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Senate Bill 439 (as introduced 4-2-09)
Sponsor: Senator Roger Kahn, M.D.
Committee: Economic Development and Regulatory Reform

Date Completed: 6-10-09

CONTENT

The bill would add Part 27 (Program Review) to the Natural Resources and Environmental Protection Act (NREPA) to do all of the following:

- **Require the Department of Natural Resources (DNR), the Department of Environmental Quality (DEQ), and other State departments to hire someone to perform benchmark analyses or arrange for independent peer review of programs administered under NREPA.**
- **Require each department to complete two analyses or reviews by February 1, 2010, and then annually, until all programs were analyzed or reviewed.**
- **Require the DEQ to complete an analysis or review of two specific programs by February 1, 2010.**
- **Specify factors that would have to be included in a benchmark analysis or peer review for the DEQ.**
- **Create the NREPA Program Review Panel to assist a person performing a benchmark analysis or peer review pursuant to the bill.**
- **Dissolve the NREPA Program Review Panel as of July 1, 2014.**

Benchmark Analysis/Peer Review

The bill would require the DNR, DEQ, and any other State department that administers a program under the Act to do one of the following for each of those programs:

- Hire a qualified, independent person through a request-for-proposal process to perform a benchmark analysis of the program.
- Arrange for an independent and external peer review of the program.

A person could not be selected to perform a benchmark analysis or peer review unless he or she had a proven ability to evaluate regulatory activities and make recommendations for improvement.

The DNR, DEQ, or any other State department that administers a program under NREPA would have to complete two benchmark analyses or peer reviews in any combination by February 1, 2010, and each year after that until all programs administered by the department under the Act were analyzed or reviewed.

Also, by February 1, 2010, the DEQ would have to complete a benchmark analysis or peer review of both the remediation program under Part 201 (Environmental Remediation) of the Act and the National Pollutant Discharge Elimination System (NPDES) program under Part 31 (Water Resources Protection). The DEQ would have to select a person or persons to

perform the benchmark analyses or arrange for the independent, external peer reviews for these programs by June 1, 2009.

An analysis or peer review for the DEQ would have to include all of the following:

- A calculation of the DEQ's per-permit cost to process the permits and administer the program.
- A review of the timeliness of the process from receipt of a permit application to its approval or denial.
- A review of customer service practices.
- A review of measurable environmental impacts.
- For the Part 31 and Part 201 programs, a comparison of the DEQ's performance to that of other Great Lakes states.

NREPA Program Review Panel

The bill would create the NREPA Program Review Panel within the DEQ. The panel would have to assist a person performing a benchmark analysis or peer review under the bill in developing a framework for that work. The panel would consist of seven members, as follows:

- Two individuals appointed by the Senate Majority Leader, one representing permit holders and one representing business.
- Two individuals appointed by the Speaker of the House, one representing permit holders and one representing business.
- Three individuals appointed by the Governor, consisting of one DEQ employee, one DNR employee, and one person representing the general public.

The initial members would have to be appointed by July 1, 2009. Members would serve for terms of four years or until a successor was appointed. The appointing officer could remove a member of the panel for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

The first meeting of the panel would have to be called by the member who was a DEQ employee. At that meeting, the panel would have to elect a chairperson and other officers it considered necessary or appropriate. After the first meeting, the panel would have to meet at least quarterly, or more frequently at the call of the chairperson or as requested by two or more members. The panel would have to comply with the Open Meetings Act and the Freedom of Information Act.

Members of the panel would serve without compensation, but could be reimbursed for actual and necessary expenses incurred in the performance of their official duties as panel members.

The panel would be dissolved on July 1, 2014.

Proposed MCL 324.2701-324.2705

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would result in additional administrative workloads for State departments. A specific cost estimate is not available.

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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.