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Senate Bill 14 (as enacted)

PUBLIC ACT 104 of 2023

Sponsor: Senator Sean McCann

Senate Committee: Energy and Environment

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

Date Completed: 2-7-24

RATIONALE

Public Act (PA) 602 of 2018, the "no-stricter-than-Federal" law, prohibits the State from adopting more stringent rules than Federal standards unless an agency director demonstrates a clear and convincing need to exceed federally mandated standards or in emergency situations. Some people believe that Federal standards are meant to serve as the lowest regulatory standards, and that, in many instances, these standards do not adequately protect the State's environment or public health. Accordingly, it was suggested that the prohibition against more stringent State rules be deleted.

CONTENT

The bill amends the Administrative Procedures Act to delete provisions that prohibit an agency from adopting or promulgating a rule more stringent than the applicable federally mandated standards, except for in specified circumstances.

The bill will take effect February 13, 2024.

Generally, the Act governs the publication of administrative rules. It prescribes procedures for their implementation, requirements that they must meet, and restrictions to their scope.

The bill deletes the following provisions of the Act.

Under the Act, except for an emergency rule, and subject to a provision exempting the amendment of special education programs and services rules, an agency may not adopt or promulgate a rule more stringent than the applicable federally mandated standard except under one of the following circumstances:

- The director of the agency determines that there is a clear and convincing need to exceed the applicable Federal standard.
- A statute of the State specifically authorizes exceeding the applicable Federal standard.

In addition, the Act specifies that the restrictions above do not apply to the amendment of the special education programs and services rules; however, they do apply to the promulgation of new rules relating to special education with the rescission of current rules.

MCL 24.232

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The State requires tailored standards, instead of general Federal standards, because of its unique environment and public health concerns. According to testimony before the Senate Committee on Energy and Environment, specialized regulations for the State's environmental policy have led to positive outcomes in the past. Before the passage of PA 602 of 2018, Michigan enacted a lead and copper rule that set the nation's most stringent standards for drinking water.¹ By 2025, Michigan's drinking water standards will be 12 parts per billion (ppb) for lead, compared to the Federal standard of 15 ppb.² Reportedly, while PA 602 contains existing loopholes that allowed the State to address the Flint water crisis and other public health crises involving hazards without Federal regulations, the State cannot respond adequately to some environmental or public health concerns.

According to testimony, one example of existing Federal regulations prohibiting a State regulatory agency from crafting more specialized standards occurred in 2022 when a spill from a chrome-plating facility located in Wixom introduced chromium into the Huron River.³ Existing Federal regulations on chromium in drinking water do not differentiate between hexavalent chromium, which is a carcinogen, and trivalent chromium, which is a micronutrient in food.⁴ Public Act 602 prevents the adoption of more specific State standards concerning chromium, which endangers the health of Michigan residents. The State should be able to establish its own environmental and public health standards to protect residents.

Supporting Argument

Public Act 602 discourages State departments' from expressing their legal rights to promulgate rules because of concern for threat of legal sanction. The clear and convincing legal standard required by PA 602 for more stringent rules makes agencies wary of drawn-out lawsuits and longer wait times for court rulings. According to testimony before the Senate Committee on Energy and Environment, the Department of Environment, Great Lakes, and Energy (EGLE) issued permits for the Ajax asphalt plant on the border of Flint and Stellantis' expansion on the eastside of Detroit even though the residents of those communities were opposed to the projects.⁵ Reportedly, in issuing those permits, EGLE said it lacked the authority to block them or to put in place more protective measures because of the possibility that its measures could be considered more stringent than Federal standards. Without a crisis to justify the need for stricter regulation, State regulatory agencies often find it legally difficult to promulgate necessary rules. The inability for State departments to express legal rights without an emergency presents a barrier to implementing standards that reflect an evolved public or scientific consensus on environmental and public health-related matters.

Opposing Argument

Among others, manufacturing businesses compete with the lowest cost location across the globe, not just those in the United States or in Michigan. According to testimony before the Senate Committee on Energy and Environment, if the repeal of PA 602 leads to the implementation of rules that make Michigan uncompetitive in the global economy, manufacturers located in Michigan may move to places where they can compete on price. These rules also could increase costs on the State's small businesses, which pay a disproportionately high percentage of their revenue toward maintaining legal standards.

¹ Eggert, D., AP News, *Michigan enacts toughest lead rules in US after Flint crisis*, June 14, 2018.

² Michigan Department of Environment, Great Lakes, and Energy, *Lead and Copper Rule Revision Summary*, July 2018.

³ Michigan Department of Environment, Great Lakes, and Energy, *Huron river no-contact recommendation lifted*, August 12, 2022.

⁴ United States Environmental Protection Agency, *Chromium in Drinking Water*, February 23, 2023.

⁵ Ron Fonger, MLive, *Asphalt plant complaint resolution leaves Flint area groups outraged*, August 10, 2023.

Reportedly, compliance costs for small firms employing 50 or fewer employees are up to 36% higher than compliance costs for large firms. By exceeding Federal standards in Michigan, operation costs for businesses in the State may be higher than operation costs in other states. Additionally, testimony indicates that Michigan is already perceived as a heavily regulated state. The repeal of PA 602 will further this reputation and decrease businesses' and manufacturers' investment in the State.

Opposing Argument

The law prevents needless and unaccountable State regulation. Repealing PA 602 would create more opportunities for arbitrary or duplicative rulemaking. When State departments make attempts to expand their regulatory scope, PA 602 is a tool that increases accountability among government officials when rulemaking. The extra steps that need to be taken by State regulatory agencies under PA 602 are not prohibitive but help to ensure that new rules have been thoroughly vetted. According to testimony before the Senate Committee on Energy and Environment, removing PA 602's prohibition against more stringent than Federal rules will lower the legal standard required for rulemaking and likely decrease accountability from State departments. This may give more power to unelected members of State regulatory agencies who have no formal accountability process to Michigan residents.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Cory Savino, PhD

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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.