

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: February 12, 2019

TO: Members of the Michigan Senate

FROM: Abbey Frazier, Fiscal Analyst
 Elizabeth Raczkowski, Fiscal Analyst
 Joe Carrasco, Fiscal Analyst

RE: Executive Order 2019-2

Executive Order 2019-2

On February 4, 2019, Governor Whitmer issued Executive Order (E.O.) 2019-2, which would rename the Department of Environmental Quality (DEQ) as the Department of Environment, Great Lakes, and Energy (DEGLE). The Executive Order would create four new functions within the DEGLE, including the Interagency Environmental Justice Response Team, the Office of the Clean Water Public Advocate, the Office of the Environmental Justice Public Advocate, and the Office of Climate and Energy. The Michigan Office of Administrative Hearings and Rules would be established under E.O. 2019-2, effectively combining the functions and responsibilities of the Michigan Administrative Hearing System (MAHS) and the Office of Regulatory Reinvention (ORR), which would be abolished.

Executive Order 2019-2 would abolish the Environmental Permit Review Commission within the DEQ, the Environmental Rules Review Committee within the Department of Technology, Management, and Budget (DTMB), and the Environmental Science Advisory Board within the DTMB. The Office of the Great Lakes would be transferred from the Department of Natural Resources (DNR) to the DEGLE, and the Michigan Agency for Energy would be transferred from the Department of Licensing and Regulatory Affairs (LARA) to the Office of Climate and Energy within the DEGLE. Various sections of the Office of Performance and Transformation within the DTMB would be transferred to the DEGLE, LARA, or the Executive Office of the Governor, and any remaining sections would be abolished.

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. 2019-2 is April 7, 2019.

Newly Established Offices and Functions under E.O. 2019-2

Interagency Environmental Justice Response Team

The Interagency Environmental Justice Responses Team would be an advisory board consisting of the departmental director or his or her designee from the DEGLE, the Department of Agriculture and Rural Development, the Department of Civil Rights, the Department of Health and Human Services (DHHS), the DNR, the Department of Transportation (MDOT), the president of the Michigan Strategic Fund, and the chairperson of the Public Service Commission.

The Interagency Environmental Justice Response Team would be charged with assisting the DEGLE in developing a statewide environmental justice plan to address discriminatory environmental or public health impacts in Michigan. The Interagency Environmental Justice Response Team also would be responsible for recommending policies and procedures for incorporating environmental justice principles into departmental decision-making.

Office of the Clean Water Public Advocate

The Office of the Clean Water Public Advocate would be charged with investigating complaints and concerns related to drinking water quality in Michigan. The Office would be responsible for developing a statewide uniform reporting system for complaints regarding drinking water quality, coordinating across State departments and programs to address problems related to drinking water quality, and assisting in the monitoring and implementation of State and Federal laws, rules, and regulations.

Office of the Environmental Justice Public Advocate

The Office of the Environmental Justice Public Advocate would be charged with investigating complaints and concerns related to environmental justice in Michigan. The Office would be responsible for developing a statewide uniform reporting system for complaints and concerns related to discriminatory public health and environmental impacts, coordinating across state departments and programs to address problems related to environmental justice, and assisting in monitoring and implementation of State and Federal laws, rules, and regulations.

Office of Climate and Energy

The Office of Climate and Energy would be charged with coordinating climate response activities across State departments and providing recommendations to State and local units of government on addressing climate impact, reducing greenhouse gas emissions, and utilizing renewable energy and energy efficiency. The Office would be charged with all functions and responsibilities currently housed under the Michigan Agency for Energy, created by Executive Order 2015-10, which would be transferred to the Office of Climate and Energy.

Other Boards

The DEGLE would have the authority to establish one or more science review boards to examine scientific issues relating to the Michigan environment, the Great Lakes, and the safety of drinking water. The science review boards would consist of seven members appointed by the Director of the DEGLE with scientific backgrounds. Board members would be charged with developing studies, holding investigations, and making inquiries to advise the DEGLE and the Governor on scientific topics. The boards would be staffed by personnel from the DEGLE and would have the authority to hire or retain contractors, advisors, and consultants, subject to available funding.

