

SENATE BILL No. 827

March 1, 2016, Introduced by Senators CASPERSON, NOFS, GREEN, BOOHER, COLBECK and ROBERTSON and referred to the Committee on Elections and Government Reform.

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, section 44 as amended by 2004 PA 23, and section 45 as amended by 2013 PA 200, 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

1 with instructions. Sections 41, 42, 45, ~~and 45a,~~ **AND 66** do not
2 apply to ~~such~~ **PROMULGATION OF THE** rules.

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

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

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

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

25 Sec. 40. (1) ~~When~~ **IF** an agency proposes to adopt a rule that
26 will apply to a small business and the rule will have a
27 disproportionate impact on small businesses because of the size of

1 those businesses, the agency shall consider exempting small
2 businesses and, if not exempted, the agency ~~proposing to adopt the~~
3 ~~rule~~ shall reduce the economic impact of the rule on small
4 businesses by doing all of the following ~~when~~ **IF** it is lawful and
5 feasible in meeting the objectives of the act authorizing the
6 promulgation of the rule:

7 (a) Identify and estimate the number of small businesses
8 affected by the proposed rule and its probable effect on small
9 businesses.

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

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

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

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

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

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

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

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

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

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

8 (A) A rule that is required by federal law and that an agency
9 promulgates without imposing standards more stringent than those
10 required by the federal law.

11 (B) **A RULE PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL**
12 **QUALITY.**

13 Sec. 41. (1) Except as provided in ~~section~~**SECTIONS 44 AND 46,**
14 before the adoption of a rule, an agency, or the office of
15 ~~regulatory reform,~~**PERFORMANCE AND TRANSFORMATION,** shall give
16 notice of a public hearing and offer a person an opportunity to
17 present data, views, questions, and arguments. The notice ~~shall~~
18 **MUST** be given within the time prescribed by any applicable statute,
19 or if none, in the manner prescribed in section 42(1).

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

22 (a) A reference to the statutory authority under which the
23 action is proposed.

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

27 (c) A statement of the terms or substance of the proposed

1 rule, a description of the subjects and issues involved, and the
2 proposed effective date of the rule.

3 (3) The agency, or the office of ~~regulatory reform~~**PERFORMANCE**
4 **AND TRANSFORMATION** acting on behalf of an agency, shall transmit
5 copies of the notice **DESCRIBED IN SUBSECTION (1)** to each person who
6 requested the agency in writing or electronically for advance
7 notice of proposed action that may affect the person. If requested,
8 the notice ~~shall~~**MUST** be by mail, in writing, or electronically to
9 the last address specified by the person.

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

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

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

1 (2) Additional methods that may be employed ~~by the agency, or~~
2 ~~the office of regulatory reform acting on behalf of the agency,~~
3 ~~depending upon the circumstances,~~ **TO PROVIDE NOTICE OF THE PUBLIC**
4 **HEARING** include publication in trade, industry, governmental, or
5 professional publications or posting on the website of the agency
6 or the office of ~~regulatory reform~~. **PERFORMANCE AND TRANSFORMATION.**

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

23 (a) Electronically transmit a copy of the notice of public
24 hearing to the committee.

25 (b) Provide notice electronically through publicly accessible
26 ~~internet~~ **INTERNET** media.

27 (4) After the office of ~~regulatory reform~~ **PERFORMANCE AND**

1 **TRANSFORMATION** electronically transmits a copy of the notice of
2 public hearing to the committee, the committee shall electronically
3 transmit copies of the notice of public hearing, not later than the
4 next business day after receipt of the notice from the office of
5 ~~regulatory reform,~~ **PERFORMANCE AND TRANSFORMATION**, to each member
6 of the committee and to the members of the standing committees of
7 the senate and house of representatives that deal with the subject
8 matter of the proposed rule.

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

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

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

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

1 of the rule.

2 (2) Sections 41 and 42 do not apply to a rule that is
3 promulgated under the Michigan occupational safety and health act,
4 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially
5 similar to an existing federal standard that has been adopted or
6 promulgated under the occupational safety and health act of 1970,
7 Public Law 91-596. ~~7-84 Stat. 1590.~~ However, notice of the proposed
8 rule ~~shall~~**MUST** be published in the Michigan register at least 35
9 days before ~~the submission of the rule to~~**IS FILED WITH** the
10 secretary of state ~~pursuant to~~**UNDER** section 46(1). A reasonable
11 period, not to exceed 21 days, ~~shall~~**MUST** be provided for the
12 submission of written or electronic comments and views following
13 publication in the Michigan register.

