

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: February 5, 2024
TO: Members of the Michigan Senate
FROM: Nathan Lehman, Elizabeth Raczkowski, Dr. Cory Savino, and Michael Siracuse,
 Fiscal Analysts
RE: Executive Order 2024-2

Executive Order 2024-2

On January 17, 2024, Governor Whitmer issued Executive Order (E.O.) 2024-2, which would:

- Transfer the powers and duties of the Michigan Office of Postsecondary Educational Attainment from the Department of Labor and Economic Opportunity (LEO) to the newly formed Michigan Department of Lifelong Education, Advancement and Potential (MiLEAP),
- Transfer the powers and duties of the Michigan Indian Tuition Waiver Office from the Department of Civil Rights to MiLEAP,
- Transfer the Michigan Tax Tribunal intact from the Michigan Office of Administrative Hearings and Rules to the Department of Licensing and Regulatory Affairs (LARA), and
- Rescind and replace Section 4(b) of E.O. 2019-13, related to procedures and member appointment on the Workers' Disability Compensation Appeals Commission housed in LEO.

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. 2024-2 is March 17, 2024.

Transfers

The E.O. would transfer the Michigan Office of Postsecondary Educational Attainment to MiLEAP from LEO and would transfer the Michigan Indian Tuition Waiver Office to MiLEAP from Civil Rights. Although it is not specifically stated within the text of the E.O., both of these transfers appear to be Type III Transfers, meaning the authority, powers, duties, functions, responsibilities, along with personnel, records, and funds for both Offices are moved to MiLEAP, while those Offices, themselves, are abolished.

The Michigan Tax Tribunal would also be moved as a Type I Transfer from the Michigan Office of Administrative Hearings and Rules to LARA. As a Type I Transfer, the Michigan Tax Tribunal retains its structure, authority, and name intact while moving to direct administration under LARA.

Amendment to E.O. 2019-13, Section 4(b)

Executive Order 2019-13 established LEO as a principle executive branch department by way of renaming the Department of Talent and Economic Development and transferring several State agencies and offices to LEO. Section 4 of E.O. 2019-13 created the Workers Disability Compensation Appeals Commission. Section 4(b) of E.O. 2019-13 established the number of members on the Appeals Commission and procedures for voting members when conflicts exist. Executive Order 2024-2 replaces Section 4(b) with updated procedures for voting members of the Commission when conflicts exist.

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 2024-2 does not specify whether the transfers of the Michigan Office of Postsecondary Educational Attainment and the Michigan Indian Tuition Waiver to MiLEAP are Type I, II, or III transfers, but they appear to be Type III transfers.

The E.O. identifies the transfer of the Michigan Tax Tribunal to LARA as a Type I transfer.

Fiscal Impact

The appropriations and expenditures for the transferred offices would have a net-zero impact on the State and no identifiable impact on local governments.

Impact for LEO

The E.O. would reduce the Department of Labor and Economic Opportunity budget. The Office of Postsecondary Educational Attainment was rolled into the Workforce Development line item in fiscal year (FY) 2015-16. At that time the office had around \$20.0 million in appropriations between programs and administration. It is unknown how much the Office and its secondary costs have changed since then, but it is likely to be greater than \$20.0 million as the Michigan Reconnect and other postsecondary education programs have been created since FY 2015-16, which increased the Office's appropriation.

Impact for Civil Rights

Applications for the Michigan Indian Tuition Waiver are processed by the Department of Civil Rights. The actual payments to universities and community colleges are appropriated in the Higher Education budget. Civil Rights has one full-time equated (FTE) position dedicated to administering the Waiver at an annual cost of \$157,000 General Fund/General Purpose.

Impact for LARA

The E.O. would have no fiscal impact on LARA. While the E.O. would transfer the Michigan Tax Tribunal and all of its FTEs and expenditures from the Office of Administrative Hearings and Rules to LARA, that Office is already accounted for by LARA's appropriation, so there would be no net change.

Summary

Executive Order 2024-2 transfers the powers and duties of the Michigan Office of Postsecondary Educational Attainment and the Michigan Indian Tuition Waive Office to MiLEAP and abolishes those offices. The E.O. transfers the Michigan Tax Tribunal intact from the Michigan Office of Administrative Hearings and Rules to LARA. The E.O. replaces procedural language from E.O. 2019-13 regarding the voting responsibilities of the Workers' Disability Compensation Appeals Commission.

Executive Order 2024-2 will take effect on March 18, 2024, unless the Legislature rejects it before that date.

If you have any questions on E.O. 2024-2, please do not hesitate to contact us.

/mrw

c: Kathryn R. Summers, Director
Joe Carrasco, Associate Director