

Legislative Analysis



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

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<http://www.house.mi.gov/hfa>

Senate Bill 14 as reported from House committee
Sponsor: Sen. Sean McCann
**House Committee: Natural Resources, Environment,
and Outdoor Tourism**
Senate Committee: Energy and Environment
Complete to 6-27-23

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

(Enacted as Public Act 104 of 2023)

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 48,¹ 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 Code²), 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

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

² https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/MI-rules/MARSE_Supplemented_with_IDEA_Regs.pdf

BRIEF DISCUSSION:

The “no stricter than federal” statute was created by 2018 PA 602³ in response to business groups’ perception that Michigan was exceeding federal regulations in a manner that was hurting the state’s standing nationally, and that standards that exceed the applicable federal standard should be approved through legislative action, not by state agencies, to ensure proper vetting.

Groups opposing the “no stricter than federal” statute include environmental organizations, which argue that the law makes it difficult for agencies to implement needed protections, and that the legislature can always step in to amend or reject administrative rules that it considers inadequate or overly burdensome.

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.

POSITIONS:

Representatives of the following entities testified in support of the bill (6-8-23):

- Michigan League of Conservation Voters
- Clean Water Action

The following entities indicated support for the bill (6-8-23):

- Department of Environment, Great Lakes, and Energy
- Department of Licensing and Regulatory Affairs
- Michigan United Conservation Clubs
- Sierra Club
- City of Ann Arbor
- Southeast Michigan Council of Governments (SEMCOG)
- For Love of Water
- Michigan Environmental Council

Representatives of the following entities testified in opposition to the bill (6-8-23):

- Michigan Manufacturers Association
- National Federation of Independent Business (NFIB)

The following entities indicated opposition to the bill (6-8-23):

- Michigan Waste and Recycling Association
- Michigan Chamber of Commerce
- Grand Rapids Chamber of Commerce
- Michigan Farm Bureau

³ <http://legislature.mi.gov/doc.aspx?2017-HB-4205>

- Michigan Ground Water Association
- Home Builders Association of Michigan
- Michigan Retailers Association
- Mackinac Center for Public Policy
- Michigan Realtors

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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.