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BILL



ANALYSIS

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Senate Bill 275 (Substitute S-1 as passed by the Senate)
Senate Bill 277 (Substitute S-1 as passed by the Senate)
Senate Bill 279 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Tom Casperson (S.B. 275)
Senator Dave Hildenbrand (S.B. 277)
Senator Phil Pavlov (S.B. 279)

Committee: Economic Development

Date Completed: 11-1-11

RATIONALE

Some people believe that overregulation has impeded economic development and job growth in Michigan. In particular, these concerns involve regulation under the Natural Resources and Environmental Act (NREPA), which governs programs administered by the Department of Environmental Quality (DEQ) as well as the Departments of Natural Resources and Agriculture. To ensure that programs under NREPA are administered effectively and fairly, and that permits are issued in a timely manner, various measures have been suggested. These include limiting a department's ability to require a permit applicant to furnish additional information; requiring the DEQ to improve its permitting and regulatory processes, and to set metrics; and requiring the DEQ to use an equitable sampling process when choosing facilities and operations to inspect.

CONTENT

Senate Bill 275 (S-1) would amend Part 13 (Permits) of the Natural Resources and Environmental Protection Act to do the following:

- Require a State department, upon request and without cost, to give a person a list specifying in detail the information required to complete a permit application.
- Prohibit a department from requesting from an applicant any

information not specified in the list, after the application was considered administratively complete, unless the request included a detailed explanation of why the information was needed.

- Provide that the applicant would not be required to supply the requested information as a condition for approval of the permit.
- Allow a department to request an applicant to clarify, amplify, or correct information required for the application, after it was considered to be administratively complete.
- Require a department to devote resources from a program to eliminate a backlog and meet the processing deadline, if the department failed to meet the deadline with respect to 10% or more of the applications for a particular permit within a fiscal quarter.

Senate Bill 277 (S-1) would add Part 27 (Program Review) to NREPA to require the Department of Environmental Quality to do the following:

- Complete process improvement of all major permit and regulatory programs administered by the DEQ under the Act.

- **Develop metrics for environmental impact, process performance, and a review of service practices.**
- **Survey people regulated by each DEQ division and the general public concerning the division's service practices.**

Senate Bill 279 (S-1) would amend Part 15 (Enforcement) of NREPA to require the DEQ to do the following:

- **Use a fair and equitable sampling process in selecting operations or facilities to be inspected, subject to exceptions.**
- **Give a person certain information before conducting an inspection, and an opportunity to provide comments after an inspection.**
- **Report annually to the Legislature regarding the inspections.**

The bills are described in detail below.

Senate Bill 275 (S-1)

Permit Application

Part 13 of NREPA regulates the processing of applications for many permits issued under the Act. The application period begins when an application is submitted and ends when it is considered administratively complete and any applicable fee has been paid. (As described below, a processing period of 20 to 150 days begins after the application period.) Under Part 13, "department" means the department, agency, or officer authorized by NREPA to approve or deny an application for a particular permit.

Part 13 requires the department, upon request and without charge, to give a person a copy of a blank permit application form; any instructions necessary to complete the application; and a complete explanation of the permit review process. The bill also would require the department to give a list specifying in detail the information required to complete the permit application.

Under Part 13, effective 30 days after the State receives an application for a permit, the application must be considered to be administratively complete unless the department notifies the applicant that the application is not administratively complete,

specifying the information necessary to make it complete, or notifies the applicant that a required fee has not been paid.

The bill instead specifies that, after a department received an application for a permit, the department would have to determine whether the application was administratively complete. Unless the department notified the applicant, within 30 days after receiving the application, that it was not administratively complete or that a fee had not been paid, the application would be considered administratively complete when the department made that determination or 30 days after the State received the application, whichever came first.

Under Part 13, if, within the 30-day period after the department receives an application, the department notifies the applicant that the application is not administratively complete, specifying the needed information, or notifies the applicant that a required fee has not been paid, specifying the amount due, the running of the 30-day period is tolled until the applicant submits the specified information or fee amount.

