

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: March 20, 2015
TO: Members of the Michigan Senate
FROM: Joe Carrasco, Fiscal Analyst
 Cory Savino, Fiscal Analyst
RE: Executive Order 2015-9

On March 12, 2015, Governor Snyder issued Executive Order 2015-9 to create the State School Reform/Redesign Office and effectively transfer the existing State School Reform/Redesign School District and the State School Reform/Redesign Officer from the Department of Education to the Department of Technology, Management, and Budget (DTMB). This order will take effect on May 11, 2015, unless it is rejected by a majority of members of each house of the Legislature by that date.

Executive Order (E.O.) 2015-9 would create an autonomous entity within the DTMB to be known as the State School Reform/Redesign Office (Office). The Office would exercise its statutory powers, duties, and functions, including but not limited to rule-making, licensing, and registration, independently of the Director of the DTMB. All budgeting, procurement, and related management functions of the Office would have to be performed under the direction and supervision of the DTMB Director. The Director of the DTMB would be the appointing authority for employees of the Office.

The E.O. would transfer the State School Reform/Redesign School District (District) and the State School Reform/Redesign Officer (Officer) to the State School Reform/Redesign Office. Both the District and the Officer would be transferred from the Department of Education. The Officer would be the head of the Office and would have to carry out the functions vested in the Officer in this E.O. and as otherwise prescribed by law. The Officer would have to act as the superintendent of the District and perform functions and responsibilities vested in the Officer under Section 15(5) of Public Act 336 of 1947 (the public employment relations Act).¹ The authority to hire the Officer would be transferred from the Superintendent of Public Instruction to the DTMB Director. The DTMB would have to request the Civil Service Commission to establish the Officer's position as an exempt position of a policy-making nature within the DTMB.

Transfer of Related Michigan Department of Education Authority

Executive Order 2015-9 would transfer all authority, powers, duties, functions, and responsibilities of the Department of Education under Section 1280c of the Revised School Code² to the State School Reform/Redesign Office, including, but not limited to, all of the following:

¹ Section 15(5) of Public Act 336 provides that, if a public school is placed in the State School Reform/Redesign District, then, for purposes of collective bargaining under the Act, the State School Reform/Redesign Officer is the public school employer of the employees of that school for as long as the school is part of the District.

² Section 1280c is the section of the Revised School Code that establishes the State School Reform/Redesign District and provides for the lowest-achieving 5% of public schools in the State to be placed under the supervision of the School Reform/Redesign Officer, under the conditions set forth in that section.

1. Determining which public schools in the State are among the lowest-achieving 5% of all public schools in the State under Section 1280c(1) of the Revised School Code.
2. Posting on a website the Federal work rules and formula for identifying the lowest-achieving 5% of all public schools in the State for the purposes of the Federal "race to the top" grant program.
3. Except as prohibited by Federal law, administering any Federal waivers granted by the U.S. Department of Education relating to the authority, powers, duties, functions, and responsibilities of the Michigan Department of Education concerning the District or the Officer under Section 1280c of the Revised School Code.

Transfer of Related Superintendent of Public Instruction Authority

Except as provided further in the E.O., all authority, powers, duties, functions, and responsibilities of the Superintendent of Public Instruction under Section 1280c of the Revised School Code and Section 15(6) of Public Act 336 of 1947³ would be transferred to the State School Reform/Redesign Office, including, but not limited to, all of the following:

1. Publication of a list identifying the public schools in the State determined to be among the lowest-achieving 5% of all public schools in the State under Section 1280c(1) of the Revised School Code.
2. Issuance of orders placing each school that is included on the list under Section 1280c(1) of the Revised School Code under the supervision of the State School Reform/Redesign Officer.
3. Appointment of a chief executive officer (CEO) to take control over multiple public schools and directing the CEO to exercise other powers or duties over the public schools under Section 1280c(7) of the Revised School Code⁴, and powers and duties under Section 15(5) of Public Act 336 of 1947.
4. Release of a public school from measures imposed under Section 1280c(6), Section 1280c(7), or Section 1280c(13) of the Revised School Code.⁵

³ Under Section 15(6) of Public Act 336, a public school employer's collective bargaining duty under the Act and a collective bargaining agreement (CBA) entered into by a public school employer are subject to 1) any effect on collective bargaining and any modification of a CBA occurring under Section 1280c of the Revised School Code; and 2) any effect on collective bargaining and any modification of a CBA under a school intervention model implemented under Section 1280c, if it affects collective bargaining or requires modification of a CBA.

⁴ Section 1280c(7) authorizes the Superintendent of Public Instruction to appoint a CEO to take control of multiple public schools, and gives the CEO the powers of the Officer with respect to those schools.

