



To: House Natural Resources, Environment, Tourism, and Outdoor Recreation
Committee Members

From: Megan Tinsley, Water Policy Director, Michigan Environmental Council
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Environmental Council

Date: Jan 25, 2024

Re: Testimony in support of Senate Bills 393 and 394

Thank you Chair Pohusky, Majority Vice Chair Hill, Minority Vice Chair Martin, and members of the committee for the opportunity to submit testimony in support of Senate Bills 393 and 394, which seek to eliminate the Environmental Science Advisory Board and the Environmental Permit Review Commission, respectively, within the Natural Resources and Environmental Protection Act (NREPA).

The Environmental Science Advisory Board was eliminated on April 22, 2019, as a result of Executive Order 2019-6¹, where Governor Whitmer reorganized the former Department of Environmental Quality; Department of Licensing and Regulatory Affairs; Department of Natural Resources; and Department of Technology, Management, and Budget and created the Department of Environment, Great Lakes, and Energy (EGLE). Thus, Senate Bill 393 would simply amend NREPA to reflect the current operations of the departments.

Senate Bill 394 would amend Part 13 of NREPA, governing permits, to eliminate the Environmental Permit Review Commission and any language throughout referencing the commission. The bill would also remove Section 88 of the Administrative Procedures Act, which specifies that contested cases involving a permit under Part 13 of NREPA must fall under the Environmental Permit Review Commission. Not only is there a current process for contested cases that applies to all agencies, Part 13 includes a robust, albeit sometimes lengthy, process for approving or denying various permits that affect the natural resources within Michigan. A common complaint among those seeking a permit is that this process can take too long. However, as we predicted at the time of the commission's inception, the commission only *extends* the permitting process during either a pre-decisional review process or contested case process. According to EGLE, it takes an average of 120 days to work through a pre-decisional case, where the director of EGLE then makes a final decision. A contested case can take an additional 160 days, where the commission's decision is considered final.

¹ Executive Order No. 2019-06, <http://legislature.mi.gov/doc.aspx?2019-EO-06>.

Additionally, the contested case process has proven to be extremely problematic. Contested cases are expensive; not only do panelists get reimbursed for certain expenses, but EGLE must pay the Michigan Office of Administrative Hearings and Rules to guide the contested case process. Also, none of the members on the commission are required to hold a legal license, let alone a Juris Doctorate, yet the process is inherently a legal one. Every single contested case has required a legal analysis from the 3-person panel selected among the commission members. Furthermore, most of the cases presented to the panels are drafted by attorneys, which include lengthy packages with thousands of pages full of legalese. Panelists are also required to hold all conversations relating to the case on the record to follow the Open Meetings Act, making it impossible to properly deliberate the complex legal issues amongst themselves before reaching a conclusion. Through research and interviews conducted by MEC, both past and present members of the commission have voiced concerns with this process.

To properly safeguard Michigan's natural resources, the Michigan Environmental Council supports the elimination of the Environmental Permit Review Commission. An independent panel—not beholden to the citizens of this state—should not make the permitting process even longer, nor should they make legal decisions on behalf of EGLE. The financial resources required to run the commission should instead be utilized in a way that actually results in the protection of Michigan's natural resources.

Thank you for your consideration of these comments and we urge you to support SB393 and SB394.

Sincerely,

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