

**SENATE FISCAL AGENCY
MEMORANDUM**



DATE: February 8, 2016
TO: Members of the Michigan Senate
FROM: Joe Carrasco, Fiscal Analyst
RE: Executive Order 2016-4

Executive Order 2016-4

On February 2, 2016, Governor Snyder issued Executive Order (E.O.) 2016-4 to create the Office of Performance and Transformation (OPT) within the Department of Technology, Management, and Budget (DTMB). Additionally, the order proposes to transfer the Office of Regulatory Reinvention (originally created in E.O. 2011-5) from the Department of Licensing and Regulatory Affairs to the DTMB and to transfer the Office of Good Government (currently an administrative unit housed within the DTMB) to the newly created OPT. Finally, the order would require the OPT to operate a Reinventing Performance in Michigan Center of Excellence. Article V, Section 2 of the Michigan Constitution states that the Legislature has 60 calendar days following the issuance of an Executive Order to disapprove it; the last day for the Legislature to reject E.O. 2016-4 is April 2, 2016.

Creation of the Office of Performance and Transformation

Executive Order 2016-4 would create the Office of Performance and Transformation within the State Budget Office of the DTMB. The State Budget Director would have to appoint an Executive Director of the OPT. The powers, duties, and responsibilities vested in the Executive Director of OPT would be transferred by this order, as described below.

The OPT would be responsible for the systematic review and coordination of the State's regulatory, business, and customer service environments and processes as well as coordination and implementation of performance management metrics, service optimization efforts, employee engagement programs and protocols, and change management and leadership education and training.

Transfer of Office of Regulatory Reinvention

Executive Order 2016-4 would transfer all authority, powers, duties, functions, and responsibilities, and rule-making authority vested in the Office of Regulatory Reinvention under E.O. 2011-5 to the OPT, and would abolish the Office of Regulatory Reinvention. All authority, powers, duties, functions, and responsibilities vested in the Director of the Department of Licensing and Regulatory Affairs (LARA) as Executive Director of the Office of Regulatory Reinvention and Chief Regulatory Officer of the State of Michigan would be transferred to the Executive Director of the OPT. The Executive Director of the OPT also would serve as the Chief Regulatory Officer of the State of Michigan.

In addition, all records, personnel, property, unspent balances of appropriations, allocations, or other funds that were available to LARA for the powers, duties, and functions transferred would be transferred to the OPT. The Executive Director of the OPT, after consultation with the LARA Director, would have to provide executive direction and supervision for the implementation of the transfers.

Transfer of Office of Good Government

This E.O. also would transfer all authority, powers, duties, functions, and responsibilities of the Office of Good Government, an administrative unit within the DTMB, to the OPT. Additionally, all records, personnel, property, unspent balances, allocations, or other funds that were available to the DTMB for the powers, duties, and functions transferred would be transferred to the OPT. The OPT Executive Director, after consultation with the DTMB Director, would have to provide executive direction and supervision for the implementation of the transfers.

The Executive Director of the OPT and the Director of the DTMB jointly would have to identify the program positions and administrative function positions that would be transferred to the OPT. All transfers to the OPT would have to be consistent with this order and documented by a memorandum of understanding between the DTMB Director and the OPT Executive Director.

Creation of the Center for Reinventing Performance in Michigan

The E.O. would require the OPT to develop, maintain, monitor, and facilitate Lean¹ process initiatives to be implemented in each State department and agency. The OPT would have to establish uniform protocols and procedures to be used for these Reinventing Performance in Michigan (RPM) initiatives and would have to operate an RPM Center of Excellence to provide coaching, mentoring, and oversight for all State and agency RPM initiatives.

The Executive Director of the OPT and the Directors of LARA and the DTMB would jointly have to identify the positions and administrative functions that would be transferred to the OPT to operate the RPM Center of Excellence. The order also would require these transfers to be documented by a memorandum of understanding between affected principal departments or agencies and the Executive Director of the OPT.