14 (3) ~~For purposes of subsection (2),~~**AS USED IN THIS SECTION,**
15 "substantially similar" means identical, with the exception of
16 style or format differences needed to conform to this or other
17 state laws, as determined by the office of ~~regulatory reform~~
18 ~~pursuant to~~**PERFORMANCE AND TRANSFORMATION UNDER** section 45(1).

19 Sec. 45. (1) Except as otherwise provided in this subsection,
20 an agency shall electronically submit a proposed rule to the
21 legislative service bureau for its formal certification. If
22 requested by the legislative service bureau, the office of
23 ~~regulatory reinvention~~**PERFORMANCE AND TRANSFORMATION** shall also
24 transmit up to 4 paper copies of the proposed rule. The legislative
25 service bureau shall promptly issue a certificate of approval
26 indicating whether the proposed rule is proper as to all matters of
27 form, classification, and arrangement. If the legislative service

1 bureau fails to issue a certificate of approval within 21 calendar
2 days after receipt of the submission for formal certification, the
3 office of ~~regulatory reinvention~~ **PERFORMANCE AND TRANSFORMATION** may
4 issue a certificate of approval. If the legislative service bureau
5 returns the submission to the agency before the expiration of the
6 21-calendar-day ~~time-period~~, the 21-calendar-day ~~time-period~~ is
7 tolled until the rule is resubmitted by the agency. The legislative
8 service bureau ~~shall have~~ **HAS** the remainder of the 21-calendar-day
9 ~~time-period~~ or 6 calendar days, whichever is longer, to consider
10 the formal certification of the rule. The office of ~~regulatory~~
11 ~~reinvention~~ **PERFORMANCE AND TRANSFORMATION** may approve a proposed
12 rule if it considers the proposed rule to be legal and appropriate.

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

1 **AND TRANSFORMATION** shall also electronically submit to the
2 committee a copy of the rule, any agency reports required under
3 this subsection, any regulatory impact statements required under
4 subsection (3), and any certificates of approval required under
5 subsection (1). The agency shall electronically transmit to the
6 committee the records described in this subsection within 1 year
7 after the date of the last public hearing on the proposed rule
8 unless the proposed rule is a resubmission under section 45a(7).

9 (3) Except as provided in subsection (6), an agency shall
10 prepare and include with a notice of transmittal under subsection
11 (2) the request for rule-making and the response from the office of
12 ~~regulatory reinvention~~, **PERFORMANCE AND TRANSFORMATION**, a small
13 business impact statement prepared under section 40(1), and a
14 regulatory impact statement. The regulatory impact statement ~~shall~~
15 **MUST** contain all of the following information:

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

19 (b) If requested by the office of ~~regulatory reinvention~~
20 **PERFORMANCE AND TRANSFORMATION** or the committee, a comparison of
21 the proposed rule to standards in similarly situated states, based
22 on geographic location, topography, natural resources,
23 commonalities, or economic similarities.

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

26 (d) An identification of the harm resulting from the behavior
27 that the rule is designed to alter and the likelihood that the harm

1 will occur in the absence of the rule.

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

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

7 (g) An identification of any reasonable alternatives to
8 regulation pursuant to the proposed rule that would achieve the
9 same or similar goals.

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

13 (i) An estimate of the cost of rule imposition on the agency
14 promulgating the rule.

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

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

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

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

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

27 (o) An analysis of the costs of compliance for all small

1 businesses affected by the proposed rule, including costs of
2 equipment, supplies, labor, and increased administrative costs.

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

6 (q) An estimate of the ability of small businesses to absorb
7 the costs estimated under subdivisions (n) to (p) without suffering
8 economic harm and without adversely affecting competition in the
9 marketplace.

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

13 (s) An identification of the impact on the public interest of
14 exempting or setting lesser standards of compliance for small
15 businesses.

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

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

21 (v) An estimate of the primary and direct benefits of the
22 rule.

23 (w) An estimate of any cost reductions to businesses,
24 individuals, groups of individuals, or governmental units as a
25 result of the rule.

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

1 (y) An estimate of any secondary or indirect benefits of the
2 rule.

3 (z) An identification of the sources the agency relied upon in
4 compiling the regulatory impact statement, including the
5 methodology utilized in determining the existence and extent of the
6 impact of a proposed rule and a cost-benefit analysis of the
7 proposed rule.