⁵ Section 1280c(6) authorizes the State School Reform/Redesign Officer to place a public school in the District, impose a school intervention model, and impose an addendum to a CBA, if the school is on the list of the lowest-achieving 5% and the Officer does not approve its redesign plan or determines that the plan is not achieving satisfactory results. Section 1280c(13) permits the Superintendent of Public Instruction to release a school from the measures imposed under Section 1280c(6) or (7), upon the recommendation of the Officer.

5. Except as prohibited by Federal law, administration of any Federal waivers granted by the U.S. Department of Education relating to the authority, powers, duties, functions, and responsibilities of the Superintendent of Public Instruction concerning the District or the Officer under Section 1280c of the Revised School Code.

The E.O. states that the Superintendent of Public Instruction would retain the authority, powers, duties, functions, and responsibilities to hear and decide appeals from a school board or a board of directors under Section 1280c(4) of the Revised School Code.⁶

In addition, all of the following authority, powers, duties, functions, and responsibilities of the Superintendent would be transferred to the Office:

1. Determining that a public school academy (PSA) that has been operating for at least four years is among the lowest-achieving 5% of all public schools in the State and notifying the PSA's authorizing body of that determination.
2. Determining that an urban high school academy that has been operating for at least four years is among the lowest-achieving 5% of all public schools in the State and notifying the academy's authorizing body of that determination.
3. Determining that a school of excellence serving a special student population that has been operating for at least four years is among the lowest-achieving 5% of all public schools in the State and notifying the school's authorizing body of that determination.

Type of Transfer

Article V, Section 2 of the State Constitution authorizes the Governor to reorganize the executive branch of government by Executive Order. Three types of reorganizations or transfers are outlined in the Executive Organization Act:

Type I Transfer. Under a Type I transfer, an existing department, board, commission, or agency is transferred intact to another principal department. The entity will be administered under the supervision of the new principal department director; however, the prescribed statutory powers, duties, and functions of rule-making and other regulatory activities of the transferred entity will be exercised by the entity, which remains relatively autonomous.

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 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.

Executive Order 2015-9 uses a Type II transfer.

⁶ Section 1280c(4) prohibits the School Reform/Redesign Officer from disapproving a school's redesign plan if it includes all of the elements required under Federal law for the school intervention model included in the plan. A school board or board of directors may appeal the disapproval of its redesign plan on this basis to the Superintendent of Public Instruction.

Implementation of Executive Order

Executive Order 2015-9 states that nothing in the Order should be construed to diminish the role of the State Board of Education under Article VIII, Section 3 of the State Constitution in providing leadership and general supervision over all public instruction. All records, personnel, property, unspent balances of appropriations, and allocations available to the State School Reform/Redesign School Office would be transferred to the new Office. The State School Reform/Redesign Officer would have to administer functions and responsibilities assigned under the E.O. in such a way as to promote efficient administration. The DTMB Director and the Officer would have to make internal organizational changes necessary to complete the realignment of functions and responsibilities pursuant to the E.O.

The Director of the DTMB would be required to provide executive direction and supervision for implementing the transfers required under the E.O. The Director and the Superintendent of Public Instruction immediately would have to initiate coordination to facilitate the transfers under the E.O. and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable Federal or State laws, or any obligations to be resolved by the Michigan Department of Education. The State Budget Director would have to determine and authorize the most efficient manner for handling financial transactions and records in the State's financial system for the remainder of the current fiscal year for transfers made under the E.O. All rules, orders, contracts, plans, and agreements relating to the functions and responsibilities transferred by the E.O. lawfully adopted before its effective date would continue to be effective until revised, amended, or rescinded. Finally, any suit, action, or other proceeding lawfully commenced by, against, or before any entity transferred by the E.O. would not abate because the E.O. took effect and could be maintained by, against, or before the appropriate successor of any entity affected by the E.O.

Fiscal Impact

The departments affected under E.O. 2015-9 include the Department of Education and the Department of Technology, Management, and Budget. Public Act 252 of 2014 provided funding of \$2,429,800 to cover 8.0 staff members and administration of the School Reform Office, which operates under Section 1280c of the Revised School Code. Additional appropriations and FTEs in Accountability Services provide assistance in creating the school ranking system that determines the schools in the bottom 5%. Under this Executive Order, the funding for the School Reform Office and additional FTEs in Accountability Services would be transferred to the DTMB. At this time, the Senate Fiscal Agency anticipates that there would be no savings to the State; however, it is indeterminate whether there would be any costs or additional appropriation requests as a result of this transfer. According to the State Budget Office, the Governor plans to issue a revised budget recommendation. As more information becomes available, the Senate Fiscal Agency will inform you as to the fiscal impact of this Executive Order on the budgets of the Department of Education and the Department of Technology, Management, and Budget.

Please contact us at 373-2768 with questions or for additional information.

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c: Ellen Jeffries, Director
Bill Bowerman, Associate Director