



**Senate Fiscal Agency**  
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BILL ANALYSIS



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House Bill 4205 (as passed by the House)  
Sponsor: Representative Triston Cole  
House Committee: Oversight  
Senate Committee: Oversight

Date Completed: 10-4-17

**CONTENT**

**The Bill would amend the Administrative Procedures Act to prohibit a State agency from adopting or promulgating rules more stringent than an applicable federally mandated standard unless the director of the agency established that there was a clear and convincing need to exceed the Federal standard, or unless specifically authorized by a State statute, if the Federal government had not mandated the State to promulgate rules.**

The Act sets out the process for a State agency to promulgate administrative rules, which generally are regulations that implement or apply law enforced by the agency. The process involves a series of steps that begin when an agency submits a request for rule-making to the Office of Performance and Transformation (OPT) in the State Budget Office, and concludes when the OPT files the rule with the Secretary of State.

Under the bill, except for an emergency rule, if the Federal government had mandated that the State promulgate rules, an agency could not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determined that there was a clear and convincing need to exceed the applicable Federal standard.

Except for an emergency rule, if the Federal government had not mandated that the State promulgate rules, an agency could not adopt or promulgate a rule more stringent than an applicable Federal standard unless specifically authorized by a Michigan statute or unless the director of the agency determined that there was a clear and convincing need to exceed the applicable Federal standard.

Under the Act, except as otherwise provided, an agency must prepare and include with a notice of transmittal the request for rule-making and the response from the OPT, a small business impact statement, and a regulatory impact statement that contains certain information. The bill would require the regulatory impact statement also to contain the following information:

- If the Federal government had mandated the State to promulgate rules and the proposed rule were more stringent than the applicable federally mandated standard, a statement of the specific facts that established the clear and convincing need to adopt the more stringent rule and an explanation of the exceptional circumstances that necessitated the more stringent standard.
- If Federal government had not mandated the State to promulgate rules and the proposed rule were more stringent than the applicable Federal standard, either the statute that

-- specifically authorized the more stringent rule or a statement of the specific facts that established the clear and convincing need to adopt the more stringent rule and an explanation of the exceptional circumstances that necessitated the more stringent standard.

The bill would take effect on January 1, 2018.

MCL 24.232 & 24.245

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill could have a fiscal impact on the State Budget Office; however, the amount is indeterminate and dependent on the number of administrative rules that would qualify as more stringent than applicable federally mandated standards. The bill would allow the director of an agency to adopt a more stringent rule if there were a preponderance of evidence that there was a need to exceed the Federal standard. Thus, the adoption of new rules and/or the revision of existing rules could require the State Budget Office to absorb any associated costs. Depending on those costs, the State Budget Office could be able to absorb them within existing annual appropriations.

In addition, the bill could reduce costs if it led to the promulgation of fewer rules.

The bill would have no fiscal impact on local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.