

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: March 18, 2019
TO: Members of the Michigan Senate
FROM: Elizabeth Raczkowski, Fiscal Analyst
RE: Executive Order 2019-7

Executive Order 2019-7

On March 1, 2019, Governor Whitmer issued Executive Order (E.O.) 2019-7, which would create the Marijuana Regulatory Agency (The Agency) within the Department of Licensing and Regulatory Affairs (LARA). The E.O. would transfer the powers, functions, and responsibilities of the Medical Marijuana Licensing Board and the Marijuana Advisory Panel to the Agency and abolish those entities. The Bureau of Marijuana Regulation also would be abolished. The Department's power to promulgate rules to regulate industrial hemp under the Michigan Regulation and Taxation of Marijuana Act (MRTMA) would be transferred to the Department of Agriculture and Rural Development (MDARD).

Executive Order 2019-7 also would transfer the Michigan Unarmed Combat Commission to LARA as an independent Type I agency. The authorities, powers, duties, functions, and responsibilities of the Department under the Michigan Unarmed Combat Regulatory Act would be transferred to the Commission or the Commission Chairperson as described in the E.O.

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. 2019-7 is April 30, 2019.

Marijuana Regulatory Agency

Creation and Powers

Section 1 of the Executive Order would create a Type I agency, the Marijuana Regulatory Agency, within LARA. The Bureau of Marijuana Regulation would be abolished. A Type I agency is one created by a Type I transfer pursuant to Public Act 380 of 1965 which operates under another agency or department but carries out its functions independently. The Agency would assume all of the authorities, powers, duties, functions, and responsibilities of the Medical Marijuana Licensing Board and the Marijuana Advisory Panel under the Medical Marijuana Facilities and Licensing Act. The Agency would be authorized to promulgate rules for the processing, testing, transportation, and sale of industrial hemp from marijuana establishments.

In addition, the E.O. specifies that all of the powers, functions, and responsibilities of LARA, including its Bureau of Marijuana Regulation, under the following four statutes would be transferred to the new Agency:

- The Michigan Medical Marijuana Act (Initiated Law (IL) 1 of 2018), as amended.
- The Medical Marijuana Facilities Licensing Act (Public Act (PA) 281 of 2016), as amended.

- The Marihuana Tracking Act (PA 282 of 2016), as amended.
- The Michigan Regulation and Taxation of Marihuana Act (IL 1 of 2018).

Administration

The Executive Director would be authorized to establish advisory workgroups composed of members of the public to assist the Agency in performing its functions and responsibilities. The E.O. would require the Agency to hold at least four public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public pertaining to the administration of the Agency.

The head of the Agency would be an executive director appointed by the Governor with the advice and consent of the Senate. The E.O. would impose a number of requirements on the Executive Director related to his or her financial and business interests, and would prohibit an individual from serving as Executive Director if he or she had been charged or convicted of any felony or a misdemeanor involving a controlled substance violation, theft, dishonesty, or fraud.

Transfers and Abolition of Existing Entities

Medical Marihuana Licensing Board

The authorities, powers, duties, functions, and responsibilities of the Medical Marihuana Licensing Board established by the Medical Marihuana Facilities and Licensing Act would be transferred to the Agency. The Medical Marihuana Licensing Board would be abolished.

Marihuana Advisory Panel

The authorities, powers, duties, functions, and responsibilities of the Marihuana Advisory Panel established by the Medical Marihuana Facilities and Licensing Act would be transferred to the Agency. The Marihuana Advisory Panel would be abolished.

Bureau of Marijuana Regulation

The authorities, powers, duties, functions, and responsibilities of the Bureau of Marijuana Regulation would be transferred to the Agency. The Bureau of Marijuana Regulation would be abolished.

Department of Agriculture and Rural Development

The Department's powers and responsibilities to promulgate rules to regulate the cultivation, processing, distribution, and sale of industrial hemp under the MRTMA would be transferred to the MDARD.

Michigan Unarmed Combat Commission

The Michigan Unarmed Combat Commission, currently housed within the Bureau of Corporations, Securities, and Commercial Licensing within LARA, would be transferred to LARA as an independent Type I agency. All of the authorities, powers, duties, functions, and responsibilities of the Department and the Director of the Department under the Michigan Unarmed Combat Regulatory Act would be transferred to the Commission unless otherwise noted in the E.O. Budgeting, procurement, and

related management functions of the Commission would be performed under the direction and supervision of the Director of LARA.

Powers and duties under certain sections of the Michigan Unarmed Combat Regulatory Act would be transferred to the Chairperson of the Commission. The Chairperson would have to do the following:

- Administer the Michigan Unarmed Combat Fund.
- Designate one or more Department employees to act as the person who made the complaint in cases in which a complaint is made by the Department.
- Issue a cease and desist order to a person for violation of the Act or of a rule or order issued under the Act.
- Determine an appropriate penalty and issue a final order if the Commission did not do so within the prescribed time period in the Act.

In addition, Executive Order 2019-7 would transfer, from the LARA Director to the Commission, certain powers and responsibilities for promulgating rules pertaining to unarmed combat events.

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.

Executive Order 2019-7 identifies the transfers of the Medical Marijuana Licensing Board and the Marijuana Advisory Panel as Type I transfers. The E.O. does not identify the abolition of the Bureau of Marijuana Regulation as at Type I, Type II, or Type III transfer, but it appears to be a Type III transfer.

The transfer of the specified powers and responsibilities for the promulgation of the rules regulating the cultivation, processing, distribution, and sale of industrial hemp from LARA to the MDARD is identified as a Type II transfer.

The E.O. identifies the transfer of the Michigan Unarmed Combat Commission to LARA as a Type I transfer.

Fiscal Impact

The Department of Licensing and Regulatory Affairs expects to perform the proposed functions of the Marijuana Regulatory Agency using existing appropriations. The proposed rule-promulgating responsibilities that would be transferred to MDARD also likely would be accommodated by existing appropriations.

The cost savings associated with the abolition of the Medical Marihuana Licensing Board and the Marihuana Advisory Panel would be minimal as members only received reimbursement for travel and associated expenses. The Department of Licensing and Regulatory Affairs could incur some expense associated with the new Executive Director position of the Marijuana Regulatory Agency.

Summary

Executive Order 2019-7 would create a new Type 1 agency, the Marijuana Regulatory Agency. The E.O. also would transfer certain powers and responsibilities of the Medical Marihuana Licensing Board and the Marihuana Advisory Panel to the new Agency. The Board, the Panel, and the Bureau of Marijuana Regulation would be abolished. The Agency would receive LARA's authorities, powers, duties, functions, and responsibilities of LARA under IL 1 of 2008, PA 281 of 2016, PA 282 of 2016, and IL 1 of 2018.

In addition, the E.O. would transfer the Michigan Unarmed Combat Commission to LARA and reassign certain powers and responsibilities of the Department and its Director to the Commission or the Commission Chairperson.

Executive Order 2019-7 will take effect on April 30, 2019, unless the Legislature rejects it before that date.

If you have any questions on E.O. 2019-7, please do not hesitate to contact me.

/mh

c: Christopher Harkins, Director
Steve Angelotti, Associate Director