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

12 (bb) Any other information required by the office of
13 ~~regulatory reinvention~~ **PERFORMANCE AND TRANSFORMATION**.

14 (4) The agency shall electronically transmit the regulatory
15 impact statement required under subsection (3) to the office of
16 ~~regulatory reinvention~~ **PERFORMANCE AND TRANSFORMATION** at least 28
17 days before the public hearing required under section ~~42~~ **41**.
18 Before the public hearing ~~can be~~ **IS** held, the regulatory impact
19 statement must be reviewed and approved by the office of ~~regulatory~~
20 ~~reinvention~~ **PERFORMANCE AND TRANSFORMATION**. The agency shall also
21 electronically transmit a copy of the regulatory impact statement
22 to the committee before the public hearing and the agency shall
23 make copies available to the public at the public hearing. The
24 agency shall publish the regulatory impact statement on its website
25 at least 10 days before the date of the public hearing.

26 (5) The committee shall electronically transmit to the senate
27 fiscal agency and the house fiscal agency a copy of each rule and

1 regulatory impact statement filed with the committee and a copy of
2 the agenda identifying the proposed rules to be considered by the
3 committee. The senate fiscal agency and the house fiscal agency
4 shall analyze each proposed rule for possible fiscal implications
5 that, if the rule were adopted, would result in additional
6 appropriations in the current fiscal year or commit the legislature
7 to an appropriation in a future fiscal year. The senate fiscal
8 agency and the house fiscal agency shall electronically report
9 their findings to the senate and house appropriations committees
10 and to the committee before the date of consideration of the
11 proposed rule by the committee.

12 (6) Subsections (2), (3), and (4) do not apply to a rule that
13 is promulgated under section 33, 44, ~~or 48~~, **OR 66**.

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

19 (2) Except ~~in case of~~ **FOR** a rule processed under section 48 **OR**
20 **66**, an agency may withdraw a promulgated rule ~~which~~ **THAT** has not
21 become effective by filing a written request stating reasons for
22 withdrawal to the secretary of state on or before the last day for
23 filing rules for the interim period in which the rules were first
24 filed, or by filing a written request for withdrawal to the
25 secretary of state and the office of ~~regulatory reform~~, **PERFORMANCE**
26 **AND TRANSFORMATION** within a reasonable time, as determined by the
27 office of ~~regulatory reform~~, **PERFORMANCE AND TRANSFORMATION**, after

1 the last day for filing and before publication of the rule in the
2 next supplement to the code. In any other ~~case~~**CIRCUMSTANCES**, an
3 agency may abrogate its rule only by rescission. ~~When~~**IF** an agency
4 has withdrawn a promulgated rule, it shall give notice, stating
5 reasons, to the committee that the rule has been withdrawn.

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

8 **SEC. 65. (1) THE ENVIRONMENTAL RULES COMMITTEE IS CREATED AS**
9 **AN INDEPENDENT BODY IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY.**

10 (2) THE ENVIRONMENTAL RULES COMMITTEE CONSISTS OF THE DIRECTOR
11 OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, OR HIS OR HER DESIGNEE,
12 THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, OR HIS
13 OR HER DESIGNEE, AND THE CHIEF EXECUTIVE OFFICER OF THE MICHIGAN
14 ECONOMIC DEVELOPMENT CORPORATION, OR HIS OR HER DESIGNEE, ALL OF
15 WHOM SERVE AS NONVOTING MEMBERS, AND THE FOLLOWING VOTING MEMBERS
16 APPOINTED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF THE
17 SENATE:

18 (A) ONE INDIVIDUAL WHO REPRESENTS THE SOLID WASTE MANAGEMENT
19 INDUSTRY.

20 (B) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE MANUFACTURING
21 ORGANIZATION.

22 (C) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE ORGANIZATION
23 THAT REPRESENTS SMALL BUSINESSES.

24 (D) ONE INDIVIDUAL WHO REPRESENTS PUBLIC UTILITIES THAT ENGAGE
25 IN THE TRANSMISSION OF ELECTRICITY.

26 (E) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE ENVIRONMENTAL
27 ORGANIZATION.

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

2 (G) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE AGRICULTURAL
3 ORGANIZATION.

4 (H) ONE INDIVIDUAL WHO REPRESENTS LOCAL GOVERNMENTS.

5 (I) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE CONSERVATION
6 ORGANIZATION.

7 (J) ONE INDIVIDUAL WHO REPRESENTS A STATEWIDE CHAMBER OF
8 COMMERCE.

