS EMPLOYED BY A PERSON THAT IS A PARTY TO
10 1 OR MORE CONTRACTS WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY
11 AND THE COMPENSATION PAID TO THE INDIVIDUAL'S EMPLOYER UNDER THOSE
12 CONTRACTS IN ANY OF THE PRECEDING 3 YEARS REPRESENTED MORE THAN 5%
13 OF THE EMPLOYER'S ANNUAL GROSS REVENUE IN THAT PRECEDING YEAR.

14 (D) THE INDIVIDUAL WAS EMPLOYED BY THE DEPARTMENT OF
15 ENVIRONMENTAL QUALITY WITHIN THE PRECEDING 3 YEARS.

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

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

24 (7) SUBJECT TO SUBSECTION (8), A VOTING MEMBER OF THE
25 ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL SERVE A TERM OF 4 YEARS,
26 EXCEPT THAT OF THE MEMBERS FIRST APPOINTED, 4 SHALL EACH SERVE A
27 TERM OF 4 YEARS, 4 SHALL EACH SERVE A TERM OF 3 YEARS, AND 4 SHALL

1 EACH SERVE A TERM OF 2 YEARS. A VOTING MEMBER OF THE ENVIRONMENTAL
2 RULES REVIEW COMMITTEE MUST NOT BE APPOINTED TO SERVE MORE THAN 3
3 CONSECUTIVE 4-YEAR TERMS BUT MAY BE APPOINTED AGAIN AFTER NOT
4 SERVING ON THE ENVIRONMENTAL RULES REVIEW COMMITTEE FOR 1 FULL
5 TERM.

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

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

11 (10) THE GOVERNOR SHALL APPOINT, BY AND WITH THE ADVICE AND
12 CONSENT OF THE SENATE, A MEMBER TO FILL A VACANCY IN THE VOTING
13 MEMBERSHIP OF THE ENVIRONMENTAL RULES REVIEW COMMITTEE CREATED BY
14 EITHER OF THE FOLLOWING:

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

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

19 (11) THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL NOT
20 CONDUCT ANY BUSINESS OR PERFORM ANY DUTIES WHILE THERE IS A VACANCY
21 IN THE VOTING MEMBERSHIP OF THE ENVIRONMENTAL RULES REVIEW
22 COMMITTEE, EXCEPT AS FOLLOWS:

23 (A) IF THE VACANCY IS CREATED BY DEATH, RESIGNATION, OR
24 REMOVAL, THE ENVIRONMENTAL RULES REVIEW COMMITTEE MAY CONTINUE TO
25 CONDUCT BUSINESS AND PERFORM DUTIES UNLESS THE GOVERNOR DOES NOT
26 APPOINT AN INDIVIDUAL TO FILL THE VACANCY WITHIN 90 DAYS. IF THE
27 GOVERNOR DOES NOT APPOINT AN INDIVIDUAL TO FILL THE VACANCY WITHIN

1 90 DAYS, THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL NOT CONDUCT
2 ANY BUSINESS OR PERFORM ANY DUTIES UNTIL THE GOVERNOR APPOINTS AN
3 INDIVIDUAL TO FILL THE VACANCY.

4 (B) IF THE VACANCY IS CREATED BY THE SENATE'S DISAPPROVAL OF
5 AN APPOINTMENT UNDER SECTION 6 OF ARTICLE V OF THE STATE
6 CONSTITUTION OF 1963, THE ENVIRONMENTAL RULES REVIEW COMMITTEE MAY
7 CONTINUE TO CONDUCT BUSINESS AND PERFORM DUTIES UNLESS THE GOVERNOR
8 DOES NOT APPOINT AN INDIVIDUAL TO FILL THE VACANCY WITHIN 90 DAYS.
9 IF THE GOVERNOR DOES NOT APPOINT AN INDIVIDUAL TO FILL THE VACANCY
10 WITHIN 90 DAYS, THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL NOT
11 CONDUCT ANY BUSINESS OR PERFORM ANY DUTIES UNTIL THE GOVERNOR
12 APPOINTS AN INDIVIDUAL TO FILL THE VACANCY.

