

HOUSE BILL No. 5331

December 6, 2017, Introduced by Reps. VanderWall, Howell, Glenn and Bellino and referred to the Committee on Natural Resources.

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

1 feasible in meeting the objectives of the act authorizing the
2 promulgation of the rule:

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

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

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

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

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

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

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

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

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

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

1 employees.

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

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

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

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

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

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

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

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

26 (3) The agency, or the office ~~of regulatory reform~~ acting on
27 behalf of an agency, shall transmit copies of the notice **DESCRIBED**

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

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

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

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

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

1 or the office. ~~of regulatory reform.~~

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

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

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

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

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

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

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

14 Sec. 44. (1) Sections 41, ~~and~~ 42, **AND 66** do not apply to an
15 amendment or rescission of a rule that is obsolete or superseded,
16 or that is required to make obviously needed corrections to make
17 the rule conform to an amended or new statute or to accomplish any
18 other solely formal purpose, if a statement to that effect is
19 included in the legislative service bureau certificate of approval
20 of the rule.

21 (2) Sections 41 and 42 do not apply to a rule that is
22 promulgated under the Michigan occupational safety and health act,
23 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially
24 similar to an existing federal standard that has been adopted or
25 promulgated under the occupational safety and health act of 1970,
26 Public Law 91-596. However, notice of the proposed rule must be
27 published in the Michigan register at least 35 days before ~~the~~

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

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

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

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

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

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

26 (3) Except as provided in subsection (6), an agency shall
27 prepare and include with a notice of transmittal under subsection

1 (2) the request for rule-making and the response from the office, a
2 small business impact statement prepared under section 40, and a
3 regulatory impact statement. The regulatory impact statement must
4 contain all of the following information:

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

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

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

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

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

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

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

25 (h) A discussion of the feasibility of establishing a
26 regulatory program similar to that proposed in the rule that would
27 operate through market-based mechanisms.

1 (i) An estimate of the cost of rule imposition on the agency
2 promulgating the rule.

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

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

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

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

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

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

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

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

25 (r) An estimate of the cost, if any, to the agency of
26 administering or enforcing a rule that exempts or sets lesser
27 standards for compliance by small businesses.

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

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

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

9 (v) An estimate of the primary and direct benefits of the
10 rule.

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

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

16 (y) An estimate of any secondary or indirect benefits of the
17 rule.

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

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

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

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

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

25 (6) Subsections (2), (3), and (4) do not apply to a rule that
26 is promulgated under section 33, ~~or~~ 48, **OR 66** or a rule to which
27 sections 41 and 42 do not apply as provided in section 44.

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

23 **(2) THE ENVIRONMENTAL RULES REVIEW COMMITTEE CONSISTS OF THE**
24 **DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, OR HIS OR HER**
25 **DESIGNEE, THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND HUMAN**
26 **SERVICES, OR HIS OR HER DESIGNEE, AND THE CHIEF EXECUTIVE OFFICER**
27 **OF THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION, OR HIS OR HER**

1 DESIGNEE, ALL OF WHOM SERVE AS NONVOTING MEMBERS, AND THE FOLLOWING
2 VOTING MEMBERS APPOINTED BY THE GOVERNOR BY AND WITH THE ADVICE AND
3 CONSENT OF THE SENATE:

4 (A) ONE INDIVIDUAL WHO REPRESENTS THE SOLID WASTE MANAGEMENT
5 INDUSTRY.

6 (B) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE MANUFACTURING
7 ORGANIZATION.

8 (C) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE ORGANIZATION
9 THAT REPRESENTS SMALL BUSINESSES.

10 (D) ONE INDIVIDUAL WHO REPRESENTS PUBLIC UTILITIES THAT ENGAGE
11 IN THE GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRICITY.

12 (E) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE ENVIRONMENTAL
13 ORGANIZATION.

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

15 (G) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE AGRICULTURAL
16 ORGANIZATION.

17 (H) ONE INDIVIDUAL WHO REPRESENTS LOCAL GOVERNMENTS.

18 (I) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE LAND CONSERVANCY
19 ORGANIZATION.

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

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

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

25 (4) AN INDIVIDUAL MAY NOT SERVE AS A VOTING MEMBER OF THE
26 ENVIRONMENTAL RULES REVIEW COMMITTEE IF ANY OF THE FOLLOWING APPLY:

27 (A) THE INDIVIDUAL IS A CURRENT EMPLOYEE OF ANY OFFICE,

1 DEPARTMENT, OR AGENCY OF THIS STATE.

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

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

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

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

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

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

26 (10) THE GOVERNOR SHALL APPOINT, BY AND WITH THE ADVICE AND
27 CONSENT OF THE SENATE, A MEMBER TO FILL A VACANCY IN THE VOTING

1 MEMBERSHIP OF THE ENVIRONMENTAL RULES REVIEW COMMITTEE CREATED BY
2 EITHER OF THE FOLLOWING:

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

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

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

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

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

25 (14) THE BUSINESS THAT THE ENVIRONMENTAL RULES REVIEW
26 COMMITTEE MAY PERFORM MUST BE CONDUCTED AT A PUBLIC MEETING OF THE
27 ENVIRONMENTAL RULES REVIEW COMMITTEE HELD IN COMPLIANCE WITH THE

1 OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

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

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

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

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

1 ENVIRONMENTAL RULES REVIEW COMMITTEE IN THE PERFORMANCE OF ITS
2 DUTIES.

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

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

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

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

26 (4) AFTER RECEIVING DRAFT PROPOSED RULES UNDER SUBSECTION (3),
27 THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL MEET 1 OR MORE TIMES

1 TO DETERMINE WHETHER THE DRAFT PROPOSED RULES MEET ALL OF THE
2 FOLLOWING CRITERIA:

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

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

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

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

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

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

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

24 (7) IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE DETERMINES
25 THAT DRAFT PROPOSED RULES MEET THE CRITERIA IN SUBSECTION (4), THE
26 PUBLIC HEARING UNDER SECTIONS 41 AND 42 MUST BE HELD, EXCEPT THAT
27 THE ENVIRONMENTAL RULES REVIEW COMMITTEE SHALL GIVE NOTICE OF AND

1 CONDUCT THE PUBLIC HEARING, AND THE DEPARTMENT OF ENVIRONMENTAL
2 QUALITY IS NOT REQUIRED TO PREPARE A SMALL BUSINESS IMPACT
3 STATEMENT UNDER SECTION 40(2) OR A REGULATORY IMPACT STATEMENT
4 UNDER SECTION 45(3).

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

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

27 (10) IF THE ENVIRONMENTAL RULES REVIEW COMMITTEE APPROVES

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

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

20 Enacting section 1. This amendatory act takes effect January
21 1, 2018.