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

10 (3) A VOTING MEMBER OF THE ENVIRONMENTAL RULES COMMITTEE MUST
11 POSSESS KNOWLEDGE, EXPERIENCE, OR EDUCATION THAT QUALIFIES HIM OR
12 HER TO REPRESENT THE REPRESENTED CONSTITUENCY.

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

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

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

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

25 (6) NOT MORE THAN 6 OF THE VOTING MEMBERS OF THE ENVIRONMENTAL
26 RULES COMMITTEE MAY BE MEMBERS OF THE SAME POLITICAL PARTY.

27 (7) SUBJECT TO SUBSECTION (8), A VOTING MEMBER OF THE

1 ENVIRONMENTAL RULES COMMITTEE SHALL SERVE A TERM OF 4 YEARS, EXCEPT
2 THAT OF THE MEMBERS FIRST APPOINTED, 4 SHALL EACH SERVE A TERM OF 4
3 YEARS, 4 SHALL EACH SERVE A TERM OF 3 YEARS, AND 3 SHALL EACH SERVE
4 A TERM OF 2 YEARS. A VOTING MEMBER OF THE ENVIRONMENTAL RULES
5 COMMITTEE MUST NOT BE APPOINTED TO SERVE MORE THAN 3 CONSECUTIVE 4-
6 YEAR TERMS BUT MAY BE APPOINTED AGAIN AFTER NOT SERVING ON THE
7 ENVIRONMENTAL RULES COMMITTEE FOR 1 FULL TERM.

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

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

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

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

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

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

24 (12) THE VOTING MEMBERS OF THE ENVIRONMENTAL RULES COMMITTEE
25 SHALL SERVE WITHOUT COMPENSATION BUT MAY BE REIMBURSED BY THE
26 OFFICE OF PERFORMANCE AND TRANSFORMATION FOR ACTUAL AND NECESSARY
27 EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES AS

1 MEMBERS.

2 (13) THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY
3 AND THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
4 SHALL EACH SELECT A SCIENCE ADVISOR TO PARTICIPATE IN MEETINGS OF
5 THE ENVIRONMENTAL RULES COMMITTEE AND PROVIDE EXPERT ADVICE TO
6 ENVIRONMENTAL RULES COMMITTEE MEMBERS ON RELEVANT SCIENCE-BASED
7 ISSUES THAT COME BEFORE THE ENVIRONMENTAL RULES COMMITTEE. TO SERVE
8 AS AN ENVIRONMENTAL RULES COMMITTEE SCIENCE ADVISOR, AN INDIVIDUAL
9 MUST POSSESS THE PROPER EDUCATIONAL CREDENTIALS AND BACKGROUND TO
10 PROVIDE SCIENCE-BASED EXPERT ADVICE. AN INDIVIDUAL MAY NOT SERVE AS
11 A SCIENCE ADVISOR IF HE OR SHE IS A STATE EMPLOYEE OR CONTRACT
12 EMPLOYEE OF THIS STATE.

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

17 (15) NINE VOTING MEMBERS OF THE ENVIRONMENTAL RULES COMMITTEE
18 CONSTITUTE A QUORUM. A QUORUM MUST BE PRESENT TO TRANSACT ANY
19 BUSINESS AT A MEETING OF THE COMMITTEE. DECISIONS BY THE
20 ENVIRONMENTAL RULES COMMITTEE AT A MEETING MUST BE MADE BY A
21 MAJORITY VOTE OF THE MEMBERS PRESENT AT THE MEETING.

22 (16) THE ENVIRONMENTAL RULES COMMITTEE SHALL SELECT A
23 CHAIRPERSON AND VICE-CHAIRPERSON FROM ITS VOTING MEMBERS. THE
24 CHAIRPERSON SHALL PRESIDE OVER ALL MEETINGS OF THE COMMITTEE AND
25 ENSURE THAT THE DECISIONS OF THE COMMITTEE ARE IMPLEMENTED. THE
26 VICE-CHAIRPERSON SHALL PERFORM THE DUTIES OF THE CHAIRPERSON IN THE
27 CHAIRPERSON'S ABSENCE. THE CHAIRPERSON AND VICE-CHAIRPERSON SHALL

1 SERVE FOR A TERM OF 2 YEARS AND MAY BE SELECTED TO SERVE FOR
2 ADDITIONAL TERMS.

3 (17) THE CHAIRPERSON OR A MAJORITY OF THE MEMBERS OF THE
4 ENVIRONMENTAL RULES COMMITTEE MAY CALL A MEETING ON 10 DAYS' NOTICE
5 UNLESS ALL THE VOTING MEMBERS OF THE ENVIRONMENTAL RULES COMMITTEE
6 AGREE IN WRITING OR BY ELECTRONIC MEANS TO A SHORTER NOTICE PERIOD.

