24.266 Request for rule-making; procedure; notification in writing; public hearing; extension; agency report; review, approval, or rejection proposed rules; certificates of approval; legislative service bureau.

Sec. 66. (1) The office shall promptly transmit to the environmental rules review committee electronic copies of a request for rule-making submitted to the office by the department of environmental quality under section 39. The department of environmental quality is strongly encouraged to create a stakeholder review process before beginning the rule promulgation process to ensure that all viewpoints are adequately represented in the proposed rule.

(2) Within 14 days after the environmental rules review committee receives a request for rule-making, the chairperson and vice-chairperson may determine and notify the other members of the environmental rules review committee that no further review of the rule-making should be required under this section. Within 14 days after receiving this notice, 3 members of the environmental rules review committee may request a vote on the determination. If 7 or more members vote to override the determination of the chairperson and vice-chairperson, the rule-making must proceed under subsections (3) to (12). If fewer than 7 members vote to override the determination of the chairperson and vice-chairperson, the request for rule-making must not proceed under subsections (3) to (12), but must proceed under the otherwise applicable sections of this act.

(3) The department of environmental quality shall provide copies of draft proposed rules and a draft regulatory impact statement to the office and the environmental rules review committee.

(4) After receiving draft proposed rules under subsection (3), the environmental rules review committee shall meet 1 or more times to consider whether the draft proposed rules meet all of the following criteria:

(a) The office has certified that the draft proposed rules do not exceed the rule-making delegation contained in the statute authorizing the rule-making.
(b) The draft proposed rules reasonably implement and apply the statute authorizing the rule-making and are consistent with all other applicable law.
(c) The draft proposed rules are necessary and suitable to achieve their purposes in proportion to the burdens they place on individuals and businesses.
(d) The draft proposed rules are as clear and unambiguous as reasonably appropriate considering the subject matter of the proposed rules and the individuals and businesses that will be required to comply with the proposed rules.
(e) The draft proposed rules are based on sound and objective scientific reasoning.

(5) Within 35 days after receiving draft proposed rules under subsection (3), the environmental rules review committee shall make 1 of the following determinations:

(a) By a vote of 9 voting members of the environmental rules review committee, a determination that the request for rule-making must not proceed any further under this section, but must proceed under the otherwise applicable sections of this act.
(b) By a majority vote of the voting members of the environmental rules review committee, a determination that the draft proposed rules meet the criteria in subsection (4) and may proceed to a public hearing under subsection (7)(a).
(c) By a majority vote of the voting members of the environmental rules review committee, either a determination that the draft proposed rules do not meet the criteria in subsection (4) or that additional review is needed to determine whether the draft proposed rules meet the criteria in subsection (4). If the environmental rules review committee makes a determination under this subdivision, the draft proposed rules must not proceed to a public hearing under sections 41 and 42 but rather must follow the process in subsection (6).

(6) If the environmental rules review committee makes a determination under subsection (5)(c), the environmental rules review committee shall notify the department of environmental quality in writing of the determination, including an explanation as to either why the draft proposed rules do not meet the criteria in subsection (4) or why additional review is needed. The department of environmental quality shall then attempt to address the environmental rules review committee's determination by taking actions that may include, but are not limited to, convening meetings with stakeholders or groups of stakeholders, providing further information to the environmental rules review committee, or revising the draft proposed rules.

(7) The department of environmental quality shall hold a public hearing under sections 41 and 42 only if 1 of the following occurs:

(a) The environmental rules review committee makes the determination under subsection (5)(b).
(b) The environmental rules review committee determines that the draft proposed rules or any revised draft...
proposed rules submitted by the department of environmental quality meet the criteria in subsection (4).

(c) Within 90 days after the department of environmental quality receives a notice under subsection (6), which deadline may be extended by up to 2 additional 90-day periods by a majority of the voting members of the environmental rules review committee, the environmental rules review committee has not determined that the draft proposed rules or any revised draft proposed rules submitted by the department of environmental quality meet the criteria in subsection (4).

(d) The environmental rules review committee fails to make a determination under subsection (5) within 35 days after receiving the draft proposed rules under subsection (3).

(8) Within 120 days after a public hearing conducted by the department of environmental quality under subsection (7), the department of environmental quality shall prepare and submit to the environmental rules review committee an agency report containing a synopsis of the comments made at and received in connection with the public hearing and a description of any changes that are suggested by the department of environmental quality to the draft proposed rules. If the department of environmental quality fails to submit an agency report to the environmental rules review committee within 120 days after the public hearing, the department of environmental quality shall withdraw the rule request.

(9) After the receipt of an agency report under subsection (8), the environmental rules review committee shall meet 1 or more times to discuss the report and comments made and testimony given at the public hearing and approve the draft proposed rules with modifications, approve the draft proposed rules, or reject the draft proposed rules. If the environmental rules review committee fails to make a determination within 120 days after receiving an agency report under subsection (8), the draft proposed rules must proceed under subsection (12).

(10) If the environmental rules review committee approves the draft proposed rules under subsection (9), the draft proposed rules must proceed under subsection (12). If the environmental rules review committee either approves the draft proposed rules with modifications or rejects the draft proposed rules, the draft proposed rules must proceed under subsection (11).

(11) If within the time period set forth in subsection (9), the environmental rules review committee approves the draft proposed rules with modifications or rejects the draft proposed rules, the environmental rules review committee shall submit a notice of objection to the director of the department of environmental quality and the governor that includes an explanation of its decision. The department of environmental quality shall then attempt to resolve any issues with the environmental rules review committee, which resolution may include submitting revised draft proposed rules. If the environmental rules review committee and the department of environmental quality resolve all issues, the draft proposed rules must proceed under subsection (12). If all issues are not resolved before 11 months after the date of the last public hearing on the draft proposed rules, the department of environmental quality shall submit a written finding to the governor on its final position on the draft proposed rules or revised draft proposed rules. If the governor concurs with the department of environmental quality's finding, the governor shall direct the director of the department of environmental quality to proceed with the draft proposed rules under subsection (12). If the governor does not concur with the department of environmental quality's finding, the governor shall direct the department of environmental quality to withdraw the draft rules.

(12) If draft proposed rules proceed under this subsection as provided in this section, the office shall transmit by notice of transmittal to the committee copies of the rules, the request for rule-making, the synopsis of the comments contained in the public hearing record, a description of any revisions to the proposed rules that were made after the public hearing, and certificates of approval from the legislative service bureau and the office. The office shall also electronically submit to the environmental rules review committee a copy of the rule and any certificates of approval from the legislative service bureau and the office. The office shall electronically transmit to the environmental rules review committee the information described in this subsection within 1 year after the date of the last public hearing.


Compiler's note: For the transfer of powers and duties of the environmental rules review committee within the office of performance and transformation to the department of environment, Great Lakes, and energy, and abolishment of the office of performance and transformation, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 306

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