

Legislative Analysis



PROHIBIT RULES STRICTER THAN FEDERAL STANDARDS

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

House Bill 4160 as introduced
Sponsor: Rep. Gina Johnsen
Committee: Rules
Complete to 9-3-25

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

SUMMARY:

House Bill 4160 would amend the Administrative Procedures Act to prohibit a state agency from adopting or issuing a rule that is more stringent (i.e., stricter) than the applicable federal standard, unless the agency's director determines that there is a clear and convincing need to exceed that standard.¹

This general prohibition would apply regardless of whether the federal government has mandated that the state issue rules to meet a specific federal standard. However, it would not apply to emergency rules issued under section 48 of the act² or to the amendment of the current special education programs and services rules (although it would apply to new rules related to special education if the current ones are rescinded).³

If the agency director determines that there is a clear and convincing need to exceed the applicable federal standard, the regulatory impact statement the agency must submit to the Office of Administrative Hearings and Rules as part of the rule-making process would have to include both a statement of the specific facts that establish the clear and convincing need to adopt the stricter rule and an explanation of the exceptional circumstances that necessitate the stricter standard.

However, for a proposed rule that is *not* related to a standard specifically mandated by the federal government, the regulatory impact statement could describe the Michigan statute that specifically authorizes the stricter rule instead of including the statements described above.

MCL 24.232 and 24.245

¹ The term *agency* is defined in the act as a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action, and does not include an agency in the legislative or judicial branch of state government, the governor, an agency having direct governing control over an institution of higher education, or the State Civil Service Commission. *Agency* also does not include an association of insurers created under the Insurance Code (or another association or facility formed under that act as a nonprofit organization of insurer members) or, for purposes of the bill, the municipal employees retirement system or retirement board created under the Municipal Employees Retirement Act.

The term *rule* is defined here: <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-24-207>

"Issuing a rule" here refers specifically to filing it with the Secretary of State at the end of the rule-making process.
² <https://www.legislature.mi.gov/Search/ExecuteSearch?docTypes=MCLs§ionNumbers=24.248>

³ See <https://www.michigan.gov/mde/services/special-education/laws-regs/marse> and
<https://www.michigan.gov/mde/services/special-education/laws-regs>

BACKGROUND:

The bill would reinstate provisions of law that were enacted in 2018 and repealed in 2023.⁴ The relevant language of House Bill 4160 is identical to those previous provisions.

FISCAL IMPACT:

House Bill 4160 would have an indeterminate fiscal impact on state government units. The magnitude and direction of this impact would depend on the number of administrative rules that are more “stringent” than federal standards and the costs associated with enforcing the “stringent” provisions of these rules. The bill does not define what a more “stringent” rule would be, and this uncertainty could require additional legislative and judicial interpretation. The state could also incur costs from the financial analysis required to isolate the costs of enforcing the “stringent” provisions of administrative rules.

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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.

⁴ Enactment: <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2017-HB-4205>
Repeal: <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-SB-0014>