7 (18) THE ENVIRONMENTAL RULES COMMITTEE MAY ENGAGE
8 ADMINISTRATIVE, TECHNICAL, OR LEGAL CONSULTANTS, IN ADDITION TO
9 ADVISORS SELECTED UNDER SUBSECTION (13), TO ASSIST THE COMMITTEE IN
10 THE PERFORMANCE OF ITS DUTIES. IF REQUESTED BY THE ENVIRONMENTAL
11 RULES COMMITTEE, A DEPARTMENT, AGENCY, OR OFFICE OF THIS STATE MAY
12 PROVIDE ADMINISTRATIVE, TECHNICAL, OR LEGAL STAFF, IN ADDITION TO
13 ADVISORS SELECTED UNDER SUBSECTION (13), TO ASSIST THE
14 ENVIRONMENTAL RULES COMMITTEE IN THE PERFORMANCE OF ITS DUTIES.

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

23 SEC. 66. (1) THE OFFICE OF PERFORMANCE AND TRANSFORMATION
24 SHALL PROMPTLY TRANSMIT TO THE ENVIRONMENTAL RULES COMMITTEE
25 ELECTRONIC COPIES OF A REQUEST FOR RULE-MAKING SUBMITTED TO THE
26 OFFICE OF PERFORMANCE AND TRANSFORMATION BY THE DEPARTMENT OF
27 ENVIRONMENTAL QUALITY. THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS

1 STRONGLY ENCOURAGED TO CREATE A STAKEHOLDER REVIEW PROCESS BEFORE
2 BEGINNING THE RULE PROMULGATION PROCESS TO ENSURE THAT ALL
3 VIEWPOINTS ARE ADEQUATELY REPRESENTED IN THE PROPOSED RULE.

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

8 (3) THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL PROVIDE
9 COPIES OF DRAFT PROPOSED RULES TO THE OFFICE OF PERFORMANCE AND
10 TRANSFORMATION AND THE ENVIRONMENTAL RULES COMMITTEE.

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

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

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

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

23 (D) THE DRAFT PROPOSED RULES ARE AS CLEAR AND UNAMBIGUOUS AS
24 REASONABLY APPROPRIATE CONSIDERING THE SUBJECT MATTER OF THE
25 PROPOSED RULES AND THE INDIVIDUALS AND BUSINESSES THAT WILL BE
26 REQUIRED TO COMPLY WITH THE PROPOSED RULES.

27 (E) THE DRAFT PROPOSED RULES ARE BASED ON SOUND AND OBJECTIVE

1 SCIENTIFIC REASONING.

2 (5) THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY SUBMIT REVISED
3 DRAFT PROPOSED RULES TO THE OFFICE OF PERFORMANCE AND
4 TRANSFORMATION AND THE ENVIRONMENTAL RULES COMMITTEE.

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

9 (7) IF THE ENVIRONMENTAL RULES COMMITTEE DETERMINES THAT DRAFT
10 PROPOSED RULES MEET THE CRITERIA IN SUBSECTION (4), THE PUBLIC
11 HEARING UNDER SECTIONS 41 AND 42 MUST BE HELD, EXCEPT THAT THE
12 ENVIRONMENTAL RULES COMMITTEE SHALL GIVE NOTICE OF AND CONDUCT THE
13 PUBLIC HEARING, AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS NOT
14 REQUIRED TO PREPARE A SMALL BUSINESS IMPACT STATEMENT UNDER SECTION
15 40(2) OR A REGULATORY IMPACT STATEMENT UNDER SECTION 45(3).

