

## Pumping the Brakes on Reform

### Michigan's permitting engine stalls out

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This report examines Michigan's recent permitting reforms, highlighting how some productive efforts to enhance accountability and efficiency have largely stalled. While the state took steps to introduce independent oversight through bodies like the Environmental Permit Review Commission (EPRC) and the Environmental Rules Review Committee (ERRC), subsequent executive actions dismantled these panels, reverting authority back to the very agency they were meant to oversee. The abolition of these panels means that permit appeals are now handled internally by the Department of Environment, Great Lakes, and Energy (EGLE), forcing applicants to seek redress from the same agency that issued their initial permit denial. Although Michigan has made some improvements in other areas, including digital permitting infrastructure, as well as through the implementation of a fee refund system, the rollback of independent review mechanisms is a significant step backward in ensuring fair and balanced permit decision-making.

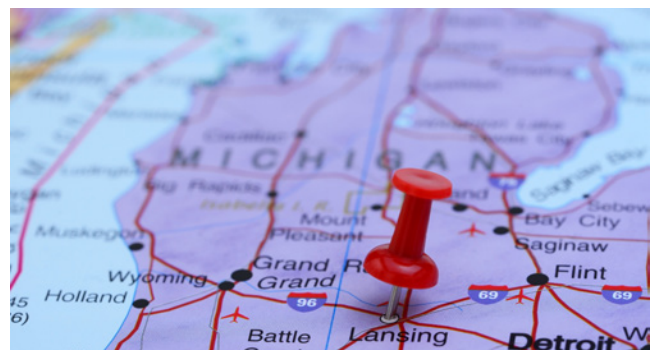
#### Origins of Michigan's permit appeal process

In 2018, Michigan instituted a permit appeal process with the passage of Public Act 268,<sup>1</sup> which created a framework for resolving disputes related to environmental permits. Central to the appeal process was the Environmental Permit Review Commission (EPRC), a 15-member body appointed by the governor.<sup>2</sup> Members of the EPRC were experienced professionals in engineering, geology, and related disciplines.<sup>3</sup> When a dispute arose, the applicant submitted a petition to the director of the Department of Environmental Quality (DEQ), which could then lead to the formation of an Environmental Permit Panel.<sup>4</sup> This three-member panel, selected from the EPRC, reviewed the case and provided recommendations.

The panel's purpose was to provide an impartial review. It could be asked to evaluate an application before an official decision was made by the DEQ director. It would consider technical data, analysis, and any documentation related to the project. The panel's recommendation could be to uphold, modify, or reverse aspects of the DEQ's review that are in dispute.

The permit review process included strict timelines to ensure timely resolution. Panels had to be convened

within 45 days of receiving a petition,<sup>5</sup> and their recommendations had to be submitted within another 45 days.<sup>6</sup> The director of DEQ then had 60 days to issue a final decision. If those deadlines were not met, the panel's recommendation became binding.<sup>7</sup> Following the director's decision, contested cases could go before an administrative law judge. That decision could be further appealed through the convening of another panel comprised of other members of the EPRC.<sup>8</sup> After that, parties could seek further recourse through judicial review under the state Administrative Procedures Act. DEQ was required to report annually to the state legislature on the number and outcomes of appeals.<sup>9</sup>



<sup>1</sup> Michigan Senate Bill No. 653, 99th Legislature Regular Session of 2018, <https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0268.pdf>.

<sup>2</sup> Michigan Public Act 268 of 2018, § 1313(2).

<sup>3</sup> Public Act 268 of 2018, § 1313(2)(a).

<sup>4</sup> Public Act 268 of 2018, § 1315(1).

<sup>5</sup> Public Act 268 of 2018, § 1315(2).

<sup>6</sup> Public Act 268 of 2018, § 1315(5).

<sup>7</sup> Public Act 268 of 2018, § 1315(6).

<sup>8</sup> Public Act 268 §§ 1317.

<sup>9</sup> Public Act 268 of 2018, § 1311.



