

***Briefing on Office of Regulatory
Reinvention***

Presented to the
House Regulatory Reform Committee
September 14, 2011

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Rules and Regulations Matter

- States directly regulate 20% of the national economy through administrative rules according to NYU's Institute of Policy Integrity's "52 Experiments with Regulatory Review" Nov. 2010 report
- These rules raise the cost of doing business, which in some cases prevents business growth, further limiting job creation.
- **BOTTOM LINE:** Michigan's regulatory environment directly influences Michigan's economic turnaround because it is a factor in whether a business decides to start here or locate here.



LARA

- Executive Order 2011-4, dated February 23rd, created the Department of Licensing and Regulatory Affairs (LARA), effective April 25th
- LARA includes four functions:
 - Licensing and Regulatory (Shelly Edgerton)
 - Michigan Administrative Hearing System (MAHS) (Mike Zimmer)
 - Employment Security/Workplace Safety (Steve Arwood)
 - Office of Regulatory Reinvention (ORR) (Rob Nederhood)
- LARA's goal is to create a licensing and regulatory environment that promotes business growth and job creation



ORR

- Executive Order 2011-5, dated February 23rd, created the Office of Regulatory Reinvention (ORR), effective April 25th
- Steven Hilfinger, Director of LARA, is Director of ORR/Chief Regulatory Officer; Deputy Director of LARA/ORR is Rob Nederhood
- Responsibilities of ORR per EO 2011-5
 - All rulemaking functions formerly housed in the State Office of Administrative Hearings and Rules (SOAHR) transferred to ORR
 - Systematic review of existing Michigan rules and rulemaking
 - Oversight of “non-rule regulatory actions” as defined in EO 2011-5
 - Implement “best regulatory management practices”
- Focus: work with Executive Office, Departments and Agencies, the Legislature, business community and public to identify, amend and rescind unnecessary or overly restrictive rules and regulations

