

Act No. 267  
Public Acts of 2018  
Approved by the Governor  
June 28, 2018  
Filed with the Secretary of State  
June 29, 2018  
EFFECTIVE DATE: June 29, 2018

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

Introduced by Senators Casperson and Robertson

# **ENROLLED SENATE BILL No. 652**

AN ACT to amend 1969 PA 306, entitled “An act to provide for the effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters; to provide for the printing, publishing, and distribution of certain publications; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to create and establish certain committees and offices; to provide for declaratory judgments as to rules; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date,” by amending sections 33, 39a, 41, 42, 43, 44, 47, and 48 (MCL 24.233, 24.239a, 24.241, 24.242, 24.243, 24.244, 24.247, and 24.248), sections 33 and 47 as amended and section 39a as added by 1999 PA 262, sections 41 and 42 as amended by 2004 PA 491, section 43 as amended by 1989 PA 288, section 44 as amended by 2016 PA 513, and section 48 as amended by 2012 PA 181, and by adding sections 65, 66, and 88.

*The People of the State of Michigan enact:*

Sec. 33. (1) An agency shall promulgate rules describing its organization and stating the general course and method of its operations. The agency may include in the rules forms with instructions. Sections 41, 42, 45, 45a, and 66 do not apply to promulgation of the rules.

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

(3) An agency may promulgate rules prescribing procedures for contested cases. The rules must be consistent with this act and other applicable statutes.

Sec. 39a. (1) Subject to section 66, an agency may publish the notice of hearing under section 42 only if the office has received draft proposed rules and has given the agency approval to proceed with a public hearing.

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

Sec. 41. (1) Except as provided in sections 44 and 66, before the adoption of a rule, an agency, or the office, shall give notice of a public hearing and offer a person an opportunity to present data, views, questions, and arguments. The notice must be given within the time prescribed by any applicable statute, or if none, in the manner prescribed in section 42(1).

(2) The notice described in subsection (1) must include all of the following:

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

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

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

(3) The agency, or the office acting on behalf of an agency, shall transmit copies of the notice described in subsection (1) to each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. If requested, the notice must be by mail, in writing, or electronically to the last address specified by the person.

(4) The public hearing must comply with any applicable statute, but is not subject to the provisions governing a contested case.

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

Sec. 42. (1) Except as provided in sections 44 and 66, at a minimum, an agency, or the office acting on behalf of the agency, shall publish the notice of public hearing as prescribed in any applicable statute or, if none, the agency, or the office acting on behalf of the agency, shall publish the notice not less than 10 days and not more than 60 days before the date of the public hearing in at least 3 newspapers of general circulation in different parts of this state, 1 of which must be in the Upper Peninsula.

(2) Additional methods that may be employed to provide notice of the public hearing include publication in trade, industry, governmental, or professional publications or posting on the website of the agency or the office.

(3) In addition to the requirements of subsection (1) and except as provided in section 66, the agency shall electronically submit a copy of the notice of public hearing to the office for publication in the Michigan Register. If the office submitted the notice of public hearing on behalf of the agency, the office shall publish the notice of public hearing in the Michigan Register. An agency's notice must be published in the Michigan Register before the public hearing and the agency shall electronically file a copy of the notice of public hearing with the office. Within 7 days after receipt of the notice of public hearing and before the public hearing, the office shall do all of the following:

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

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

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

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

Sec. 43. (1) Except for an emergency rule promulgated in the manner described in section 48, a rule is not valid unless it is processed in compliance with section 66, if applicable, section 42, and in substantial compliance with section 41(2), (3), (4), and (5).

(2) A proceeding to contest a rule on the ground of noncompliance with the requirements of sections 41 and 42 or section 66 must be commenced within 2 years after the effective date of the rule.

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

(2) Sections 41 and 42 do not apply to a rule that is promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970, Public Law 91-596. However, notice of the proposed rule must be published in the Michigan Register at least 35 days before the rule is filed with the secretary of state under section 46(1). A reasonable period, not to exceed 21 days, must be provided for the submission of written or electronic comments and views following publication in the Michigan Register.

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

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

Sec. 47. (1) Except for a rule processed under section 48, a rule becomes effective on the date fixed in the rule, which must not be earlier than 7 days after the date of promulgation, or, if a date is not fixed in the rule, 7 days after the date of promulgation.

(2) Except for a rule processed under section 48 or 66, an agency may withdraw a promulgated rule that has not become effective by filing a written request stating reasons for withdrawal to the secretary of state on or before the last day for filing rules for the interim period in which the rules were first filed, or by filing a written request for withdrawal to the secretary of state and the office, within a reasonable time, as determined by the office, after the last day for filing and before publication of the rule in the next supplement to the code. In any other circumstances, an agency may abrogate its rule only by rescission. If an agency has withdrawn a promulgated rule, it shall give notice, stating reasons, to the committee that the rule has been withdrawn.

