

SENATE BILL No. 89

January 25, 2007, Introduced by Senators BASHAM, JACOBS, PRUSI, GLEASON, BRATER, OLSHOVE and McMANUS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 11117 and 11120 (MCL 324.11117 and 324.11120),
as amended by 1995 PA 61.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11117. (1) A site review board shall be established to
2 review and ~~recommend to the department whether the department~~
3 ~~should grant or deny final approval for each site construction~~
4 permit application that is referred to the board by the department.
5 If more than 1 construction permit application for interrelated
6 facilities on a single site within the same municipality ~~are~~ **IS**
7 submitted by the same applicant, reviewed concurrently by the

1 department, and referred to the board by the department, a single
2 board shall be established to review the ~~site~~ **CONSTRUCTION PERMIT**
3 applications concurrently but shall ~~recommend the granting or~~
4 ~~denial of~~ **GRANT OR DENY** final approval for each application
5 individually. A board shall consist of 9 voting members and a
6 nonvoting chairperson to be appointed as provided in subsection
7 (2).

8 (2) The following 9 members and 1 nonvoting chairperson shall
9 serve on every **SITE REVIEW** board established to review a ~~site~~
10 construction permit application:

11 (a) Seven members shall be members appointed by the governor,
12 with the advice and consent of the senate. The 7 members on each
13 **SITE REVIEW** board shall include a geologist, a chemical engineer,
14 and a toxicologist, each of whom are on the faculty of an
15 institution of higher education within the state, a representative
16 from a manufacturing industry, 2 representatives of the public, and
17 a representative of a municipality. Subject to the other
18 requirements of this subdivision, the governor may appoint more
19 than 1 geologist, chemical engineer, toxicologist, representative
20 from a manufacturing industry, and representative of a municipality
21 and more than 2 representatives of the public **TO SERVE ON SITE**
22 **REVIEW BOARDS**. However, only 1 geologist, chemical engineer,
23 toxicologist, representative from a manufacturing industry, and
24 representative of a municipality and only 2 representatives of the
25 public, as randomly designated by the department, shall serve on a
26 particular board. The member who represents municipalities shall be
27 associated with a municipality or municipal association that is or

1 represents the same type of municipality in which a facility is
2 proposed to be located. A member representing a municipality or the
3 public shall not serve on a site review board that is evaluating an
4 application for a facility located within a county or municipality
5 that directly employs the member or in which the member resides. A
6 vacancy shall be filled for the unexpired portion of the period in
7 the same manner as the original appointments. All members appointed
8 by the governor, including a chairperson appointed pursuant to
9 subdivision (c), shall be appointed to serve on site review boards
10 for a period of 3 years, and may be appointed for additional 3-year
11 periods. In addition, a member may serve beyond the expiration of
12 the member's 3-year period of service for so long a period of time
13 as is necessary to complete action on construction permit
14 applications pending at the expiration of the member's 3-year
15 period of service.

16 (b) One member shall be appointed by the governing body of the
17 municipality in which the treatment, storage, or disposal facility
18 is ~~primarily~~ proposed to be **PRIMARILY** located to serve on the board
19 that is established to consider a particular construction permit
20 application. One member shall be appointed by the county board of
21 commissioners in which the treatment, storage, or disposal facility
22 is proposed to be located and shall be a resident of the county
23 where the facility is proposed to be located. The members serving
24 pursuant to this subdivision shall serve until the particular
25 construction permit application subject to their review is approved
26 or until the application is rejected and is no longer subject to
27 review.

(c) An attorney shall 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 chairperson shall have experience in conducting formal meetings where sworn testimony is received. Subject to the other requirements of this subdivision, the governor may appoint more than 1 chairperson **TO SERVE ON SITE REVIEW BOARDS**. However, only 1 chairperson, designated by the department, shall serve on a particular board.

(3) The department shall notify the local governing body of the municipality and county government of a construction permit application filed with the department.

(4) Five of the 9 voting members of the **SITE REVIEW** board constitute a quorum for the transaction of business of the board and the concurrence of 5 voting members of the board constitutes a legal action of the board. All meetings of the board shall be conducted pursuant to the open meetings act, ~~Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws 1976~~ **PA 267, MCL 15.261 TO 15.275**.

(5) The department shall make staff available to assist a board in carrying out its responsibilities.

~~—— (6) A site review board that is established before December 28, 1987 shall proceed and fulfill its duties pursuant to the applicable law in effect when the site review board was established.~~

Sec. 11120. (1) The department shall notify those members appointed by the governor who will serve on ~~the~~ **A PARTICULAR SITE**

1 **REVIEW** board within 75 days after receipt of a construction permit
 2 application, if the department has not notified the applicant of
 3 the intent to deny the application, or at the time the department
 4 refers an application to the board, or at the time an application
 5 is automatically referred to the board pursuant to section
 6 11119(4), whichever is earlier. At that time the department also
 7 shall notify the county and the municipality in which the proposed
 8 treatment, storage, or disposal facility is to be located and
 9 request the appointment of the members of the board as provided in
 10 section 11117(2)(b). The notification shall include a notice of
 11 intent to issue all departmental permits required for the
 12 construction, pending ~~recommendations of the board and approval by~~
 13 ~~the department~~ **APPROVAL BY THE BOARD**. Within 45 days after the
 14 notification, the county and the municipality shall select the
 15 members to serve on the board. The board shall be created at that
 16 time and notification of the creation of the board shall be made to
 17 the chairperson.

