

PROHIBIT STATE AGENCIES FROM ADOPTING RULES MORE STRINGENT THAN FEDERAL RULES

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House Bill 5613 as introduced
Sponsor: Rep. Triston Cole
Committee: Regulatory Reform
Complete to 5-17-16

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

SUMMARY:

House Bill 5613 would amend Sections 32 and 45 of the Administrative Procedures Act of 1969 by prohibiting a state agency from adopting rules more stringent than the applicable federally-mandated standard unless the director of that agency determines there is a "clear and convincing need" to exceed the federal standard when the federal government has mandated that Michigan promulgate rules.

If the federal government has not mandated that Michigan promulgate rules, then an agency could only promulgate more stringent rules if specifically authorized by statute to do so, or if the director of that agency determines there is a "clear and convincing need" to exceed the applicable federal standard.

If a proposed rule is more stringent than the applicable federal standard, regardless of whether the state was mandated to promulgate rules, the currently required regulatory impact statement must contain either the statute that specifically authorizes the more stringent rule or a statement of the specific facts that establishes the clear and convincing need to adopt the more stringent rule, and an explanation of the unique characteristics of this state that necessitate the more stringent standard.

HB 5613 also would update the statute so that provisions that now reference the Office of Regulatory Reinvention (ORR) would instead reference the Office of Performance and Transformation (OPT). This reflects changes made by Executive Order 2016-4, which created the OPT and moved the ORR and Office of Good Government (OGG) into the OPT. The OPT is housed in the Department of Treasury.

FISCAL IMPACT:

House Bill 5613 would have an indeterminate fiscal impact on the state government, the magnitude and direction of which would depend on two unresolved questions:

- (1) The number of administrative rules that are more "stringent" than federal standards.
- (2) The costs associated with enforcing the "stringent" provisions of these rules.

For those administrative rules for which there are federal standards, it is not altogether certain what the criteria for resolving question (1) would be; defining what constitutes a

"stringent" rule could require additional legislative guidance and/or judicial interpretation. Resolving question (2) is dependent on the resolution of question (1), and would further entail financial analysis by the Office of Performance and Transformation to isolate the costs of enforcing the "stringent" provisions of administrative rules from the costs of enforcing the federal standard.

Over the long run, HB 5613 could decrease the state's expenditures by reducing the number and complexity of administrative rules and therefore the costs of enforcing those rules. However, the bill could alternatively increase state expenditures if particular rules, over and above federal standards, reduce the overall costs of enforcing the applicable federal standards (e.g. by clarifying federal standards and stipulating detailed requirements in attempt to reduce legal/compliance costs). Whether HB 5613 would result in an eventual decrease or increase in enforcement costs is currently uncertain.

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