

# Legislative Analysis

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## DEQ INSPECTIONS; PROGRAM REVIEW

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**House Bill 4017 as enrolled**  
**Public Act 235 of 2011**  
**Sponsor: Rep. Dave Agema**

**Senate Bill 277 as enrolled**  
**Public Act 248 of 2011**  
**Sponsor: Sen. Dave Hildenbrand**

**House Committee: Regulatory Reform**  
**Senate Committee: Economic Development**

**Complete to 3-26-18**

**BRIEF SUMMARY:** House Bill 4017 would require the DEQ, with some exceptions, to use a fair and equitable sampling process when selecting operations or facilities to inspect, require that annual reports on the inspections be given to the Legislature, and require certain information be given before and after an inspection is conducted.

Senate Bill 277 would require the Department of Environmental Quality (DEQ) to complete process improvement of major programs administered by the department under the Natural Resources and Environmental Protection Act, establish requirements for the process improvement, develop metrics for such things as environmental impacts, conduct surveys regarding the department's service practices, and post certain information on the department's website.

**FISCAL IMPACT:** The DEQ would incur additional costs under the bills as discussed in more detail later in the analysis.

### **THE APPARENT PROBLEM:**

Some people believe that regulation under the Natural Resources and Environmental Protection Act (NREPA), which governs programs administered by the Department of Environmental Quality and other state agencies, is overregulating businesses to the point of impeding economic development and job growth in Michigan. For example, some business owners feel that "random" inspections are anything but random, believing instead that they have been targeted over and over while other similar businesses were not inspected. Others complained of a lack of professionalism by inspectors and lack of information concerning deficiencies in inspections.

In 2010, legislation was passed by the Senate that would have addressed this concern by, among other things, requiring state agencies that administer programs under NREPA to hire someone to perform benchmark analyses or arrange for independent reviews of those

programs and to require any state department performing inspections under NREPA to use a “stratified random sampling process” to select people to inspect.

The bills were criticized as creating an additional administrative workload for state departments and for adopting a “one-size fits all” approach that failed to recognize significant differences between programs under NREPA. Elements of the bill package conflicted with other state and federal requirements, and some believed there was no evidence that state agencies were inappropriately allocating resources to inspections or unfairly selecting facilities to inspect. Some environmental groups stated that the bills would cripple the DEQ by their requirements to the extent of severely impacting the agency’s ability to protect both the public health and the environment.

The legislation has since been revised to, among other things, only apply to programs administered by DEQ under NREPA.

### ***THE CONTENT OF THE BILLS:***

**House Bill 4017** would add a new section to NREPA, Article I (General Provisions), Part 5 (Enforcement), MCL 324.1505. Under the bill, the Department of Environmental Quality (DEQ) would be required to use a fair and equitable sampling process to select persons whose operations or facilities would be inspected.

Exemptions. The fair and random sampling process would not apply to the following:

\*\* An inspection performed in response to a complaint from a third party, performed in response to evidence that a violation had occurred, or to a follow-up inspection to determine whether violations identified in previous inspections had been corrected.

\*\* An inspection required for the issuance of a permit.

\*\* Any inspection otherwise required under state or federal law.

Annual report. An annual report would have to be submitted to the Legislature on the methods used to comply with the bill’s requirements, and the number of inspections performed under the fair and equitable process during the prior year as well as the number performed under the list of exemptions.

Performance of Inspections. *Before* conducting an inspection under NREPA, the DEQ would have to provide the person whose operation or facility would be inspected with an explanation of the person’s rights and responsibilities with respect to the inspection and the reasons for conducting the inspection.

*After* conducting an inspection under the act, the DEQ would have to give the person an opportunity to provide comments to the department on the quality of the inspection and the professionalism of the inspector.

**Senate Bill 277** would create Part 27 (Program Review) of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.2701 et al., to require the Department of Environmental Quality (DEQ) to do the following:

\*\* Complete process improvement of one major program by February 1, 2012, and two major programs each year thereafter until the DEQ has completed process improvement for all major programs. "Program" would mean a permit program or regulatory program administered by the DEQ under NREPA. If a process improvement for a program had been completed prior to the bill's effective date, a new one would not have to be conducted. The department would have to consider using peer reviews by other EPA Region 5 states and benchmark analyses. A description of the process improvements made for each major program would have to be posted on the agency's website.