Public Act 268 also specified deadlines for processing various environmental permit applications. The law requires that decisions on permits be made within, usually, at most 150 days of a complete permit application being submitted,<sup>10</sup> unless there is a hearing or an extension is agreed upon by both the applicant and the agency.<sup>11</sup> The law also introduces financial consequences for missed deadlines. If a permit decision is not made within the specified processing period, the agency must either a) refund the first periodic charge for permits with recurring fees, or b) refund 15 percent of the application fees to the applicant, whichever is greater.<sup>12</sup> Additionally, for certain permits, the law allows for automatic approvals if the agency fails to act within the required timeframe.<sup>13</sup>

### More oversight and expertise

Michigan's Environmental Rules Review Committee (ERRC) and Environmental Science Advisory Board (ESAB) were, like the EPRC, established in 2018 as part of a broader effort to introduce external oversight into the state's environmental regulatory process.<sup>14</sup> The ERRC was created to oversee the rulemaking process for environmental regulations. Composed of department heads, industry representatives, environmental experts, and other stakeholders, the ERRC was tasked

with reviewing proposed regulations before they were finalized by the Michigan DEQ.<sup>15</sup> Its primary function was to evaluate whether new environmental rules were necessary, reasonable, within the DEQ's rulemaking authority, and based on sound scientific and economic reasoning.<sup>16</sup>

The ESAB was established to provide expert scientific guidance to the governor and state agencies on complex environmental issues.<sup>17</sup> Comprised of researchers and specialists in fields such as environmental science, risk assessment, economics and engineering, the ESAB served as an independent body that could offer nonpartisan, evidence-based insights on policy matters.<sup>18</sup> Unlike the ERRC, which had a regulatory function, the ESAB acted in a purely advisory role as a scientific resource, ensuring that environmental policymaking in Michigan remains aligned with the latest research and best practices.

Despite their intended roles in promoting accountability and science-driven policymaking, the EPRC, ERRC and ESAB became politically contentious. Critics, particularly within the administration of Gretchen Whitmer and environmental advocacy groups, argued that these panels gave industry undue influence over environmental regulations and created bureaucratic inefficiencies.<sup>19</sup> This friction set the stage for a series of executive and legislative actions aimed at dismantling these oversight mechanisms—a battle that would unfold over the next several years.

### Executive actions and legislative battles

In 2019, Gov. Whitmer issued Executive Order 2019-02, which sought to eliminate the EPRC, the ERRC, and the ESAB through a "Type III transfer."<sup>20</sup> A Type III transfer is the complete abolition of an agency, board, or commission, with its statutory powers and responsibilities reassigned to a principal department within the executive branch.<sup>21</sup>

<sup>10</sup> Public Act 268 § 1301(xi)-(xii); § 1307(1)-(2).

<sup>11</sup> Public Act 268 § 1301(xi), § 1307(2).

<sup>12</sup> Public Act 268 § 1307(7).

<sup>13</sup> Public Act 268 § 1307(8).

<sup>14</sup> Michigan Public Acts 267 and 269 of 2018.

<sup>15</sup> Public Act 267, Michigan Senate Bill 652, 99th Legislature, Regular Session of 2018, <https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0267.pdf>.

<sup>16</sup> Public Act 267 § 66(4).

<sup>17</sup> Public Act 269, Michigan Senate Bill 654, 99th Legislature, Regular Session of 2018, <https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0269.pdf>.

<sup>18</sup> Public Act 269, § 2609.

<sup>19</sup> Keith Matheny, "Gov. Rick Snyder signs controversial 'polluter panels' bill," *Detroit Free Press*, June 29, 2018, <https://www.freep.com/story/news/local/michigan/2018/06/29/michigan-department-environmental-quality-panel/745625002/>; Kyle Davidson, "EGLE says environmental review panels should be axed, cites delays and drains on resources," *Michigan Advance*, January 25, 2024, <https://michiganadvance.com/2024/01/25/egle-says-environmental-review-panels-should-be-axed-cites-delays-and-drains-on-resources/>.

<sup>20</sup> Gov. Gretchen Whitmer, "Executive Order 2019-02: Executive Reorganization," February 4, 2019, <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2019/02/04/executive-order-2019-2>.

<sup>21</sup> State Budget Office, "Glossary of Terms," accessed March 5, 2025, <https://www.michigan.gov/budget/glossary-of-terms>.

In Michigan, the governor has the authority to execute a Type III transfer under Article V, Section 2 of the Michigan Constitution, which grants the governor the power to reorganize the executive branch through executive orders.<sup>22</sup> This authority allows the governor to abolish, consolidate, transfer, or reassign functions, powers, and duties of executive agencies, boards, and commissions for efficiency and administrative purposes.<sup>23</sup> Such executive orders take effect unless disapproved by a majority vote in both chambers of the state legislature within 60 days.<sup>24</sup>

Whitmer's 2019 Order quickly met resistance in the Republican-controlled legislature. Lawmakers saw the move as a power grab that would consolidate too much authority within the DEQ. House Concurrent Resolution 1 was introduced to overturn the executive order, and both chambers of the legislature passed it, blocking Whitmer's attempt to dissolve the panels.<sup>25</sup> This marked a rare instance where the legislature successfully overturned an executive order, something that had not been done in 42 years.<sup>26</sup> The action reinforced the view that independent regulatory review panels were valuable checks on administrative discretion.