Types of Transfers

Article V, Section 2 of the State Constitution authorizes the Governor to organize the Executive branch of government by Executive Order. Three types of reorganizations or transfers are identified 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 is administered under the supervision of the new principal department; 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 appropriations and other funds associated with an entity, and the entity itself, are transferred to and placed under the authority of the principal department.

¹ According to the Michigan Department of Technology, Management, and Budget, Lean is an operating philosophy that focuses on shortening the time that elapses between a customer's order and the shipment of the product or the provision of the service that fills the order. Lean accomplishes this by eliminating waste from processes, with waste being defined as anything that is not necessary to produce the product or service.

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

Executive Order 2016-4 uses Type II and Type III transfers. The transfer of the Office of Good Government to the OPT would be a Type II transfer. The transfer and abolishment of the Office of Regulatory Reinvention would be a Type III transfer.

Other Duties and Responsibilities

The OPT would be required to develop, maintain, and promote statewide programs for change management, employee engagement, performance management, and process improvement. These programs could include:

- Creation and maintenance of communication mechanisms
- Assignment of liaisons to each State department or agency
- Coordination of periodic statewide employee surveys
- Creation and maintenance of information technology systems to store and report employee activities regarding engagement, performance management, and process improvement
- Coordination of training programs for State employees to promote leadership and management skills
- Scheduling and hosting employee events and employee recognition programs

The OPT also would be required to report to the Governor annually on its review and recommendations concerning statewide performance excellence activities. Additionally, within 30 days of the date of the E.O., each State department and agency director would have to designate a Performance Excellence Officer who would be responsible for coordinating performance excellence responsibilities and also would serve as the liaison to the OPT.

Each Performance Excellence Officer would have to submit to the OPT, by October 1, 2016, and by October 1 of each successive year, a Performance Excellence Plan (approved by the department or agency director) that would include the performance excellence initiatives that the Performance Excellence Officer expected to process during the following 12-month period.

Implementation of Executive Order

Executive Order 2016-4 would require the directors of the departments and agencies affected by the order to administer the functions transferred in such ways as to promote efficient administration. As mentioned earlier, all records, personnel, property, unspent balances and other allocations transferred by this order would be transferred to the Executive Director of the OPT. Any suit, action, or other lawful proceedings commenced by or against any entity transferred by the E.O. would not abate by reason of the order taking effect. Any such proceedings could be maintained by, against, or before the appropriate successor of any entity affected by the order.

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 management system for the remainder of the current fiscal year for transfers made under this order. Finally, the order would abolish the Office of Regulatory Reinvention created by E.O. 2011-5.

Fiscal Impact

The departments affected by E.O. 2016-4 include the Department of Licensing and Regulatory Affairs and the Department of Technology, Management, and Budget. Public Act 84 of 2015 appropriated to LARA \$482,600 (all General Fund) to cover 4.0 staff members and administration of the Office of Regulatory Reinvention. Under this Executive Order, the funding and the FTEs would be transferred to the OPT within the DTMB.

Additionally, Public Act 84 of 2015 appropriated to the DTMB \$1,708,000 (all General Fund) to cover 9.0 staff members and administration of the Office of Good Government. Under this Executive Order, the funding and the FTEs would be transferred to the OPT within the DTMB; thus, the appropriation would remain within 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 the proposed transfers.

It is assumed that the Governor will include funding for all of the functions transferred to the OPT in his Executive Budget Recommendation for FY 2016-17, scheduled to be released on February 10, 2016. 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 Licensing and Regulatory Affairs and the Department of Technology, Management, and Budget.

Executive Order 2016-4 will take effect on April 3, 2016, unless the Legislature rejects it before that date.

If you have any questions on E.O. 2016-4, please do not hesitate to contact me at 373-2768.

/mh

c: Ellen Jeffries, Director
Bill Bowerman, Associate Director