The State Plumbing Board position designated for the Director of the DEQ or the his or her designee would be transferred to the Director of the DEGLE. The State Plumbing Board position for an employee of the DEQ would be transferred to an individual with expertise in hydrology or clean drinking water at the DEGLE, to be selected by the Director.

Michigan Office of Administrative Hearings and Rules

The E.O. would establish the Michigan Office of Administrative Hearings and Rules within LARA through combining the MAHS within LARA and the ORR within the DTMB. The functions and responsibilities of the MAHS would be transferred to the Michigan Office of Administrative Hearings and Rules and the MAHS be would abolished. The functions and responsibilities of the ORR would also be transferred to the Michigan Office of Administrative Hearings and Rules and the ORR would be abolished.

Program Transfers Under Executive Order 2019-2

The new Department of Environment, Great Lakes, and Energy would receive all programs and agencies from the DEQ, as well as other transfers from the DNR, LARA, and the DTMB, listed below:

Transfer from the Department of Environmental Quality

The Environmental Permit Review Commission established within the DEQ, including any environmental permit panels of the Commission, would be transferred to the DEGLE and abolished.

Transfer from the Department of Natural Resources

A new Office of the Great Lakes would be established within the DEGLE. The current Office of the Great Lakes would be transferred to the DEGLE from the DNR and abolished, while the new Office of the Great Lakes would exercise the authorities, powers, duties, and responsibilities of the current Office.

Transfers from the Department of Licensing and Regulatory Affairs

The Michigan Agency for Energy and the Michigan Public Service Commission are currently housed within LARA. The Public Service Commission was transferred to the Michigan Agency for Energy by E.O. 2018-1. Under E.O. 2019-2, the authorities, powers, duties, functions, and responsibilities of the Michigan Agency for Energy would be transferred from LARA to the DEGLE Office of Climate and Energy and abolished. The Public Service Commission would be excluded from this transfer and, instead, would be transferred directly to LARA. The Energy Security section of the Michigan Agency for Energy would be transferred to the Public Service Commission.

The authorities, powers, duties, functions, and responsibilities of the Michigan Administrative Hearing System would be transferred to the new Michigan Office of Administrative Hearings and Rules.

Transfers from the Department of Technology, Management, and Budget

The Office of Good Government creates and shares leading practices to transform the culture and performance of the executive branch. This office would be transferred to the DTMB and abolished.

The Office of Continuous Improvement works to help State employees improve their work and improve residents' experience with State government. The Office would be transferred to the DTMB and abolished.

The Office of Interagency Initiatives promotes interagency collaboration and shared understanding. This office would be transferred to the Executive Office and abolished.

The Environmental Rules Review Committee, created within the Office of Performance and Transformation, would be transferred to the DEGLE and abolished. The Environmental Science Advisory Board, established within the DTMB, would be transferred to the DEGLE and abolished.

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 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.

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.

All transfers identified in E.O. 2019-2 are listed in the table below:

Agency	Action	Type	Section
<u>DTMB</u>			
Office of Regulatory Reinvention	abolished	Type III	(7)(a)(6)
Office of Performance and Transformation	functions under Sec. V of EO 2016-4 to DTMB; functions transferred from ORR under Sec. II of EO 2016-4 and those under 1969 PA 306 not otherwise transferred under this EO to MOAHR in LARA	Type III	(7)(a)(4,6)
Office of Good Government	to DTMB, abolished	Type III	(7)(a)(1)
Office of Reinventing Performance	to DTMB, abolished	Type III	(7)(a)(2)
Office of Interagency Initiatives	to Governor's Office, abolished	Type III	(7)(a)(3)
Environmental Rules Committee	to DEGLE, abolished	Type III	(7)(a)(5)
Environmental Science Advisory Board	to DEGLE, abolished	Type III	(7)(b)(1,2)