Following the legislature's rejection of Executive Order 2019-02, Whitmer issued Executive Order 2019-06, which took a more limited approach to restructuring environmental governance.<sup>27</sup> While this order left the EPRC and ERRC intact, it successfully abolished the ESAB, since the legislature failed to overturn the order.<sup>28</sup> The revised order also reorganized the ERRC as an office within the DEQ, as opposed to being an independent office within the Office of Performance and Transformation. The order renamed the DEQ the Department of Environment, Great Lakes, and Energy (EGLE) and also created several new offices, including the Office of the Clean Water Public Advocate and the Office of Climate and Energy, signaling a shift in priorities from regulatory review toward environmental advocacy.

The battle over Michigan's permitting panels did not end there. In subsequent years, environmental groups and state officials continued to push for the dissolution of the EPRC and ERRC panels.<sup>29</sup> In 2023, two bills, Senate Bills 393 and 394<sup>30</sup>, were introduced to formally eliminate the EPRC and ERRC. The bills were supported by environmental advocates and EGLE leadership, who argued that the panels added unnecessary layers of bureaucracy and rarely led to meaningful changes in regulatory decisions.<sup>31</sup> However, the bills ultimately failed to pass the legislature, illustrating the continued political divide over the role of independent review in Michigan's permitting system.

## 2024 reorganization order

In July 2024, Gov. Whitmer issued Executive Order 2024-05, which succeeded in eliminating both the EPRC and the ERRC through a Type III transfer.<sup>32</sup> This transfer formally assigned responsibilities for permit review petitions and appeals to the Director of EGLE or a subordinate. Public Act 9 of 2024 modified Michigan's Administrative Procedures Act of 1969 by removing statutory references to the ERRC and repealing its authority over rulemaking reviews, formally abolishing the committee.<sup>33</sup>

With the dissolution of these panels, Michigan has effectively returned to a system where permit appeals must be made directly to the same agency that initially denied the application. This change undermines accountability by making it far less likely that applicants will receive a neutral review of their case. The EPRC provided a structured appeal process that required experts in relevant fields to weigh in on disputes, offering a degree of technical objectivity that is now absent. Without this external check, businesses and members of the public that require environmental permits have fewer formal avenues to challenge permit denials.

<sup>22</sup> See Constitution of Michigan of 1963, Article V, § 2 Principal departments, Sec. 2., <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Article-V-2#:~:text=All%20executive%20and%20administrative%20offices,education%20provided%20for%20in%20this>.

<sup>23</sup> Michigan Public Act 380 of 1965, <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-380-of-1965>.

<sup>24</sup> Constitution of Michigan of 1963, Article V, Section 2.

<sup>25</sup> Michigan House Concurrent Resolution 1 of 2019, <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2019-HCR-0001>.

<sup>26</sup> Paul Egan and Kathleen Gray, "Legislature votes to reject Whitmer's environmental executive order," *Detroit Free Press*, February 14, 2019, <https://www.freep.com/story/news/local/michigan/2019/02/14/gretchen-whitmer-environmental-executive-order/2869421002/>.

<sup>27</sup> Gov. Gretchen Whitmer, "Executive Order 2019-06: Executive Reorganization," February 20, 2019, <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2019/02/20/executive-order-2019-6>.

<sup>28</sup> Tyler Arnold, "Michigan GOP to allow Whitmer's rewrite of environmental agency executive Order," *The Center Square*, February 25, 2019, [https://www.thecentersquare.com/michigan/article\\_14202ce4-36f8-11e9-b1a8-cfd589324070.html](https://www.thecentersquare.com/michigan/article_14202ce4-36f8-11e9-b1a8-cfd589324070.html).

<sup>29</sup> Paul Egan, "Whitmer's new environmental order leaves 'polluter panels' in place— for now," *Detroit Free Press*, Feb. 20, 2019, <https://www.freep.com/story/news/local/michigan/2019/02/20/whitmer-new-environmental-executive-order/2913254002/>.

<sup>30</sup> Michigan Senate Bill 393, 102nd Legislature, 2023-2024, <https://legiscan.com/MI/bill/SB0393/2023>; Michigan Senate Bill 394, 102nd Legislature, 2023-2024, <https://legiscan.com/MI/bill/SB0394/2023>.

<sup>31</sup> Kyle Davidson, "EGLE says environmental review panel should be axed, cites delays and drains on resources," *Michigan Advance*, January 25, 2024, <https://michiganadvance.com/2024/01/25/egle-says-environmental-review-panels-should-be-axed-cites-delays-and-drains-on-resources/>.