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

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

1 HE OR SHE IS A STATE EMPLOYEE OR CONTRACT EMPLOYEE OF THIS STATE.

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

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

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

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

27 (18) THE ENVIRONMENTAL RULES REVIEW COMMITTEE MAY ENGAGE

1 ADMINISTRATIVE, TECHNICAL, OR LEGAL CONSULTANTS, IN ADDITION TO
2 ADVISORS SELECTED UNDER SUBSECTION (13), TO ASSIST THE
3 ENVIRONMENTAL RULES REVIEW COMMITTEE IN THE PERFORMANCE OF ITS
4 DUTIES. IF REQUESTED BY THE ENVIRONMENTAL RULES REVIEW COMMITTEE, A
5 DEPARTMENT, AGENCY, OR OFFICE OF THIS STATE MAY PROVIDE
6 ADMINISTRATIVE, TECHNICAL, OR LEGAL STAFF, IN ADDITION TO ADVISORS
7 SELECTED UNDER SUBSECTION (13), TO ASSIST THE ENVIRONMENTAL RULES
8 REVIEW COMMITTEE IN THE PERFORMANCE OF ITS DUTIES.

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

18 SEC. 66. (1) THE OFFICE SHALL PROMPTLY TRANSMIT TO THE
19 ENVIRONMENTAL RULES REVIEW COMMITTEE ELECTRONIC COPIES OF A REQUEST
20 FOR RULE-MAKING SUBMITTED TO THE OFFICE BY THE DEPARTMENT OF
21 ENVIRONMENTAL QUALITY UNDER SECTION 39. THE DEPARTMENT OF
22 ENVIRONMENTAL QUALITY IS STRONGLY ENCOURAGED TO CREATE A
23 STAKEHOLDER REVIEW PROCESS BEFORE BEGINNING THE RULE PROMULGATION
24 PROCESS TO ENSURE THAT ALL VIEWPOINTS ARE ADEQUATELY REPRESENTED IN
25 THE PROPOSED RULE.

26 (2) WITHIN 14 DAYS AFTER THE ENVIRONMENTAL RULES REVIEW
27 COMMITTEE RECEIVES A REQUEST FOR RULE-MAKING, THE CHAIRPERSON AND

1 VICE-CHAIRPERSON MAY DETERMINE AND NOTIFY THE OTHER MEMBERS OF THE
2 ENVIRONMENTAL RULES REVIEW COMMITTEE THAT NO FURTHER REVIEW OF THE
3 RULE-MAKING SHOULD BE REQUIRED UNDER THIS SECTION. WITHIN 14 DAYS
4 AFTER RECEIVING THIS NOTICE, 3 MEMBERS OF THE ENVIRONMENTAL RULES
5 REVIEW COMMITTEE MAY REQUEST A VOTE ON THE DETERMINATION. IF 7 OR
6 MORE MEMBERS VOTE TO OVERRIDE THE DETERMINATION OF THE CHAIRPERSON
7 AND VICE-CHAIRPERSON, THE RULE-MAKING MUST PROCEED UNDER
8 SUBSECTIONS (3) TO (12). IF FEWER THAN 7 MEMBERS VOTE TO OVERRIDE
9 THE DETERMINATION OF THE CHAIRPERSON AND VICE-CHAIRPERSON, THE
10 REQUEST FOR RULE-MAKING MUST NOT PROCEED UNDER SUBSECTIONS (3) TO
11 (12), BUT MUST PROCEED UNDER THE OTHERWISE APPLICABLE SECTIONS OF
12 THIS ACT.

13 (3) THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL PROVIDE
14 COPIES OF DRAFT PROPOSED RULES AND A DRAFT REGULATORY IMPACT
15 STATEMENT TO THE OFFICE AND THE ENVIRONMENTAL RULES REVIEW
16 COMMITTEE.

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

21 (A) THE OFFICE HAS CERTIFIED THAT THE DRAFT PROPOSED RULES DO
22 NOT EXCEED THE RULE-MAKING DELEGATION CONTAINED IN THE STATUTE
23 AUTHORIZING THE RULE-MAKING.

