

**SENATE FISCAL AGENCY
MEMORANDUM**



DATE: April 1, 2015
TO: Members of the Michigan Senate
FROM: Josh Sefton, Fiscal Analyst
RE: Executive Order 2015-10

On March 18, 2015, Governor Snyder issued Executive Order (E.O.) 2015-10, which would create the Michigan Agency for Energy (MAE) within the Department of Licensing and Regulatory Affairs (LARA), and transfer the Public Service Commission (PSC) from LARA to the MAE. The E.O. also would transfer the regulation of motor carriers from the Public Service Commission to the Department of State Police (DSP), transfer the Retired Engineers Technical Assistance Program (RETAP) from the Department of Environmental Quality (DEQ) to the MAE, transfer the Michigan Energy Office from the Michigan Economic Development Corporation (MEDC) to the MAE, and transfer the responsibility for the Energy Advisory Committee from the Director of LARA to the Executive Director of the MAE.

Article V, Section 2, of the Michigan Constitution states that the Legislature has 60 days following the issuance of an E.O. to reject it; the last day for the Legislature to reject E.O. 2015-10 is May 17, 2015.

Michigan Agency for Energy

Executive Order 2015-10 would create the Michigan Agency for Energy within LARA. The MAE would be headed by an Executive Director who would be appointed by the Governor and serve as a member of the Governor's Cabinet. The E.O. would require the MAE to perform three principal functions: to analyze and make recommendations to the Governor on energy-related programs and policies, to administer certain energy programs and serve as a statewide coordinator for energy programs, and to provide information and assistance to all State departments on energy-related issues.

The PSC would be transferred to the MAE intact from LARA, and while the E.O. does not specify the type of transfer, it would be by definition a Type I transfer (as described in the Background section of this memorandum). The PSC is the entity responsible for the regulation of and rate-setting for public utilities in Michigan; the history of the PSC can be traced back to the Michigan Railroad Commission, which was established in 1873. Under the E.O., the PSC would continue to operate independently of both the Director of LARA and the Executive Director of the MAE. The E.O. does not appear to significantly change the operations of the PSC, but does specify that the PSC's legislative liaison would be shared by the PSC and the MAE, that the Energy Markets and Energy Data & Security sections of the PSC would be transferred to the MAE, and that one human resources position and any positions dedicated to property functions be transferred to the MAE.

The E.O. also would transfer three other functions to the MAE via a Type II transfer, though the type is not specified explicitly in the E.O. First, RETAP would be transferred from the DEQ; RETAP provides the services of retired engineers to assist Michigan businesses with pollution prevention. This program was established by Public Act 289 of 1998 and provided a total of \$10.0 million through the Clean Michigan Initiative, which still provides funding for RETAP. Second, the

Michigan Energy Office would be transferred from the MEDC. The Michigan Energy Office was transferred to the MEDC under E.O. 2011-4 and provides various energy-related grants to eligible entities. The final responsibility transferred to the MAE by the E.O. would be administration of the Energy Advisory Committee, which would be transferred from the Director of LARA to the Executive Director of the MAE. The Committee's primary responsibility is to inform the Governor of an impending energy emergency.

Other Program Transfers

Executive Order 2015-10 would transfer the responsibility of regulating motor carriers in Michigan from the PSC to the DSP via what would appear to be a Type II transfer, as the E.O. does not specify the type. Currently the Motor Carrier Division of the PSC regulates companies operating as carriers for hire within the State. These include freight carriers, household movers, and towing companies. The Motor Carrier Division also is involved in assisting the Federal Motor Carrier Safety Administration in implementing interstate carrier registration programs such as the Unified Carrier Registration program and the Intrastate USDOT Numbering Program. The E.O. would transfer all of these responsibilities to the DSP.

Background

Article V, Section 2 of the State Constitution authorizes the Governor to organize the Executive branch of government by Executive Order. Three types of reorganization or transfers are outlined in the Executive Reorganization Act. The three types include:

Type I Transfer. Under a Type I transfer, an existing department, board, commission, or agency is transferred intact to another principal department. The entity is administered under the supervision of the new principal department director; however, the prescribed statutory powers, duties, and functions are exercised by the entity as a relatively autonomous entity.