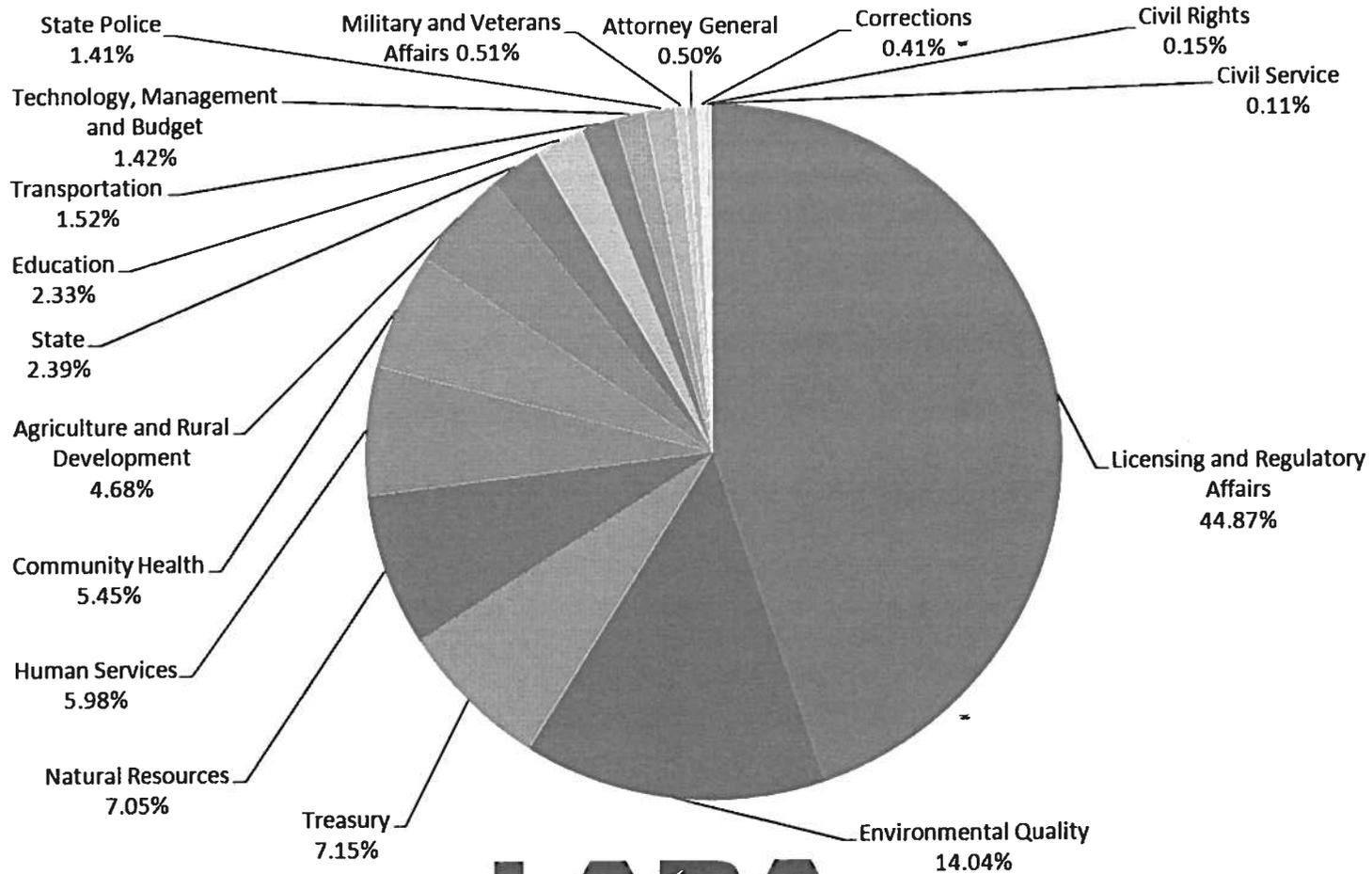


Input to ORR

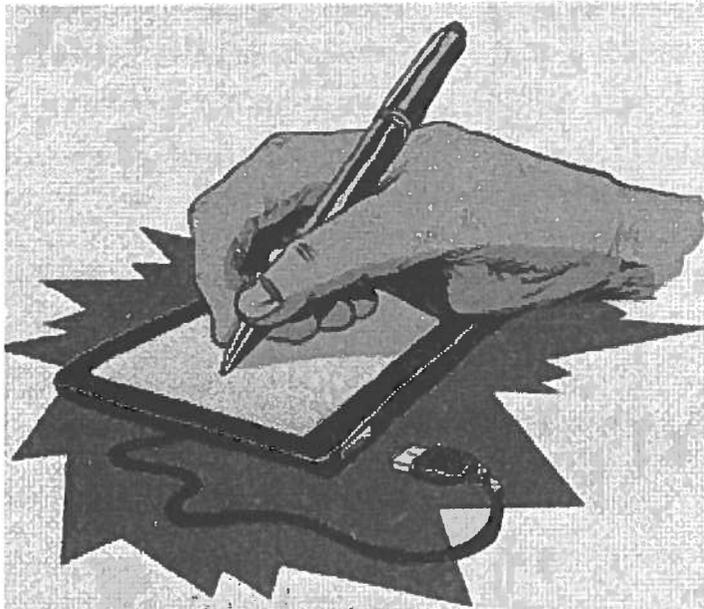
- ORR will seek input from the following sources:
 - Departments and Agencies
 - Executive Office
 - Legislators and legislative committees
 - Business groups and individuals
 - Advisory Rules Committees
 - Website suggestions: www.michigan.gov/orr
 - Other suggestions/complaints/input

