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## EXEMPT SOME MIOSHA RULES

Senate Bill 563 as passed by the Senate  
First Analysis (7-1-93)

Sponsor: Sen. Frederick Dillingham

Senate Committee: Government

Operations

House Committee: House Oversight &  
Ethics

### *THE APPARENT PROBLEM:*

According to representatives from the Departments of Labor and Public Health, the state cannot meet deadlines for adopting certain required federal occupational safety and health standards if it must follow all the demands of the Administrative Procedures Act for promulgating rules. Reportedly, when the federal government adopts new safety standards, it requires the state to adopt "equally effective" rules within six months. (The federal act and program are typically referred to as OSHA, the state act and program as MIOSHA) State officials say this deadline cannot be met consistently given the state's rules promulgation process, with its publication, public hearing, and legislative approval requirements. Federal officials have scolded their state counterparts about this problem regularly since the late 1970s, according to state officials, who say they are worried about the state's being allowed to continue to administer its own program as an alternative to federal administration. They seek a special approval process for rules that are identical to federal rules already in effect and required as a minimum for the state to adopt.

### *THE CONTENT OF THE BILL:*

The bill would amend the Administrative Procedures Act (MCL 24.241 et al.) so that rules promulgated under the Michigan Occupational Safety and Health Act that were substantially similar to existing federal standards adopted or promulgated under federal law would be exempt from the usual rules process. However, notice of the proposed rule would have to be published in the Michigan Register at least 60 days before the submission of the rule to the secretary of state. A reasonable period, not to exceed 30 days, would have to be provided for the submission of written comments and views following publication. To promulgate the rule, the agency, following the

period for written comments, would file three copies of the rule with the secretary of state along with the approval of the Legislative Service Bureau and the attorney general. The term "substantially similar" means identical, with the exception of style or format differences needed to conform to the APA or other state laws, as determined by the Department of Attorney General.

The sections of the APA from which the MIOSHA rules would be exempt include those, generally speaking, that call for a public hearing on the proposed rules subsequent to notice, that require rules to be submitted to the Legislative Service Bureau and the attorney general for approval as to form and legality, that require submission of rules to the Joint Committee on Administrative Rules for approval or disapproval, and that require regulatory impact statements, small business economic impact statements, and fiscal impact reports.

### *FISCAL IMPLICATIONS:*

The Department of Public Health has said that the bill would result in savings due to a reduction in administrative costs and in printing costs for copies of rules and public hearing notices. (6-23-93)

### *ARGUMENTS:*

#### *For:*

The bill would provide a special exemption for the rules process for health and safety rules the state is required by the federal government to adopt when those rules are virtually identical to the federal rules. While the rules process would still be required for state standards that go beyond those at the federal level, it seems unnecessary to apply the lengthy rules process to rules that have already passed scrutiny at the federal level. The state could

Senate Bill 563 (7-1-93)

be in danger of losing the right to operate its own program if it cannot speed up the rules process to the satisfaction of the federal government.

***Against:***

Some people are concerned that this bill will limit the opportunity for public input and debate over important rules governing workplace health and safety standards. Public comment on the rules would be permitted, but no attention must be paid to that comment. While the bill says it applies to rules that are "substantially similar" to federal standards, it leaves that determination up to the attorney general. It offers no opportunity for disputing the attorney general's determination. It ought to be the case that if the attorney general's opinion is challenged, then the regular rules process be followed.

***POSITIONS:***

The Department of Public Health (6-23-93) and the Department of Labor (6-1-93) have indicated support for the bill, which was introduced at their request.

A representative of the Michigan Sheet Metal and Air Conditioning Contractors testified in opposition to the bill. (6-24-93)