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

27 (C) THE DRAFT PROPOSED RULES ARE NECESSARY AND SUITABLE TO

1 ACHIEVE THEIR PURPOSES IN PROPORTION TO THE BURDENS THEY PLACE ON
2 INDIVIDUALS AND BUSINESSES.

3 (D) THE DRAFT PROPOSED RULES ARE AS CLEAR AND UNAMBIGUOUS AS
4 REASONABLY APPROPRIATE CONSIDERING THE SUBJECT MATTER OF THE
5 PROPOSED RULES AND THE INDIVIDUALS AND BUSINESSES THAT WILL BE
6 REQUIRED TO COMPLY WITH THE PROPOSED RULES.

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

9 (5) WITHIN 35 DAYS AFTER RECEIVING DRAFT PROPOSED RULES UNDER
10 SUBSECTION (3), THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL MAKE
11 1 OF THE FOLLOWING DETERMINATIONS:

12 (A) BY A VOTE OF 9 VOTING MEMBERS OF THE ENVIRONMENTAL RULES
13 REVIEW COMMITTEE, A DETERMINATION THAT THE REQUEST FOR RULE-MAKING
14 MUST NOT PROCEED ANY FURTHER UNDER THIS SECTION, BUT MUST PROCEED
15 UNDER THE OTHERWISE APPLICABLE SECTIONS OF THIS ACT.

16 (B) BY A MAJORITY VOTE OF THE VOTING MEMBERS OF THE
17 ENVIRONMENTAL RULES REVIEW COMMITTEE, A DETERMINATION THAT THE
18 DRAFT PROPOSED RULES MEET THE CRITERIA IN SUBSECTION (4) AND MAY
19 PROCEED TO A PUBLIC HEARING UNDER SUBSECTION (7) (A).

20 (C) BY A MAJORITY VOTE OF THE VOTING MEMBERS OF THE
21 ENVIRONMENTAL RULES REVIEW COMMITTEE, EITHER A DETERMINATION THAT
22 THE DRAFT PROPOSED RULES DO NOT MEET THE CRITERIA IN SUBSECTION (4)
23 OR THAT ADDITIONAL REVIEW IS NEEDED TO DETERMINE WHETHER THE DRAFT
24 PROPOSED RULES MEET THE CRITERIA IN SUBSECTION (4). IF THE
25 ENVIRONMENTAL RULES REVIEW COMMITTEE MAKES A DETERMINATION UNDER
26 THIS SUBDIVISION, THE DRAFT PROPOSED RULES MUST NOT PROCEED TO A
27 PUBLIC HEARING UNDER SECTIONS 41 AND 42 BUT RATHER MUST FOLLOW THE

1 PROCESS IN SUBSECTION (6) .

2 (6) IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE MAKES A
3 DETERMINATION UNDER SUBSECTION (5) (C) , THE ENVIRONMENTAL RULES
4 REVIEW COMMITTEE SHALL NOTIFY THE DEPARTMENT OF ENVIRONMENTAL
5 QUALITY IN WRITING OF THE DETERMINATION, INCLUDING AN EXPLANATION
6 AS TO EITHER WHY THE DRAFT PROPOSED RULES DO NOT MEET THE CRITERIA
7 IN SUBSECTION (4) OR WHY ADDITIONAL REVIEW IS NEEDED. THE
8 DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL THEN ATTEMPT TO ADDRESS
9 THE ENVIRONMENTAL RULES REVIEW COMMITTEE'S DETERMINATION BY TAKING
10 ACTIONS THAT MAY INCLUDE, BUT ARE NOT LIMITED TO, CONVENING
11 MEETINGS WITH STAKEHOLDERS OR GROUPS OF STAKEHOLDERS, PROVIDING
12 FURTHER INFORMATION TO THE ENVIRONMENTAL RULES REVIEW COMMITTEE, OR
13 REVISING THE DRAFT PROPOSED RULES.

14 (7) THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL HOLD A
15 PUBLIC HEARING UNDER SECTIONS 41 AND 42 ONLY IF 1 OF THE FOLLOWING
16 OCCURS:

17 (A) THE ENVIRONMENTAL RULES REVIEW COMMITTEE MAKES THE
18 DETERMINATION UNDER SUBSECTION (5) (B) .

