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BILL ANALYSIS

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Senate Bill 89 (as introduced 1-25-07)

Sponsor: Senator Raymond E. Basham

Committee: Natural Resources and Environmental Affairs

Date Completed: 2-21-07

CONTENT

The bill would amend Part 111 (Hazardous Waste Management) of the Natural Resources and Environmental Protection Act (NREPA) to require a site review board to grant or deny approval of an application to construct a hazardous waste treatment, storage, or disposal facility, rather than make a recommendation on an application to the Department of Environmental Quality (DEQ).

Part 111 requires the establishment of a site review board to review and recommend to the DEQ whether the DEQ should grant or deny final approval for each site construction permit application that is referred to the board by the Department. The bill would delete the reference to the board's making a recommendation to the DEQ. Under the bill, a board would have to be established to review and grant or deny approval for each construction permit application referred to it.

Part 111 requires the DEQ to notify those members appointed by the Governor (as described below, under **BACKGROUND**) who will serve on a particular site review board within 75 days after receiving a construction permit application, if the DEQ has not notified the applicant of the intent to deny the application, or at the time an application is referred to the board, whichever is earlier. At that time, the DEQ also must notify the county and the municipality in which the proposed facility is to be located and request the appointment of the board members. The notification must include a notice of intent to issue all departmental permits required for the construction, pending recommendations of the board and approval by the DEQ. The bill would refer to the board's approval, rather than the board's recommendations and the DEQ's approval.

Part 111 requires a site review board to establish a timetable for the consideration of an application, hold a public hearing, list the issues that are to be addressed through a negotiation process between the applicant and the affected parties, list the issues to be evaluated by the board through its deliberations, conduct formal or informal hearings to receive evidence on the disputed issues not subject to the negotiation process, deliberate regarding the impact of the proposed facility on the municipality in which it is to be located, and make a final determination as to its recommendation to the DEQ regarding the permit application. The bill would delete the reference to the board's recommendation to the Department, and would require the board to make a final determination on the application.

Part 111 allows the site review board to seek the advice of any person in order to render a decision to issue its recommendation to the DEQ to approve or deny a construction permit application. Within 180 days after the first meeting, the board must make a decision on the negotiated agreement and the final best offer from each party on each issue and must

recommend to the DEQ that the Department either approve or reject the application. The bill would delete references to the board's recommendation in these provisions and instead refer to the board's decision to approve or deny an application.

Currently, if the site review board recommends to the DEQ the approval of the application, and the DEQ follows the recommendation, the DEQ must prepare a draft construction permit and initiate a public participation process. Under the bill, if the board approved the application, it would have to notify the DEQ, which then would have to prepare the draft permit and initiate the public participation process.

Upon completion of the public participation process, the DEQ must review all comments and issue or revise and issue the permit or reconvene the board to consider issues specified by the Department that were raised during the process. Within 30 days after being reconvened, the board must recommend to the DEQ the rejection of the application or recommend the revision and issuance of the permit, or recommend that the DEQ revise the draft construction permit and initiate a public participation process. The bill would require the board instead to do one of the following within 30 days after being reconvened:

- Reject the application and notify the DEQ.
- Approve the application and direct the DEQ to issue or revise and issue the construction permit.
- Direct the DEQ to revise the draft construction permit and initiate a public participation process.

Currently, if the board recommends the rejection of an application, it must state its reasons in writing and indicate the necessary changes to make the application acceptable, if a new application is made; and recommend that the DEQ deny the permit and initiate a public participation process. Under the bill, instead, if the board rejected an application, all of the following would apply:

- The board would have to state its reasons in writing and indicate the necessary changes to make the application acceptable if a new application were made.
- The board would have to notify the DEQ of the rejection.
- The DEQ would have to notify the applicant of the permit denial and initiate a public participation process.

Under the current requirements for a public participation process, it must be equivalent to the process required by the applicable provisions of the Federal Solid Waste Disposal Act or regulations promulgated under it. The bill, instead, would refer to a process equivalent to that required by the applicable provisions of Part 115 (Solid Waste Management) of NREPA.

MCL 324.11117 & 324.11120

BACKGROUND

A site review board consists of nine members and one nonvoting chairperson. Seven members are appointed by the Governor with the advice and consent of the Senate. These seven members must include a geologist, a chemical engineer, and a toxicologist who are on the faculty of an institution of higher education within the State; a representative from a manufacturing industry; two representatives of the public; and a representative of a municipality. The Governor may appoint more than one geologist, chemical engineer, toxicologist, manufacturing representative, and municipal representative, and more than two public representatives to serve on review boards. Only two public representatives, one manufacturing representative, one municipal representative, and one person in each specified profession, however, as randomly designated by the DEQ, may serve on a particular board.

The member representing municipalities must be associated with a municipality or municipal association that is or represents the same type of municipality in which a proposed facility is to be located. A member representing a municipality or the public may not serve on a site review board that is evaluating an application for a facility located within a county or municipality that directly employs the member or in which the member resides.

One board member must be appointed by the governing body of the municipality in which the proposed facility is to be located primarily to serve on the board that is established to consider a particular construction permit application. One member must be appointed by the board of commissioners of the county in which the proposed facility is to be located and must be a resident of that county.

An attorney must be appointed by the Governor with the advice and consent of the Senate to serve as a nonvoting chairperson on each board established to review a site construction permit. The Governor may appoint more than one chairperson to serve on site review boards. Only one chairperson, however, designated by the DEQ, may serve on a particular board.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

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

Fiscal Analyst: Jessica Runnels

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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.