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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: June 7, 2023

RE: Report on Senate Bill 14

The Legislative Policy Division (LPD) has been requested by Council President Mary Sheffield to provide a report regarding the proposed Senate Bill 14. LPD provides this report for your consideration.

The proposed Senate Bill 14 if approved by the State of Michigan would delete provisions that are currently in effect as part of Public Act 306 of 1969, the Administrative Procedures Act (APA). As set forth in the APA, its purpose is to:

[p]rovide for the effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters; to provide for the printing, publishing, and distribution of certain publications; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to create and establish certain committees and offices; to provide for declaratory judgments as to rules; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date.

The APA is applicable to agencies of the State of Michigan as defined under the Act, MCL 24.203(2)¹. The rules² governing those agencies are set forth in accordance with the Act, and include, but are not limited to, procedures the agencies must follow. The proposed Senate Bill 14, if approved, would delete current language under the Act found in Chapter 3, *Procedures for Processing and Publishing Rules*, more specifically, MCL 24.232 subsections (8), (9).³ Those subsections are currently written as follows:

(8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

The proposed Senate Bill 14 deletes the language of Subsections (8), (9) that prohibits the agency from adopting or promulgating a rule that exceed the applicable federal standard and provide a more stringent rule. Under Subsection (8), if the federal rules mandate the State to promulgate rules, they can only be more stringent than the federal standard if the director of the agency to determine that there is a clear and convincing need. Under Subsection (9), if there is no federal mandate for the state to promulgate the rules, they can be more stringent than the federal standard when it is specifically authorized by State statute, or the director of the agency determines that there is a clear and convincing need. Under the proposed Senate Bill 14, the agency will be allowed to adopt or promulgate a more stringent rule than the federal standard **without** a determination of a clear and convincing need to exceed that federal standard.

As indicated in the Senate Fiscal Agency analysis, “Some people believe that this prohibition makes it difficult for the State to adequately protect its environment and respond to public health emergencies...” The current language of both subsection (8) and (9) does not apply in emergencies under Section 48 which provides in pertinent part:

1) If an agency finds that preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by sections 41 and 42 and states in the rule the agency's reasons for that finding, and the governor concurs in the finding of emergency, the agency may dispense with all or part of the procedures and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies

¹ "Agency" means a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action. Subject to section 115(5), agency includes the municipal employees retirement system and the retirement board created by the municipal employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555. Agency 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, the state civil service commission, or an association of insurers created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or other association or facility formed under that act as a nonprofit organization of insurer members.

² "Rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency.

³ LPD notes the Senate Bill also deletes Subsection (10) which is relative to special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code and provided where Subsection (8) and (9) applied.

must be attached the certificates prescribed by section 45 and the governor's certificate concurring in the finding of emergency.

In accordance with Section 48, in instances that are required to respond to public health emergencies or the preservation of the public health safety and welfare emergencies, the current prohibition against more stringent rules is not applicable. The question is whether non-emergency environmental or public health rules that go beyond the federal standard should be allowed without a showing of clear and convincing need.

LPD notes that the Senate Bill 14 will only effect state agencies and not local units of government as they are not subject to the APA. The issue is whether a state agency can adopt or promulgate a rule more stringent than that set by the federal government through its normal process, or should the agency be required to make a determination of clear and convincing need by the director.

If this honorable body chooses to support the proposed legislation, a resolution in support has been provided, see attached.

RESOLUTION SUPPORTING PROPOSED SENATE BILL 14

Submitted by Council President Mary Sheffield:

WHEREAS, The mission of the Detroit City Council is to promote the economic, cultural, and physical welfare of Detroit's citizens through Charter-mandated legislative functions and speaks as a legislative body through its resolutions; and

WHEREAS, The Detroit City Council takes an interest in all aspects of governmental actions be it federal state or local that has the potential to affect the residents of the City of Detroit, and

WHEREAS, Minimum standard rules and guidelines set by the federal government are often applied or administered by the State of Michigan pursuant to Public Act 306 of 1969, the Administrative Procedures Act (APA), MCL 24.201 et seq.; and

WHEREAS, The APA, in 2018, was amended to prohibit the State from adopting more stringent rules than federally standards unless it is specifically authorized by State statute, or the director of the agency determines that there is a clear and convincing need under MCL 24.302; and

WHEREAS, Senate Bill 14 would amend 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; and

WHEREAS, It has been indicated by the Senate Fiscal Agency that "Some people believe that this prohibition makes it difficult for the State to adequately protect its environment and respond to public health emergencies..." and

WHEREAS, This Honorable Body believes that state and local governmental units should have the ability to adopt or promulgate minimum standards that are more stringent than the federal standards based upon the desires of the state or local communities without having to establish clear and convincing needs for such standards; **BE IT THEREFORE**

RESOLVED, That the Detroit City Council hereby supports the proposed Senate Bill 14 amending 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; and **BE IT FINALLY**

RESOLVED, That a copy of this resolution be provided to Governor Whitmer and the Detroit delegation of the Michigan Legislature