



To: Members of the House Oversight Committee  
From: Charlotte Jameson, Government Affairs Director, Michigan LCV  
Re: Testimony in Opposition to House Bill 4205

The Michigan League of Conservation Voters (LCV) is the non-partisan, political voice for Michigan's land, air, and water. On behalf of our statewide membership and our Board of Directors, Michigan LCV expresses our opposition to House Bill 4205. This bill would largely prohibit Michigan administrative agencies from promulgating or adopting rules that are more stringent than parallel federal standards. The only exception to this would be if the Director of an agency determined that there was a "clear and convincing need" to exceed the federal standard and provided an explanation of the unique characteristics of this state that necessitate the need for a more stringent standard. In Michigan, our Great Lakes and natural resources are central to our economy and our way of life, and as such they warrant the utmost protection. Instead of giving state agencies the flexibility they need to develop a regulatory structure that fits Michigan's unique natural resources, HB 4205 would essentially defer critical decisions about the protection of our natural resources and public health to the federal government.

Michigan has a history of going above and beyond to protect our Great Lakes. In 1976, toxic algal blooms plagued Lake Erie to such an extent that the lake was labeled "dead." In the face of this serious water quality threat, Governor Milliken issued a rule that limited the amount of phosphorus, the root cause of algal blooms in freshwater environments, flowing into Lake Erie. The rule was stronger than federal standards and since has been credited as a critical step that helped to drastically reduce the growth of toxic algal blooms in the lake.

Additionally, the drinking water and public health crisis in Flint underscores the fact that still today Michigan is faced with serious threats to our water quality that require more stringent regulations. In the continued aftermath of the Flint crisis we can see a clear instance where a federal standard- the Lead and Copper rule- failed to adequately protect Michigan communities. There is now broad consensus that the Lead and Copper rule needs to be clarified and strengthened in order to better safeguard the public health of Flint residents and to prevent lead poisoning from impacting the drinking water supply of other communities. However, the federal government has yet to take needed action to improve the rule. In the face of federal inaction, Governor Snyder announced a state level proposal that goes beyond the current federal standards in order to provide more sufficient protection for Michiganders and our drinking water. If HB 4205 were enacted, the creation and adoption of this critical state rule would likely not be possible.

This legislation would require agencies to demonstrate a "clear and convincing need" in order to promulgate a rule more stringent than the federal government. This "clear and convincing need" standard is not defined within the legislation and is therefore it is not entirely clear what constitutes a need for a more stringent rule. Although the "clear and convincing" evidence standard is used in nearly every U.S. court, we have seen in countless jurisdictions that the lack of a clear explanation

as to what "clear and convincing" means has lead to greatly varying interpretations. Michigan LCV maintains that this undefined standard and the uncertain legal landscape around the terminology would then require additional legislative guidance and/or judicial interpretation. Although the full financial impact is unclear, in the end, by adopting this bill, the legislature would open up our rulemaking process to more litigation and could create large resource burdens on state agencies to defend state rules.

Federal standards are intended to be a floor, not a ceiling. They do not account for the unique attributes or needs of individual states. Flexibility in agency rulemaking is an essential governance tool to ensure that our regulations are fully adequate to protect Michigan's natural resources and public health.

Michigan LCV respectfully request that members of the House Oversight Committee oppose HB 4205. Please note that Michigan LCV reserves the right to score a committee vote on HB 4205 on our Legislative Scorecard.