The bill would add that, after a permit application was considered to be administratively complete, the department could not request from the applicant any new or additional information that was not specified in the list provided by the department (as the bill would require), unless the request included a detailed explanation of why the information was needed. The applicant would not be required to provide the requested information as a condition for approval of the permit.

The department could, however, request the applicant to clarify, amplify, or correct the information required for the application, after a permit application was considered administratively complete. The applicant would have to provide the requested information.

Failure to Meet Processing Deadline

Part 13 requires a department to approve or deny a permit application by the processing deadline, which is the last day of the

processing period. The processing period begins following the application period and ends after specified number of days, which range from 20 days to 150 days depending on the type of permit.

Under the bill, if a department failed to approve or deny a permit application by the processing deadline with respect to 10% or more of the applications for a particular type of permit received during a quarter of the State fiscal year, the department immediately would have to devote resources from that program to eliminate any backlog and satisfy the processing deadline requirement with respect to new applications for that type of permit within the next fiscal quarter.

In addition, the department's annual report to legislative committees would have to include the type of permit and percentage of applications for which the requirement was not met, how the department attempted to eliminate any backlog and satisfy the requirement with respect to new applications for that type of permit in the next fiscal quarter, and whether the department was successful. (Part 13 requires the director of a department to submit a report by December 1 of each year to the Senate and House standing committees and appropriations subcommittees with primary responsibility for issues under the jurisdiction of that department.)

Senate Bill 277 (S-1)

Process Improvement

The bill would require the Department of Environmental Quality to complete process improvement of one major program by February 1, 2012, and two major programs each subsequent year until the DEQ has completed process improvement for all major programs. This would not require the DEQ to repeat process improvement for a program if process improvement for that program had been completed before the bill's effective date. ("Program would mean a permit program or regulatory program administered by the DEQ under NREPA.)

Process improvement would have to use process mapping and be conducted by a team that included at least all of the following:

- Two certified facilitators, who would have to administer the process improvement.
- A representative of people regulated by the program.
- A representative of members of the general public affected by the program.

As part of process improvement, the DEQ would have to consider using peer reviews by other Environmental Protection Agency Region 5 states and benchmark analyses.

The Department would have to post on its website a description of the process improvements made for each major program.

Metrics

The bill would require the DEQ to develop metrics for environmental impacts, process performance, and a review of service practices affecting regulated people and the general public. For a permit program, process performance would have to include the following:

- A calculation of the DEQ's per-permit cost to administer the program.
- A review of the timeliness of the permit process from receipt to approval or denial of a permit application.

The DEQ would have to post the metrics on its website.

Survey

For each division of the DEQ, the Department would have to survey people regulated by that division and the general public concerning the division's service practices. By February 1, 2012, the DEQ would have to complete the surveys and post aggregate survey results for each division on the Department's website. The DEQ could not post information identifying a survey respondent.

Senate Bill 279 (S-1)

The bill would require the Department of Environmental Quality to use a fair and equitable sampling process to select people whose operations or facilities would be inspected. This requirement would not apply to any of the following:

- An inspection performed in response to a complaint from a third party.
- An inspection performed because the DEQ had evidence that a violation had occurred.
- A follow-up inspection to determine whether violations identified in a previous inspection had been corrected.
- An inspection required for the issuance of a permit.
- Any inspection otherwise required under State or Federal law.

Before conducting an inspection, the DEQ would have to give the person whose operation or facility would be inspected both of the following:

- An explanation of the person's rights and responsibilities with respect to the inspection.
- The reasons for conducting the inspection.

After conducting an inspection, the DEQ would have to give the person an opportunity to provide comments to the Department on the quality of the inspection and the professionalism of the inspector.

The DEQ would have to submit an annual report to the Legislature on the methods used to comply with the bill and, for each program, the number of inspections subject to the sampling process requirement and the number of inspections of each type not subject to the requirement that the DEQ performed during the prior year.

MCL 324.1301 et al. (S.B. 275)
 Proposed MCL 324.2701-324.2707 (S.B. 277)
 Proposed MCL 324.1505 (S.B. 279)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

When choosing a place to locate or expand, business executives consider the ease of obtaining permits and navigating regulatory procedures. A climate of overregulation can contribute to a perception that the State is unfriendly toward business. The bills would address this in several ways.

