

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: July 19, 2017
TO: Members of the Michigan Senate
FROM: Joe Carrasco, Fiscal Analyst
 Cory Savino, Fiscal Analyst
RE: Executive Order 2017-5

Executive Order 2017-5

On June 30, 2017, Governor Snyder issued Executive Order 2017-5 to transfer the existing State School Reform/Redesign Office, including the State School Reform/Redesign District and Officer, from the Department of Technology, Management, and Budget (DTMB) to the Department of Education. Executive Order (E.O.) 2017-5 proposes to reverse the reorganization under Executive Order 2015-9, which established the School Reform/Redesign Office and Officer as an autonomous authority within the DTMB. The authority to hire the Officer and perform other functions would be transferred to the Superintendent of Public Instruction from the DTMB Director.

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. 2017-5 is August 30, 2017.

Transfer of the State School Reform/Redesign Office

Executive Order 2017-5 would transfer all authority, powers, duties, functions, and responsibilities of the School Reform/Redesign Office under Section 1280c of the Revised School Code¹ and Section 15(6)² of Public Act 336 of 1947, that were transferred to the DTMB in Executive Order 2015-9, back to the Department of Education or to the Superintendent of Public Instruction, as applicable, with the transfer of the State School Reform/Redesign Office from the DTMB to the Department of Education.

The authority, powers, duties, functions, and responsibilities of the Superintendent of Public Instruction that were transferred to School Reform/Redesign Office under E.O. 2015-9 and that would be transferred back to the Superintendent of Public Instruction include, but are not limited to, all of the following:

¹ 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.

² Section 15(6) is the section of the Public Employment Relations Act that makes a collective bargaining agreement entered into by a public school employer (in this case the State School Reform/Redesign Officer or an appointed chief executive officer) subject to Section 1280c of the Revised School Code and the school intervention model being implemented at the school, if a school intervention model affects or modifies a collective bargaining agreement.

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

Executive Order 2017-5 would rescind all of paragraph III.B of Executive Order 2015-9, which transferred the State School Reform/Redesign Officer from the Department of Education to the State School Reform/Redesign Office and required the Officer to be the head of the office and carry out the functions vested in the Officer. This paragraph also transferred the authority to hire the Officer from the State Superintendent of Public Instruction to the Director of the DTMB. By rescinding this paragraph, E.O. 2017-5 would transfer power over the Office, which would include hiring for the Office, from the School Reform/Redesign Officer to the State Superintendent of Public Instruction. The E.O. specifies that the Officer transferred back to the Department of Education "shall have the status, power, and responsibilities set forth in Section 1280c of the Revised School Code".

Implementation of Executive Order

Executive Order 2017-5 states that "transferring the State School Reform/Redesign Office to the Department of Education will ensure the efficient continuation of the work by the Superintendent of Public Instruction in conjunction with the State School Reform/Redesign Office". The Superintendent of Public Instruction, in consultation with the Director of the DTMB, would be required to provide executive direction and supervision for the implementation of the transfers under E.O. 2017-5. All records, personnel, property, unspent balances of appropriations, and allocations available to the State School Reform/Redesign Office would be transferred to the Department of Education with the State School Reform/Redesign Office. The Superintendent of Public Instruction would be required to make internal organizational changes as administratively necessary to complete the realignment of functions and responsibilities under the Order.

The Director of the DTMB and the Superintendent of Public Instruction would be required to immediately 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 and State laws, or other obligations to be resolved. 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 necessary for the implementation of 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.

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 2017-5 does not specify whether the transfer of the State School Reform/Redesign Office from the DTMB to the Department of Education is a Type I, II, or III transfer, but it appears to be a Type II transfer.

Fiscal Impact

The departments affected by E.O. 2017-5 include the Department of Education and the Department of Technology, Management, and Budget. Public Act 107 of 2017 provided funding totaling \$3,468,100 GF/GP to cover 11.0 FTE staff members and operations for administration of the School Reform Office (the State School Reform/Redesign Office), which operates under Section 1280c of the Revised School Code. Under the Executive Order, the funding for the School Reform Office and FTEs would be transferred to the Department of Education. At this time, the Senate Fiscal Agency anticipates that there would be no additional costs to the State; however, it is indeterminate whether there would be any savings as a result of this transfer due to further coordination between the Office and the Department of Education that would remove duplication of services. Currently, it is not known whether the Governor will request a supplemental appropriation for the transfer of the Office to the Department of Education. 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
Kathryn Summers, Associate Director