19 (B) THE ENVIRONMENTAL RULES REVIEW COMMITTEE DETERMINES THAT
20 THE DRAFT PROPOSED RULES OR ANY REVISED DRAFT PROPOSED RULES
21 SUBMITTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY MEET THE
22 CRITERIA IN SUBSECTION (4) .

23 (C) WITHIN 90 DAYS AFTER THE DEPARTMENT OF ENVIRONMENTAL
24 QUALITY RECEIVES A NOTICE UNDER SUBSECTION (6) , WHICH DEADLINE MAY
25 BE EXTENDED BY UP TO 2 ADDITIONAL 90-DAY PERIODS BY A MAJORITY OF
26 THE VOTING MEMBERS OF THE ENVIRONMENTAL RULES REVIEW COMMITTEE, THE
27 ENVIRONMENTAL RULES REVIEW COMMITTEE HAS NOT DETERMINED THAT THE

1 DRAFT PROPOSED RULES OR ANY REVISED DRAFT PROPOSED RULES SUBMITTED
2 BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY MEET THE CRITERIA IN
3 SUBSECTION (4) .

4 (D) THE ENVIRONMENTAL RULES REVIEW COMMITTEE FAILS TO MAKE A
5 DETERMINATION UNDER SUBSECTION (5) WITHIN 35 DAYS AFTER RECEIVING
6 THE DRAFT PROPOSED RULES UNDER SUBSECTION (3) .

7 (8) WITHIN 120 DAYS AFTER A PUBLIC HEARING CONDUCTED BY THE
8 DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER SUBSECTION (7) , THE
9 DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL PREPARE AND SUBMIT TO THE
10 ENVIRONMENTAL RULES REVIEW COMMITTEE AN AGENCY REPORT CONTAINING A
11 SYNOPSIS OF THE COMMENTS MADE AT AND RECEIVED IN CONNECTION WITH
12 THE PUBLIC HEARING AND A DESCRIPTION OF ANY CHANGES THAT ARE
13 SUGGESTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE DRAFT
14 PROPOSED RULES. IF THE DEPARTMENT OF ENVIRONMENTAL QUALITY FAILS TO
15 SUBMIT AN AGENCY REPORT TO THE ENVIRONMENTAL RULES REVIEW COMMITTEE
16 WITHIN 120 DAYS AFTER THE PUBLIC HEARING, THE DEPARTMENT OF
17 ENVIRONMENTAL QUALITY SHALL WITHDRAW THE RULE REQUEST.

18 (9) AFTER THE RECEIPT OF AN AGENCY REPORT UNDER SUBSECTION
19 (8) , THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL MEET 1 OR MORE
20 TIMES TO DISCUSS THE REPORT AND COMMENTS MADE AND TESTIMONY GIVEN
21 AT THE PUBLIC HEARING AND APPROVE THE DRAFT PROPOSED RULES WITH
22 MODIFICATIONS, APPROVE THE DRAFT PROPOSED RULES, OR REJECT THE
23 DRAFT PROPOSED RULES. IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE
24 FAILS TO MAKE A DETERMINATION WITHIN 120 DAYS AFTER RECEIVING AN
25 AGENCY REPORT UNDER SUBSECTION (8) , THE DRAFT PROPOSED RULES MUST
26 PROCEED UNDER SUBSECTION (12) .

27 (10) IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE APPROVES THE

1 DRAFT PROPOSED RULES UNDER SUBSECTION (9), THE DRAFT PROPOSED RULES
2 MUST PROCEED UNDER SUBSECTION (12). IF THE ENVIRONMENTAL RULES
3 REVIEW COMMITTEE EITHER APPROVES THE DRAFT PROPOSED RULES WITH
4 MODIFICATIONS OR REJECTS THE DRAFT PROPOSED RULES, THE DRAFT
5 PROPOSED RULES MUST PROCEED UNDER SUBSECTION (11).