Senate Bill 275 (S-1) would ensure that the DEQ and other departments issuing permits under NREPA did not delay the review of permit applications by requesting additional information once an application had been submitted and was considered administratively complete. A department would have 30 days to decide whether an application was administratively complete and to request information necessary to make it complete. After that, the department still could request additional information but the applicant would not have to provide it as a condition of permit approval. The bill also would require a department to devote resources from a program to meeting the processing deadline and eliminating its backlog, if the department failed to meet the deadline for 10% or more of permit applications for that program within a fiscal quarter. These measures would help streamline the process for obtaining permits under NREPA.

Under Senate Bill 277 (S-1), the DEQ would have to complete process improvement for all of its major permitting and regulatory programs over a period of time. By engaging in process improvement, the Department would take actions to identify, analyze, and improve existing processes in order to meet its objectives. Process improvement goes beyond making temporary fixes or managing crises, and is a way of making things better. The bill also would require the DEQ to develop metrics for environmental impact, process performance, and a review of service practices. Metrics are a set of measurements that quantify results, and would help the Department determine whether its programs were meeting their goals. For a permitting program, the metrics would have to include cost calculations and a review of timeliness. In addition, the bill would require the DEQ to conduct surveys regarding each division's service practices. The survey results could give the Department important feedback that would inform it of deficiencies as well as perceptions among those regulated and the general public. Together, these requirements would enhance the DEQ's ability to identify and correct problems and make needed improvements.

Senate Bill 279 (S-1) would mandate a fair and equitable approach to selecting facilities

and operations to inspect. The bill also would require the DEQ to tell someone in advance why an inspection was being done and what the person's rights and responsibilities were, and to give the person an opportunity to comment afterward. These measures would prevent the DEQ from targeting particular industries or businesses that are subject to regulation, or inspecting the same facilities repeatedly out of convenience, and would help ensure that no one was surprised by an inspection, felt treated unfairly, or was afraid to speak out against government action.

Opposing Argument

Senate Bill 275 (S-1) would unreasonably limit the ability of a department to obtain information needed to determine whether a NREPA permit should be approved or denied. Essentially, a department would have 30 days to request information that was not included in an application; although it could request information after that deadline, supplying the information could not be a condition of approval. It is not always possible for a department such as the DEQ to process complex applications within a 30-day time frame, particularly in light of budgetary cuts and staff reductions. In some cases, applicants submit deficient applications and just wait for the department to tell them what is needed. In other cases, members of the public raise issues that the department did not anticipate in its initial review. Even though an application might be considered administratively complete, a department should retain the ability to request additional information and deny a permit if the applicant fails to provide it.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 275 (S-1)

The bill would require a department to direct extra resources to environmental permitting programs administered under Part 13 of NREPA if those programs failed to approve or deny 10% or more of permit applications within the time frame set in statute. The bill does not specify where these extra resources would come from. These resources would likely be transferred from elsewhere in the department, so there would

be no net fiscal impact on the department as a whole. Any transfer resulting from this bill, unless made from the same appropriation line as the program receiving the transfer, would have to be approved by both the House and Senate Appropriations Committees. Such transfers could potentially have programmatic effects on the department, but the nature of these would remain unknown until a transfer request was brought before the Legislature.

The bill also would require an annual report containing various information regarding Part 13 permitting programs, including actions taken to address programs that failed to meet statutory administrative completion timelines. This report would introduce some new, minor administrative costs to the department. It is unknown what the annual cost of this report would be.

Senate Bill 277 (S-1)

The overall fiscal impact of this bill on State finances is indeterminate. The bill would require the DEQ to complete process improvements for each of its programs over a period of time. This would likely lead to increased administrative costs for the Department in the short term as it performed these processes. To the extent that process improvements made the DEQ more efficient, it is possible that long-term savings could be larger than the short-term costs. Additionally, each division would be required to develop, administer, and post surveys of those regulated by that division as well as the general public. Administrative costs would be increased by an unknown amount as a result.

Senate Bill 279 (S-1)

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

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.