<sup>32</sup> Gov. Gretchen Whitmer, "Executive Order 2024-5: Executive Reorganization," July 18, 2024, <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2024/07/18/executive-order-2024-5-executive-reorganization>.

<sup>33</sup> Michigan House Bill 4826 of 2023, Public Act 9 of 2024, <https://legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-4826>.

The elimination of the ERRC also raises concerns about transparency and expertise in regulatory policy. This committee was responsible for reviewing new environmental rules to ensure they were justified by evidence and not excessively burdensome before implementation. Absent these procedures, the public has less assurance that decisions are based on the best available evidence and do not impose excessive costs.

### Whitmer's other permitting reforms

Whitmer has embarked on several other permitting initiatives throughout her time in office. Signed in June 2022, Executive Directive 2022-6 introduced a coordinated, project-based approach to permitting for infrastructure investments valued at \$50 million or more.<sup>34</sup> This directive mandates inter-agency collaboration for these infrastructure projects, including creation of permitting plans, with the Michigan Infrastructure Office (MIO) playing a central coordinating role.

The directive also emphasizes transparency through publicly available permitting schedules and a dashboard tracking project progress, following an approach similar to the federal FAST-41 permitting process,<sup>35</sup> which has also been copied by states like Pennsylvania.<sup>36</sup> As of March 2025, a beta version of the online dashboard was available online, housed on the MIO website, which includes a list of covered projects and an interactive map.<sup>37</sup>

Building on timelines established in Public Act 268 of 2018, Executive Directive 2023-4, signed in August 2023, requires all state agencies to catalog the permits they issue, detailing associated fees, statutory authority, length of time required to process applications, and recommendations for eliminating obsolete requirements.<sup>38</sup> Agencies must also propose optimal processing times for each permit type, which will then be used to establish standardized benchmarks.

A notable feature of ED 2023-4 is its accountability measures. Agencies are now obligated to refund permit application fees in full if processing times exceed the

benchmarks. This introduces a financial consequence for bureaucratic inefficiency, going beyond the partial fee waivers enacted in 2018. The directive also allocates \$6.6 million for system modernization and staff updates to address bottlenecks. This followed Michigan's FY 2023-24 budget which,<sup>39</sup> in response to the governor's budget request,<sup>40</sup> allocated the \$6.6 million to hire additional staff and to modernize permitting systems.

### Recent legislation on permitting

Michigan enacted several pieces of substantial permitting legislation in 2023, including Public Acts 233 and 234. These are largely designed to accelerate renewable energy development and resource extraction. Public Act 233 establishes a centralized state certification process for utility-scale renewable energy facilities, including wind, solar, and energy storage systems.<sup>41</sup> This process facilitates approvals by preempting local zoning ordinances. Local governments are prohibited from establishing moratoria on renewable energy projects and can make local regulations no more stringent than state energy standards.

Public Act 233 also grants the Michigan Public Service Commission (MPSC) significant authority in overseeing the siting of large-scale renewable energy facilities. The MPSC now has the power to issue certificates for energy facilities when local governments either fail to adopt compatible renewable energy ordinances or deny applications under restrictive conditions. In short, the MPSC has been given final authority for all siting decisions relating to major wind and solar developments. Local control has been removed as townships and counties no longer have the final say on a development application in their area. If the MPSC approves the development, the project will move forward.

Public Act 234 addresses local regulatory obstacles to oil and gas drilling and mineral resource extraction by limiting the ability of municipalities to block projects.<sup>42</sup> Extraction bans can only be implemented if "very serious consequences" can be demonstrated, based on the standards outlined in the court case *Silva v. Ada Township*.

<sup>34</sup> Gov. Gretchen Whitmer, "Executive Directive No. 2022-6: Streamlining Permitting," June 1, 2022, <https://www.michigan.gov/whitmer/-/media/Project/Websites/Whitmer/Documents/Exec-Directives/ED-20226-Streamlining-Permitting-final.pdf>.

<sup>35</sup> 42 U.S.C. § 4370m et seq., <https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter55/subchapter4&edition=prelim>.

<sup>36</sup> Gov. Josh Shapiro, "Executive Order 2024-04 – PA Permit Fast Track Program," November 19, 2024, <https://www.pasenate.gov/Executives/Orders/Executive-Orders/2024-04-PA-Permit-Fast-Track-Program>.

<sup>37</sup> Michigan Infrastructure Office, "Project Dashboard," accessed March 5, 2025, <https://somgovweb.state.mi.us/miinfra/projects/>.