\*\* Require a process improvement to utilize process mapping and be conducted by a team that included, at a minimum, two certified facilitators (who would administer the process improvement), a representative of persons regulated under the program, and a representative of the general public affected by the program.

\*\* Develop metrics for environmental impacts and process performance, including the DEQ's per-permit cost to administer the program, the timeliness of the permit process from receipt of an application to approval or denial, and a review of service practices affecting regulated persons and the general public. The metrics would have to be posted on the DEQ's website.

\*\* For each division of DEQ, require the department to survey persons regulated by that division and the general public concerning the division's service practices. Surveys would have to be completed and aggregate results for each division posted on the DEQ's website by February 1, 2012. However, survey information identifying a survey respondent would not be posted.

#### ***FISCAL INFORMATION:***

House Bill 4017 would have an indeterminate fiscal impact on the Department of Environmental Quality. Any increased costs to the Department would be related to additional administrative workload from the bill's provisions that the Department use a sampling process when choosing persons for all routine inspections and from the requirement for a detailed annual report.

Under the provisions of Senate Bill 277, the Department of Environmental Quality would incur additional administrative costs; however, these costs are not anticipated to be significant. Any additional expenses would stem from the bill's requirements that the Department complete a process improvement analysis for two major programs each year, establish an evaluation team, use peer review of other states and benchmark analyses, develop metrics, post specific information on its website, and create a survey program for regulated stakeholders.

## ***ARGUMENTS:***

### ***For:***

Some feel that a climate of overregulation in the state contributes to a reputation that Michigan is unfriendly toward business. This can be detrimental to job growth and investment in the state if business executives believe, or experience, difficulty in obtaining permits or navigating regulatory procedures. Attempts to address these concerns in the last legislative session failed, in part due to criticisms that the reforms would have increased costs to the agencies administering programs under the Natural Resources and Environmental Protection Act (NREPA) and been less efficient than current practices. This session, instead, House Bill 4017 and Senate Bill 277 would take a sensible approach in addressing concerns raised by the business community.

House Bill 4017 would require the DEQ to establish a fair and equitable sampling process when doing random inspections of operations or facilities. Thus, the bill would prevent the DEQ from inspecting the same facilities repeatedly out of convenience, and would protect businesses from being targeted for speaking out against government action. Proponents say that this would send a positive message that no business or industry would be singled out unfairly and reassure job providers that they would be treated equitably in the inspection process. The bill would not affect inspections done when a complaint has been lodged, an inspection is needed before a permit can be granted, or there is evidence that a violation of NREPA has occurred. In addition, the bill would provide some legislative oversight in that the DEQ would have to provide an annual report to the Legislature regarding the numbers of inspections done and the methods used to comply with the bill's requirements. Further, when conducting an inspection under the act, whether a random inspection or one initiated by a complaint or required under state or federal law, the owner of the operation or facility would have to be made aware of the reasons for the inspection and his or her rights and responsibilities with respect to the inspection. A person who underwent an inspection could then provide the DEQ with comments regarding the quality of the inspection and the inspector's professionalism. It is reasonable to assume this information could be used by the DEQ in developing inspection guidelines and inspector training to increase efficiency and improve relations with those undergoing inspections, which should encourage cooperation and compliance.

Senate Bill 277 would affect only programs administered by DEQ under NREPA. Under the bill, each program would eventually undergo a process improvement. In general, "process improvement" for an organization or entity refers to a systematic approach of optimizing the way of doing things so as to achieve more efficient results. A process improvement would be done by a team composed of experts in the field along with a person regulated by the program and a person impacted by the program. DEQ would have to consider using peer reviews by other EPA Region 5 states and benchmark analyses (although they would not be required to). This gives DEQ more flexibility to review each program on a case-by-case basis. Transparency would be achieved by requiring metrics to be developed to measure environmental impacts and process performance for each program. The metrics would be posted on the department's website for public access. In addition, the department would have to conduct surveys for each

division of DEQ both of persons regulated by that division and of members of the public concerning the division's service practices. Aggregate results would be posted on the DEQ website. Though not specified in the bill, it is reasonable to assume that survey results could be used in identifying elements of programs and service practices that work well and those that need tweaking.

***Against:***

House Bill 4017 is not specific as to what will be done with comments received by persons whose operations or facilities are inspected. Nor does the bill address what steps would be taken to protect an inspector from untrue allegations regarding his or her professionalism or if the identity of those submitting comments would be kept confidential and not disclosed to an inspector.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.