Type II Transfer. Under a Type II transfer, all of the statutory authority, powers, duties and functions, as well as records, personnel, property, unspent balances of the appropriations and other funds associated with an entity, and the entity itself are transferred to and placed under the authority of the principal department.

Type III Transfer. A Type III transfer means the abolishment of an existing entity. The statutory authority, powers, duties, functions, records, personnel, and funding are not abolished, but instead are transferred to the principal department.

Fiscal Impact

In total, E.O. 2015-10 would have a largely neutral short-term fiscal impact on the State, and no fiscal impact on local units of government. The position of Executive Director of the MAE would be an unclassified position, and count against the six allowed LARA under the Constitution. Since the E.O. primarily would transfer programs from one agency to another, it should not result in a significant increase or reduction in the cost to administer those programs. The long-term fiscal impact of the creation of the MAE would depend largely on the policy prerogatives of the Governor and the Legislature; if the responsibilities or scope of the MAE were expanded, costs would likely increase. At the current time, however, the fiscal impact of the E.O. would likely be neutral.

Financial details of the transfers in E.O. 2015-10 have not been released, so the specific budgetary impacts of the E.O. are unknown at the moment. However, the fiscal year (FY) 2014-15

appropriations for the programs transferred to the MAE under the E.O. are detailed in Table 1. It should be noted that these figures do not include administrative cost allocations for property management, rent, executive support, information technology, and other services, so the actual amount that would be transferred to the MAE under the E.O. would likely be somewhat greater than the figures provided.

It is possible that an Executive Budget Revision will be released before the enactment of the FY 2015-16 budget, assuming that the E.O. is not rejected by the Legislature. Such a revision would provide the budget impact of E.O. 2015-10 and allow the Legislature to decide whether to reflect the E.O. in the FY 2015-16 State budget. If such details are not available before the FY 2015-16 is enacted, the MAE would operate from the appropriations of its constituent programs in their current places in the State budget.

Table 1

Programs Transferred to the Michigan Agency for Energy under E.O. 2015-10 FY 2014-15 Enacted Appropriations				
Fund Source	Public Service Commission	Michigan Energy Office	RETAP	TOTAL - MAE
FTEs	190.0	0.0	3.0	193.0
Gross	\$30,130,500	\$3,610,900	\$1,220,400	\$34,961,800
Federal	1,291,200	2,911,600	0	4,202,800
Private	0	30,000	0	30,000
Restricted	26,309,800 ¹	699,300	670,400	27,679,500
GF/GP	0	0	550,000	550,000

¹ Does not include \$2.5 million from Motor Carrier Fees that would be transferred to the DSP under the E.O.

Finally, the transfer of the regulation of motor carriers from the PSC to the DSP would likely be cost-neutral to the two affected departments. Motor carriers are charged fees that are the only fund source used to support the carriers regulation and licensure. A total of approximately \$2.9 million of these fees was appropriated to the PSC in FY 2014-15 to support regulation and licensure of motor carriers; presumably a similar amount would be transferred to the DSP from the PSC under the E.O. In addition to appropriations, 14.0 FTE positions would be transferred to the DSP.

Summary

Executive Order 2015-10 would create a new agency within LARA called the Michigan Agency for Energy, which would assist the Governor and State departments with issues related to energy. The E.O. would transfer the PSC, RETAP, Michigan Energy Office, and Energy Advisory Committee to the MAE, and provide for the Governor to appoint an Executive Director. Additionally, the E.O. would transfer the regulation of motor carriers from the PSC to the DSP. The Governor issued this E.O. on March 18; the Legislature has until May 17 to decide whether to reject it.

If you have questions on E.O. 2015-10, please do not hesitate to contact me.

/lms

c: Ellen Jeffries, Director
Bill Bowerman, Associate Director