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

Sec. 48. (1) If an agency finds that preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by sections 41 and 42 and states in the rule the agency's reasons for that finding, and the governor concurs in the finding of emergency, the agency may dispense with all or part of the procedures and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies must be attached the certificates prescribed by section 45 and the governor's certificate concurring in the finding of emergency. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or 6 months after the date of its filing, whichever is earlier. The rule may be extended once for not more than 6 months by the filing of a governor's certificate of the need for the extension with the office of the secretary of state before expiration of the emergency rule. Any period or extension during which an emergency rule is effective under this subsection is tolled from the date that the environmental rules review committee makes a determination as to a similar rule under section 66(5)(c) until the date a public hearing is held on the rule under section 66(7).

(2) If the director of the department of health and human services determines that an imminent danger to the health or lives of individuals in this state can be prevented or controlled by scheduling a substance as a controlled substance under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251, and the administrator determines that the substance should be scheduled or rescheduled as a controlled substance, the department of licensing and regulatory affairs may dispense with all or part of the procedures required by sections 41 and 42 and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies must be attached the certificate of approval and the director of the department of health and human services's notification under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251. The office shall submit the emergency rule draft language to the legislative service bureau for its formal certification within 7 business days after receipt from the department of licensing and regulatory affairs. The legislative service bureau shall issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement within 7 business days after receiving the submission and return the rule to the office. If the legislative service bureau fails to issue a certificate of approval within 7 business days after receipt of the submission for formal certification, the office may issue a certificate of approval. If the legislative service bureau returns the submission to the office before the expiration of the 7-business-day time period, the 7-business-day time period is tolled until the rule is returned by the office. The legislative service bureau has the remainder of the 7-business-day time period to consider the formal certification of the rule. On receipt from the legislative service bureau, the office shall, within 7 business days, approve the proposed rule if it considers the proposed rule to be legal and appropriate. An emergency rule adopted under this subsection remains in effect until the earlier date of the following:

(a) An identical or similar rule is promulgated.

(b) An identical or similar bill is enacted into law.

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

(d) Six months after the date of its filing, which may be extended for not more than 6 months by the administrator on filing a certificate of extension with the office of the secretary of state before the expiration of 6 months after the date of its filing.

(3) An emergency rule must not be numbered and must not be compiled in the Michigan Administrative Code, but must be noted in the annual supplement to the code. The emergency rule must be published in the Michigan register under section 8.

(4) If the agency desires to promulgate an identical or similar rule with an effectiveness beyond the final effective date of an emergency rule, the agency shall comply with the procedures prescribed by this act for the processing of a rule that is not an emergency rule. The rule must be published in the Michigan register and in the code.

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

Sec. 65. (1) The environmental rules review committee is created as an independent body in the office.

(2) The environmental rules review committee consists of the director of the department of environmental quality, or his or her designee, the director of the department of health and human services, or his or her designee, the director of the department of agriculture and rural development, or his or her designee, and the director of the department of natural resources, or his or her designee, all of whom serve as nonvoting members, and the following voting members appointed by the governor by and with the advice and consent of the senate:

(a) One individual who represents the solid waste management industry.

(b) One individual who represents a statewide manufacturing organization.

(c) One individual who represents a statewide organization that represents small businesses.

(d) One individual who represents public utilities that engage in the generation, transmission, or distribution of electricity.

(e) One individual who represents a statewide environmental organization.

(f) One individual who represents the oil and gas industry.

(g) One individual who represents a statewide agricultural organization.

(h) One individual who represents local governments.

(i) One individual who represents a statewide land conservancy organization.

(j) Two individuals who represent the general public.

(k) One individual who is a public health professional.

(3) A voting member of the environmental rules review committee must possess knowledge, experience, or education that qualifies him or her to represent the represented constituency.

(4) An individual may not serve as a voting member of the environmental rules review committee if any of the following apply:

(a) The individual is an employee of any office, department, or agency of this state.

(b) The individual is a party to 1 or more contracts with the department of environmental quality and the compensation paid under those contracts in any of the preceding 3 years represented more than 5% of the individual's annual gross income in that preceding year.

(c) The individual is employed by a person that is a party to 1 or more contracts with the department of environmental quality and the compensation paid to the individual's employer under those contracts in any of the preceding 3 years represented more than 5% of the employer's annual gross revenue in that preceding year.

(d) The individual was employed by the department of environmental quality within the preceding 3 years.

(5) An individual who is a lobbyist agent under 1978 PA 472, MCL 4.411 to 4.431, may serve as a member of the environmental rules review committee only if the individual does not simultaneously receive compensation or reimbursement of actual expenses for lobbying from more than 1 person while serving as a member of the environmental rules review committee.