Agency	Action	Type	Section
<u>LARA</u>			
Michigan Public Service Commission	from Michigan Agency for Energy to directly under LARA	Type I	(5(a)(1))
Michigan Agency for Energy	LARA to Office of Climate and Energy in DEGLE; abolished	Type III	(5(b)(2))
Energy Security section	Michigan Agency for Energy to Public Service Commission	Type II	(5(b)(1))
Michigan Administrative Hearing System	to Office of Administrative Hearings and Rules; abolished	Type III	(5(c)(1,2))
Michigan Office of Administrative Hearings and Rules	created within LARA	Type I	(3)
<u>DNR</u>			
Office of the Great Lakes	a new Office of the Great Lakes established in DEGLE; DNR to DEGLE, abolished	Type III	(6(a)(1,2,3))
<u>DEQ</u>			
Environmental Permit Review Commission	to DEGLE, abolished	Type III	(4(a)(1,2))

Executive Order 2019-2 identifies the transfer of the Michigan Public Service Commission from the Michigan Agency for Energy to LARA as a Type I transfer. The transfer of the Michigan Agency for Energy from LARA to the DEGLE is identified as a Type III transfer. The E.O. does not specify the transfer of the Energy Security section of the Michigan Agency for Energy as a Type I, II, or III transfer, but it appears to be a Type II transfer.

The transfer of the Michigan Administrative Hearing System to the Michigan Office of Administrative Hearings and Rules appears to be a Type III transfer.

The transfer of the Environmental Permit Review Committee from the DEQ to the DEGLE is identified as a Type III transfer. The transfer of the Office of the Great Lakes from the DNR to the DEGLE also is identified as a Type III transfer.

All transfers from the DTMB involving the Office of Performance and Transformation are identified as Type III transfers. The transfer of the Environmental Science Advisory Board from the DTMB to the DEGLE also is identified as a Type III transfer.

Fiscal Impact

The DEQ expects to accommodate the proposed functions of the DEGLE within current appropriations; however, the fiscal impact on the DEQ, DNR, and DTMB, and any potential FTE additions or reductions are indeterminate based on the language in E.O. 2019-2.

The Department of Licensing and Regulatory Affairs estimates that approximately \$720,000 in appropriations and 5.0 FTEs would be retained within LARA to fund the Energy Security section within the Public Service Commission. The remaining \$6.4 million in appropriations and 21.0 FTEs from the Michigan Agency for Energy is expected to be transferred to the DEGLE. Currently, LARA does not have an estimate for potential increased costs due to the transfer of some Office of

Performance and Transformation functions to the new Michigan Office of Administrative Hearings and Rules.

Summary

Executive Order 2019-2 effectively would restructure the Department of Environmental Quality, and rename as the Department of Environment, Great Lakes, and Energy. The DEGLE would have newly-established functions and offices, including the Interagency Environmental Justice Response Team, the Office of the Clean Water Public Advocate, the Office of the Environmental Justice Public Advocate, and the Office of Climate and Energy. The DEGLE would take over the responsibilities and functions of the Michigan Agency for Energy, currently within LARA, and the Office of the Great Lakes within the DNR.

Executive Order 2019-2 also would establish the Michigan Office of Administrative Hearings and Rules by combining the Michigan Administrative Hearing System and the Office of Regulatory Reinvention.

Executive Order 2019-2 would abolish the Environmental Permit Review Commission, the Environmental Rules Review Committee, and the Environmental Science Advisory Board. Various sections of the Office of Performance and Transformation within the DTMB would be transferred to the DEGLE, LARA, or the Executive Office of the Governor, and any remaining sections would be abolished.

Executive Order 2019-2 will take effect on April 7, 2019, unless it is declined by a majority vote of both chambers by that date.

If you have any questions on E.O. 2019-2, please do not hesitate to contact us.

/mh

c: Christopher Harkins, Director
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