18 (2) Within 30 days after creation of a **SITE REVIEW** board, the
 19 board shall meet to review and establish a timetable for the
 20 consideration of an application for a proposed treatment, storage,
 21 or disposal facility.

22 (3) The **SITE REVIEW** board shall do all of the following:

23 (a) Set a date and arrange for publication of notice of a
 24 public hearing in a newspaper having major circulation in the
 25 vicinity of the proposed site, at its first meeting. The public
 26 notice shall ~~do~~ **MEET** both of the following **REQUIREMENTS**:

27 (i) Contain a map indicating the location of the proposed

1 treatment, storage, or disposal facility, a description of the
2 proposed action, and the location where the application for a
3 construction permit may be reviewed and where copies may be
4 obtained.

5 (ii) Identify the time, place, and location for the public
6 hearing held to receive public comment ~~and input~~ on the application
7 for a construction permit.

8 (b) Hold a public hearing within 45 days of the first board
9 meeting.

10 (c) Publish the notice not less than 30 days before the date
11 of the public hearing.

12 (4) Comment ~~and input~~ on the proposed treatment, storage, or
13 disposal facility may be presented orally or in writing at the
14 public hearing, and shall continue to be accepted in writing by the
15 **SITE REVIEW** board for 15 days after the public hearing date.

16 (5) After the public hearing comment period has been closed,
17 the **SITE REVIEW** board shall list the issues that are to be
18 addressed through a negotiation process and list the issues to be
19 evaluated by the board through its deliberations.

20 (6) A negotiation process shall take place between the
21 applicant and the affected parties, who shall be identified by the
22 **SITE REVIEW** board. A representative of the municipality and a
23 representative of the county in which the facility is proposed to
24 be located shall each be considered an affected party. If requested
25 by any affected party or the applicant, the board shall appoint a
26 mediator to assist during negotiations. The negotiation process
27 shall **MEET ALL OF THE FOLLOWING REQUIREMENTS:**

1 (a) Proceed concurrently with the board's hearings process.

2 (b) Address the list of issues referred by the board and any
3 other issues unanimously agreed to be considered by the applicant
4 and all affected parties.

5 (c) Be completed within 150 days after the first meeting of
6 the board unless the applicant and 1 or more affected parties
7 involved in the negotiation process jointly request an extension of
8 not more than 60 days and the extension is approved by the board.
9 The board shall not grant extensions in excess of 60 days. An
10 extension granted under this subdivision may extend the time period
11 in which the board either approves or rejects the construction
12 permit application as specified in subsection (15).

13 (7) On each negotiation issue which has not reached a
14 negotiated settlement, the **SITE REVIEW** board shall select between
15 final best offers presented by affected parties. The final best
16 offer or the negotiated settlement shall not be less stringent than
17 the requirements of the law or pertinent decisions of the board,
18 whichever is the most stringent.

19 (8) The **SITE REVIEW** board shall conduct formal or informal
20 hearings to receive evidence on the disputed issues not subject to
21 the negotiation process described in subsections (6) and (7).

22 (9) The formal hearings process shall be conducted by the **SITE**
23 **REVIEW** board to receive information from technical experts on
24 disputed issues. Any affected party may request permission by the
25 board to participate in the board's formal hearings within 15 days
26 after the board's public hearing. The board shall determine which
27 affected parties shall participate in the board's formal hearing.

1 If the board denies the request of an affected party to participate
2 in the board's formal hearing, the board shall give the affected
3 party notice of the board's decision and the reasons for the
4 decision. A representative of the municipality and a representative
5 of the county in which the facility is proposed to be located ~~shall~~
6 **ARE** each ~~be~~ automatically entitled to participate. During the
7 board's formal hearings process, the board shall:

8 (a) Receive sworn testimony.

9 (b) Cross-examine witnesses.

10 (c) Allow representatives of affected parties to cross-examine
11 witnesses.

12 (d) Request participation as needed.

13 (10) ~~Comments made at AT~~ informal hearings, **COMMENTS** shall not
14 be made under oath and no cross-examination shall occur.

15 (11) The **SITE REVIEW** board shall deliberate on the impact of
16 the proposed treatment, storage, or disposal facility on the
17 municipality in which it is to be located, and make a final
18 determination ~~as to its recommendation to the department regarding~~
19 **ON** the construction permit application.

20 (12) The **SITE REVIEW** board shall consider, at a minimum, all
21 of the following:

22 (a) The risk and impact of accident during the transportation
23 of hazardous waste.

24 (b) The risk and impact of contamination of ground and surface
25 water by leaching and runoff from the proposed treatment, storage,
26 or disposal facility.

27 (c) The risk of fires or explosions from improper treatment,

1 storage, and disposal methods.

2 (d) The impact on the municipality where the proposed
3 treatment, storage, or disposal facility is to be located in terms
4 of health, safety, cost, and consistency with local planning and
5 existing development. The board also shall consider local
6 ordinances, permits, or other requirements and their potential
7 relationship to the proposed treatment, storage, or disposal
8 facility.

9 (e) The nature of the probable environmental impact, including
10 ~~the specification of the predictable adverse effects, WHICH SHALL~~
11 **BE SPECIFIED BY THE BOARD, on ALL OF** the following:

12 (i) The natural environment and ecology.

13 (ii) Public health and safety.

14 (iii) Scenic, historic, cultural, and recreational value.

15 (iv) Water and air quality and wildlife.

16 (f) An evaluation of measures to mitigate adverse effects.

17 (g) ~~The board shall consider the~~ information contained in the
18 construction permit application disclosure statement.

19 (13) The **SITE REVIEW** board also shall consider the concerns
20 and objections submitted by the public. The board shall facilitate
21 efforts to provide that the concerns and objections are mitigated
22 by establishing additional stipulations specifically applicable to
23 the treatment, storage, or disposal facility and operation at that
24 site. Through deliberations, the board may modify the construction
25 permit application in response to its findings. To the fullest
26 extent practicable, the board also shall integrate by stipulation
27 the provisions of the local ordinances, permits, or requirements.

1 (14) The **SITE REVIEW** board may seek the advice of any person
2 in order to render a decision ~~to issue its recommendation to the~~
3 ~~department to~~ approve or deny the construction permit application.

4 (15) Within 180 days after the first meeting of the **SITE**
5 **REVIEW** board, the board shall make a decision on the negotiated
6 agreement and the final best offer from each party on each issue
7 and shall ~~recommend to the department that the department~~ either
8 approve or reject the construction permit application. The 180-day
9 time period may be extended as provided in ~~subdivision~~ **SUBSECTION**
10 (6)(c). However, an extension shall not exceed 60 days.

11 (16) If the **SITE REVIEW** board ~~recommends to the department the~~
12 ~~approval of the construction permit application and the department~~
13 ~~follows the recommendation, the department shall~~ **APPROVES THE**
14 **CONSTRUCTION PERMIT APPLICATION, THE BOARD SHALL NOTIFY THE**
15 **DEPARTMENT OF THE APPROVAL. THE DEPARTMENT SHALL** prepare a draft
16 construction permit and initiate a public participation process
17 equivalent to that required by the applicable provisions of ~~the~~
18 ~~solid waste disposal act or regulations~~ **PART 115 OR RULES**
19 promulgated under that ~~act~~ **PART**. Upon completion of the public
20 participation process, the department shall review all comments
21 made during that process and shall issue or revise and issue the
22 construction permit or reconvene the board to consider issues
23 specified by the department that were raised during the public
24 participation process. Within 30 days after having been reconvened
25 under this subsection, the board shall ~~recommend to the department~~
26 ~~the rejection of the application or recommend the revision and~~
27 ~~issuance of the construction permit, or recommend that the~~

1 ~~department~~ DO 1 OF THE FOLLOWING:

2 (A) REJECT THE APPLICATION AND NOTIFY THE DEPARTMENT.

3 (B) APPROVE THE APPLICATION AND DIRECT THE DEPARTMENT TO ISSUE
4 OR TO REVISE AND ISSUE THE CONSTRUCTION PERMIT.

5 (C) DIRECT THE DEPARTMENT TO revise the draft construction
6 permit and initiate a public participation process equivalent to
7 that required by the applicable provisions of ~~the solid waste~~
8 ~~disposal act or regulations~~ PART 115 OR RULES promulgated under
9 that act PART.

10 (17) If the board ~~recommends the rejection of~~ REJECTS the
11 construction permit application, ~~the board shall do all of the~~
12 ~~following:~~ (a) State ALL OF THE FOLLOWING APPLY:

13 (A) THE BOARD SHALL STATE its reasons in writing and indicate
14 the necessary changes to make the application acceptable if a new
15 application is made.

16 (b) ~~Recommend that the department deny~~ THE BOARD SHALL NOTIFY
17 THE DEPARTMENT OF THE REJECTION.

18 (C) THE DEPARTMENT SHALL NOTIFY THE APPLICANT OF THE DENIAL OF
19 the construction permit and initiate a public participation process
20 equivalent to that required by the applicable provisions of ~~the~~
21 ~~solid waste disposal act, or regulations~~ PART 115 OR RULES
22 promulgated under that act PART.