(6) Not more than 6 of the voting members of the environmental rules review committee may be members of the same political party.

(7) Subject to subsection (8), a voting member of the environmental rules review committee shall serve a term of 4 years, except that of the members first appointed, 4 shall each serve a term of 4 years, 4 shall each serve a term of 3 years, and 4 shall each serve a term of 2 years. A voting member of the environmental rules review committee must not be appointed to serve more than 3 consecutive 4-year terms but may be appointed again after not serving on the environmental rules review committee for 1 full term.

(8) The term of a voting member of the environmental rules review committee continues until a successor is appointed.

(9) The governor may remove a voting member of the environmental rules review committee for cause. Cause includes, but is not limited to, repeated failure to attend meetings.

(10) The governor shall appoint, by and with the advice and consent of the senate, a member to fill a vacancy in the voting membership of the environmental rules review committee created by either of the following:

(a) The death, resignation, or removal of a member before the member's term has expired. A member appointed under this subdivision shall serve for the remainder of the unexpired term.

(b) The expiration of a member's term.

(11) The environmental rules review committee shall not conduct any business or perform any duties while there is a vacancy in the voting membership of the environmental rules review committee, except as follows:

(a) If the vacancy is created by death, resignation, or removal, the environmental rules review committee may continue to conduct business and perform duties unless the governor does not appoint an individual to fill the vacancy within 90 days. If the governor does not appoint an individual to fill the vacancy within 90 days, the environmental rules

review committee shall not conduct any business or perform any duties until the governor appoints an individual to fill the vacancy.

(b) If the vacancy is created by the senate's disapproval of an appointment under section 6 of article V of the state constitution of 1963, the environmental rules review committee may continue to conduct business and perform duties unless the governor does not appoint an individual to fill the vacancy within 90 days. If the governor does not appoint an individual to fill the vacancy within 90 days, the environmental rules review committee shall not conduct any business or perform any duties until the governor appoints an individual to fill the vacancy.

(12) The voting members of the environmental rules review committee shall serve without compensation but may be reimbursed by the department of environmental quality for actual and necessary expenses incurred in the performance of their official duties as members.

(13) The director of the department of environmental quality and the director of the department of health and human services shall each select a science advisor to participate in meetings of the environmental rules review committee and provide expert advice to environmental rules review committee members on relevant science-based issues that come before the environmental rules review committee. To serve as an environmental rules review committee science advisor, an individual must possess the proper educational credentials and background to provide science-based expert advice. An individual may not serve as a science advisor if he or she is a state employee or contract employee of this state.

(14) The business that the environmental rules review committee may perform must be conducted at a public meeting of the environmental rules review committee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(15) Nine voting members of the environmental rules review committee constitute a quorum. A quorum must be present to transact any business at a meeting of the environmental rules review committee. Decisions by the environmental rules review committee at a meeting must be made by a majority vote of the members present at the meeting.

(16) The environmental rules review committee shall select a chairperson and vice-chairperson from its voting members. The chairperson shall preside over all meetings of the environmental rules review committee and ensure that the decisions of the environmental rules review committee are implemented. The vice-chairperson shall perform the duties of the chairperson in the chairperson's absence. The chairperson and vice-chairperson shall serve for a term of 2 years and may be selected to serve for additional terms.

(17) The chairperson or a majority of the members of the environmental rules review committee may call a meeting of the environmental rules review committee. However, a meeting may not be called on less than 10 days' notice unless all the voting members of the environmental rules review committee agree in writing or by electronic means to a shorter notice period.

(18) The environmental rules review committee may engage administrative, technical, or legal consultants, in addition to advisors selected under subsection (13), to assist the environmental rules review committee in the performance of its duties. If requested by the environmental rules review committee, a department, agency, or office of this state may provide administrative, technical, or legal staff, in addition to advisors selected under subsection (13), to assist the environmental rules review committee in the performance of its duties.

(19) The purpose of the environmental rules review committee is to oversee all rule-making of the department of environmental quality as provided in this act. For purposes of this act, the department of environmental quality includes any department, agency, commission, or other person to whom the rule-making authority of the department of environmental quality on the effective date of the amendatory act that added this section is transferred after the effective date of the amendatory act that added this section.

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.

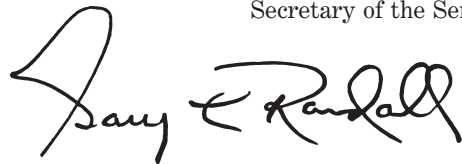
Sec. 88. In a contested case regarding a permit, as that term is defined in section 1301(g) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1301, the designation of a presiding officer, the effect of a decision by a presiding officer, the availability of other administrative remedies, and judicial review are controlled by sections 1315 and 1317 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1315 and 324.1317.

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor