

# Legislative Analysis



## REPEAL “NO STRICTER THAN FEDERAL RULE” PROHIBITION FOR STATE ADMINISTRATIVE RULES

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 14 as passed by the Senate**

**Sponsor: Sen. Sean McCann**

**House Committee: Natural Resources, Environment, and Outdoor Tourism**

**Senate Committee: Energy and Environment**

**Complete to 6-7-23**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

Senate Bill 14 would amend the Administrative Procedures Act to eliminate a prohibition on state agencies’ promulgating rules that are more stringent than federal rules (with exceptions, described below).

Under the act presently, except for emergency rules promulgated under section 48,<sup>1</sup> if the federal government has mandated that rules be promulgated by the state, and there is an applicable federally mandated standard, then the rule promulgated or adopted by the Michigan state agency cannot exceed that standard unless the director of the agency determines that there is a clear and convincing need to exceed it. If the director makes that determination, then at the time the proposed rule is transmitted to the Legislative Service Bureau for formal certification, the agency proposing the rule must include a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule in the regulatory impact statement. It must also include an explanation of the exceptional circumstances that necessitate the more stringent standard.

Additionally, if the federal government has *not* mandated that the state promulgate a rule, then a state agency is prohibited from adopting or promulgating a rule more stringent than the applicable federal standard unless specifically authorized by state law or if the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard. If there is an authorization under state law or the director makes that determination, then at the time of transmittal, the agency proposing the rule must include in the regulatory impact statement either the statute that specifically authorizes the more stringent rule or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule and an explanation of the exceptional circumstances that necessitate the more stringent standard.

The above prohibition does not extend to amendments made to the Special Education Programs and Services Rules (R 340.1701 to R 340.1862 of the Michigan Administrative Code<sup>2</sup>), although newly promulgated rules are subject to the “no more stringent” requirement.

The bill would remove the provisions described above.

MCL 24.232 and 24.245

<sup>1</sup> Provisions for Emergency Rules: <http://legislature.mi.gov/doc.aspx?mcl-24-248>

<sup>2</sup> [https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/MI-rules/MARSE\\_Supplemented\\_with\\_IDEA\\_Regs.pdf?rev=31a344bbefe64c8ca8aeb91d97891591](https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/MI-rules/MARSE_Supplemented_with_IDEA_Regs.pdf?rev=31a344bbefe64c8ca8aeb91d97891591)

## **FISCAL IMPACT:**

Senate Bill 14 would not have a direct fiscal impact on the state or local units of government. Under the bill, the potential would exist for a state-promulgated rule to exceed federal standards and to have fiscal implications that may not exist if the rule were within federal standards. Such a situation is, at present, theoretical and any resulting fiscal impact would need to be considered on a case-by-case basis.

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