16 (8) AFTER A PUBLIC HEARING CONDUCTED BY THE ENVIRONMENTAL
17 RULES COMMITTEE UNDER SUBSECTION (7), THE ENVIRONMENTAL RULES
18 COMMITTEE SHALL MEET 1 OR MORE TIMES TO DISCUSS COMMENTS MADE AND
19 TESTIMONY GIVEN AT THE PUBLIC HEARING AND DETERMINE IF ANY
20 REVISIONS TO THE DRAFT PROPOSED RULES ARE APPROPRIATE. AT THAT
21 MEETING, THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR
22 HIS OR HER DESIGNEE SHALL PROVIDE A SYNOPSIS OF THE COMMENTS
23 CONTAINED IN THE PUBLIC HEARING RECORD. IF THE ENVIRONMENTAL RULES
24 COMMITTEE DETERMINES THAT REVISIONS ARE NOT APPROPRIATE, THE DRAFT
25 PROPOSED RULES MUST BE PROCESSED AS PROVIDED IN SUBSECTION (10). IF
26 THE ENVIRONMENTAL RULES COMMITTEE DETERMINES THAT 1 OR MORE
27 REVISIONS ARE APPROPRIATE, THE ENVIRONMENTAL RULES COMMITTEE MAY

1 APPROVE THE DRAFT PROPOSED RULES SUBJECT TO THE REVISIONS BEING
2 MADE. THE LEGISLATIVE SERVICE BUREAU SHALL DRAFT THE REVISIONS TO
3 THE DRAFT PROPOSED RULES.

4 (9) IF FEWER THAN 6 VOTING MEMBERS OF THE ENVIRONMENTAL RULES
5 COMMITTEE OBJECT TO THE PROPOSED REVISIONS DRAFTED BY THE
6 LEGISLATIVE SERVICE BUREAU, THE RULES MUST BE PROCESSED AS PROVIDED
7 IN SUBSECTION (10). IF 6 OR MORE VOTING MEMBERS OF THE
8 ENVIRONMENTAL RULES COMMITTEE OBJECT TO THE PROPOSED REVISIONS, THE
9 ENVIRONMENTAL RULES COMMITTEE SHALL MEET 1 OR MORE TIMES TO APPROVE
10 REVISIONS TO THE DRAFT PROPOSED RULES.

11 (10) IF THE ENVIRONMENTAL RULES COMMITTEE APPROVES DRAFT
12 PROPOSED RULES, THE OFFICE OF PERFORMANCE AND TRANSFORMATION SHALL
13 TRANSMIT BY NOTICE OF TRANSMITTAL TO THE COMMITTEE COPIES OF THE
14 RULES, THE REQUEST FOR RULE-MAKING, THE SYNOPSIS OF THE COMMENTS
15 CONTAINED IN THE PUBLIC HEARING RECORD, A DESCRIPTION OF ANY
16 REVISIONS TO THE PROPOSED RULES THAT WERE MADE BY THE ENVIRONMENTAL
17 RULES COMMITTEE AFTER THE PUBLIC HEARING, AND CERTIFICATES OF
18 APPROVAL FROM THE LEGISLATIVE SERVICE BUREAU AND THE OFFICE OF
19 PERFORMANCE AND TRANSFORMATION. THE OFFICE OF PERFORMANCE AND
20 TRANSFORMATION SHALL ALSO ELECTRONICALLY SUBMIT TO THE
21 ENVIRONMENTAL RULES COMMITTEE A COPY OF THE RULE AND ANY
22 CERTIFICATES OF APPROVAL FROM THE LEGISLATIVE SERVICE BUREAU AND
23 THE OFFICE OF PERFORMANCE AND TRANSFORMATION. THE OFFICE OF
24 PERFORMANCE AND TRANSFORMATION SHALL ELECTRONICALLY TRANSMIT TO THE
25 ENVIRONMENTAL RULES COMMITTEE THE INFORMATION DESCRIBED IN THIS
26 SUBSECTION WITHIN 1 YEAR AFTER THE DATE OF THE LAST PUBLIC HEARING.

27 (11) THE ENVIRONMENTAL RULES COMMITTEE SHALL MAKE A FINAL

1 DECISION REGARDING DRAFT PROPOSED RULES AND ANY REVISIONS TO DRAFT
2 PROPOSED RULES WITHIN 12 CALENDAR MONTHS AFTER RECEIVING ELECTRONIC
3 COPIES OF THE REQUEST FOR RULE-MAKING SUBMITTED BY THE DEPARTMENT
4 OF ENVIRONMENTAL QUALITY TO THE OFFICE OF PERFORMANCE AND
5 TRANSFORMATION UNDER SUBSECTION (1) .

6 (12) THIS SECTION DOES NOT APPLY TO A REQUEST FOR RULE-MAKING
7 SUBMITTED TO THE OFFICE OF PERFORMANCE AND TRANSFORMATION BY THE
8 DEPARTMENT OF ENVIRONMENTAL QUALITY AFTER DECEMBER 31, 2019.

9 Enacting section 1. This amendatory act takes effect July 1,
10 2016.