<sup>38</sup> Gov. Gretchen Whitmer, "Executive Directive No. 2024-4: Expediting Permit Applications & Adding Accountability Measures," August 3, 2023, <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2023/08/03/executive-directive-20234-expediting-permits-and-adding-accountability-measures>.

<sup>39</sup> Michigan Fiscal Agency, "Bill Analysis: House Bill 4437—FY 2023-24 General Omnibus Appropriation Bill," 102 Legislature, Regular Session of 2023," [2023-SFA-4437-R.pdf](https://www.sfa.michigan.gov/4437-R.pdf).

<sup>40</sup> Gov. Gretchen Whitmer, "Gov. Whitmer Announces Fiscal Year 2024 Budget: Building a Brighter Future," press release, February 8, 2023, <https://www.michigan.gov/whitmer/news/press-releases/2023/02/08/gov-whitmer-announces-fiscal-year-2024-budget-building-a-brighter-future>.

<sup>41</sup> Michigan House Bill No. 5120, 102nd Legislature, 2023, <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5120>.

<sup>42</sup> Michigan House Bill No. 5121, 102nd Legislature, 2023, <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5121>.

## Recommendations

With the elimination of the EPRC, Michigan now lacks an independent venue for permit appeals, placing full decision-making authority in the hands of EGLE's leadership. Since agencies have little incentive to reverse their own decisions, this arrangement makes it more difficult for businesses, property owners, and developers to secure fair outcomes.

The Michigan Legislature should consider ways to create permitting and regulatory review panels in a way that prevents the governor from unilaterally abolishing them. For example, if structured as entities under the legislative branch, rather than the executive branch, the panels would presumably be outside the governor's executive reorganization authority. To address some of the concerns about these panels, the EPRC and ERRC could also be restructured to include a different mix of industry experts, environmental scientists, and neutral technical professionals.

Codifying timelines in statute is another area where Michigan's permitting system could advance. The recent executive order from Gov. Whitmer introduced performance benchmarks and fee refunds for delays. Deadlines for all permit types should have a statutory basis to enhance predictability. Expanding the use of automatic approvals for straightforward applications when deadlines are missed would also help ensure that permit decisions do not create unnecessary bottlenecks.

The MIO's Project Dashboard has made some strides in offering online permit tracking functionalities. Its capabilities should be expanded to make the system more comprehensive, for example by including more projects and more state agencies. It could also be combined with, or modified to include elements of, the MiEnviro Portal, which allows for submission and processing of permits online.<sup>43</sup> The Project Dashboard should also allow for detailed public searches of permit histories and agency performance data, and it could integrate automated notifications to keep applicants informed about deadlines and required actions.<sup>44</sup>

## Conclusion

While Michigan's recent permitting reforms have faced setbacks, there are reasons to be optimistic about the future. The state has demonstrated a willingness to modernize its permitting processes, as seen in the implementation of fee refunds for delayed decisions, efforts to streamline renewable energy and resource extraction approvals, and investments in digital infrastructure like the MIO's Project Dashboard. These initiatives suggest that Michigan recognizes the importance of permitting efficiency and is making some strides toward a more responsive system.

However, these improvements cannot fully compensate for the loss of independent oversight and external accountability in the permitting process. With the elimination of the EPRC Michigan now lacks a neutral venue for permit appeals, leaving decisions entirely in the hands of agency officials with little incentive to reverse their own rulings. Without the ERRC and the ESAB, Michigan's regulatory process now lacks structured mechanisms for incorporating independent expert analysis and evidence into decision-making.

The rollback of these panels represents a consolidation of regulatory power within the EGLE, making it more difficult for the public to challenge arbitrary decisions. Without a meaningful check on agency authority, Michigan risks discouraging investment, increasing regulatory uncertainty, and eroding public trust in its environmental policy-making process. If no corrective action is taken, the state may find itself falling behind its peers in creating a permitting system that fosters economic growth and environmental responsibility.

To restore balance, Michigan should pursue statutory protections for independent oversight and enforceable permit deadlines. Without these safeguards, the state's permitting engine will continue to remain stalled out.

## About the author

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<sup>43</sup> "MiEnviro Portal," Michigan Department of Environment, Great Lakes, and Energy, accessed December 17, 2024, <https://www.michigan.gov/egle/maps-data/mienviroportal>.

<sup>44</sup> A potential model can be found in Virginia's Permit Transparency portal. See James Broughel, "Transparency On Tap: Virginia's Online Permit Revolution," Competitive Enterprise Institute, June 12, 2024, <https://cei.org/studies/transparencyontap/>.



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