6 (11) IF WITHIN THE TIME PERIOD SET FORTH IN SUBSECTION (9),
7 THE ENVIRONMENTAL RULES REVIEW COMMITTEE APPROVES THE DRAFT
8 PROPOSED RULES WITH MODIFICATIONS OR REJECTS THE DRAFT PROPOSED
9 RULES, THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL SUBMIT A
10 NOTICE OF OBJECTION TO THE DIRECTOR OF THE DEPARTMENT OF
11 ENVIRONMENTAL QUALITY AND THE GOVERNOR THAT INCLUDES AN EXPLANATION
12 OF ITS DECISION. THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL THEN
13 ATTEMPT TO RESOLVE ANY ISSUES WITH THE ENVIRONMENTAL RULES REVIEW
14 COMMITTEE, WHICH RESOLUTION MAY INCLUDE SUBMITTING REVISED DRAFT
15 PROPOSED RULES. IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE AND THE
16 DEPARTMENT OF ENVIRONMENTAL QUALITY RESOLVE ALL ISSUES, THE DRAFT
17 PROPOSED RULES MUST PROCEED UNDER SUBSECTION (12). IF ALL ISSUES
18 ARE NOT RESOLVED BEFORE 11 MONTHS AFTER THE DATE OF THE LAST PUBLIC
19 HEARING ON THE DRAFT PROPOSED RULES, THE DEPARTMENT OF
20 ENVIRONMENTAL QUALITY SHALL SUBMIT A WRITTEN FINDING TO THE
21 GOVERNOR ON ITS FINAL POSITION ON THE DRAFT PROPOSED RULES OR
22 REVISED DRAFT PROPOSED RULES. IF THE GOVERNOR CONCURS WITH THE
23 DEPARTMENT OF ENVIRONMENTAL QUALITY'S FINDING, THE GOVERNOR SHALL
24 DIRECT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO
25 PROCEED WITH THE DRAFT PROPOSED RULES UNDER SUBSECTION (12). IF THE
26 GOVERNOR DOES NOT CONCUR WITH THE DEPARTMENT OF ENVIRONMENTAL
27 QUALITY'S FINDING, THE GOVERNOR SHALL DIRECT THE DEPARTMENT OF

1 ENVIRONMENTAL QUALITY TO WITHDRAW THE DRAFT RULES.

2 (12) IF DRAFT PROPOSED RULES PROCEED UNDER THIS SUBSECTION AS
3 PROVIDED IN THIS SECTION, 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 AFTER THE PUBLIC HEARING, AND CERTIFICATES OF
8 APPROVAL FROM THE LEGISLATIVE SERVICE BUREAU AND THE OFFICE. THE
9 OFFICE SHALL ALSO ELECTRONICALLY SUBMIT TO THE ENVIRONMENTAL RULES
10 REVIEW COMMITTEE A COPY OF THE RULE AND ANY CERTIFICATES OF
11 APPROVAL FROM THE LEGISLATIVE SERVICE BUREAU AND THE OFFICE. THE
12 OFFICE SHALL ELECTRONICALLY TRANSMIT TO THE ENVIRONMENTAL RULES
13 REVIEW COMMITTEE THE INFORMATION DESCRIBED IN THIS SUBSECTION
14 WITHIN 1 YEAR AFTER THE DATE OF THE LAST PUBLIC HEARING.

15 SEC. 88. IN A CONTESTED CASE REGARDING A PERMIT, AS THAT TERM
16 IS DEFINED IN SECTION 1301(G) OF THE NATURAL RESOURCES AND
17 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.1301, THE
18 DESIGNATION OF A PRESIDING OFFICER, THE EFFECT OF A DECISION BY A
19 PRESIDING OFFICER, THE AVAILABILITY OF OTHER ADMINISTRATIVE
20 REMEDIES, AND JUDICIAL REVIEW ARE CONTROLLED BY SECTIONS 1315 AND
21 1317 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,
22 1994 PA 451, MCL 324.1315 AND 324.1317.

23 Enacting section 1. This amendatory act does not take effect
24 unless Senate Bill No. 653 of the 99th Legislature is enacted into
25 law.