Rules by Department

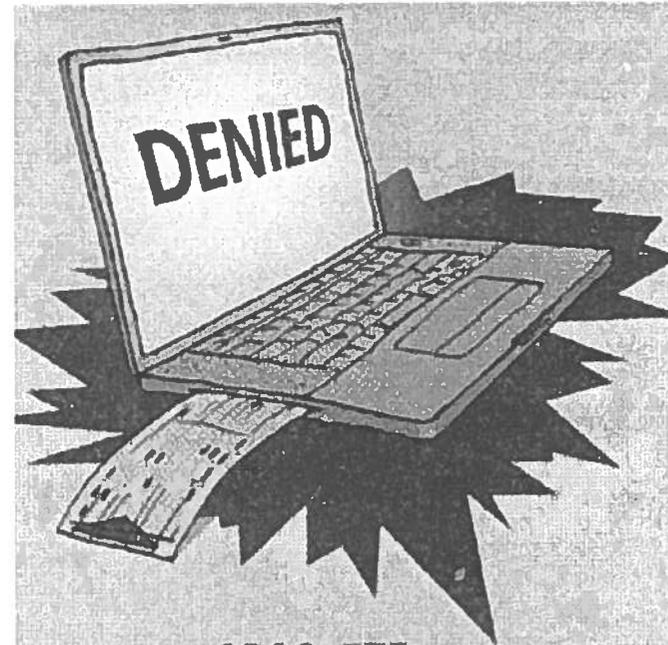
- Michigan had 18,703 rules as of April 25, 2011



Example: Obsolete Rules



**OBSOLETE
SIGNATURE-GATHERING**
Wage and hour rules prevent electronic signatures, a now common practice used on federal documents such as student loan documents.



**OBSOLETE
RECORD-KEEPING**
Rules for the Public Service Commission mandate that records must be kept in punch-card format, preventing digital record-keeping.

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Example: Onerous Rules



EXCESSIVE RULES ON CHILD CARE

It is government-mandated that child care workers must smile. In addition, before whole milk can be served to a child, a parent must approve of it in writing.



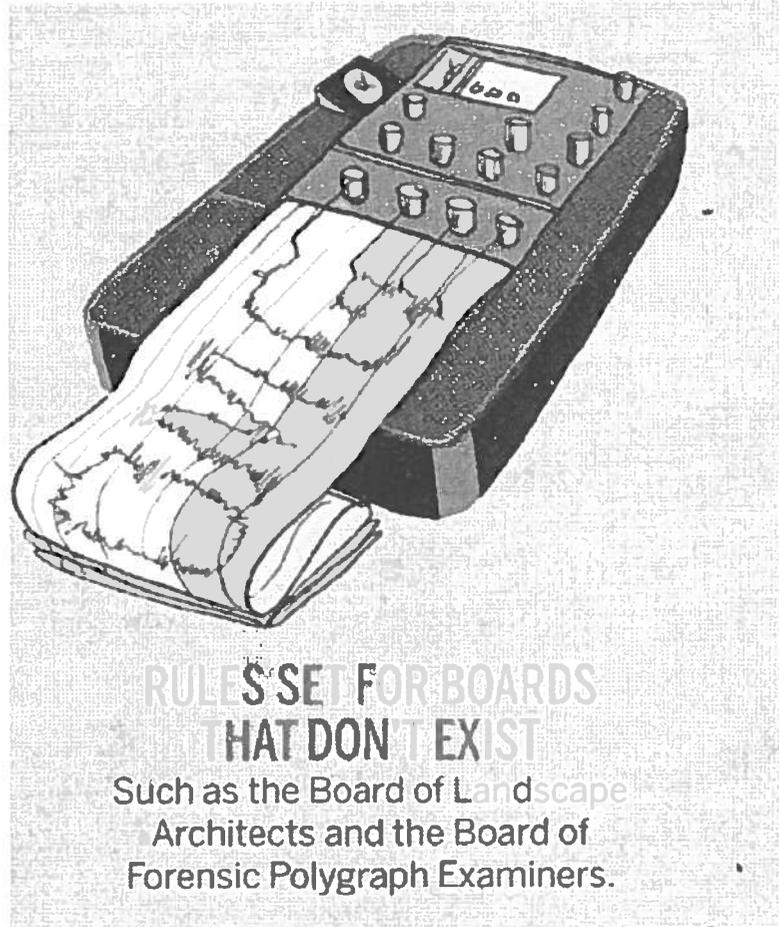
BARBERSHOP WASTEBASKETS

There are rules mandating how often wastebaskets must be emptied and the size of the wastebaskets barbers should use.

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Example: No Longer Necessary



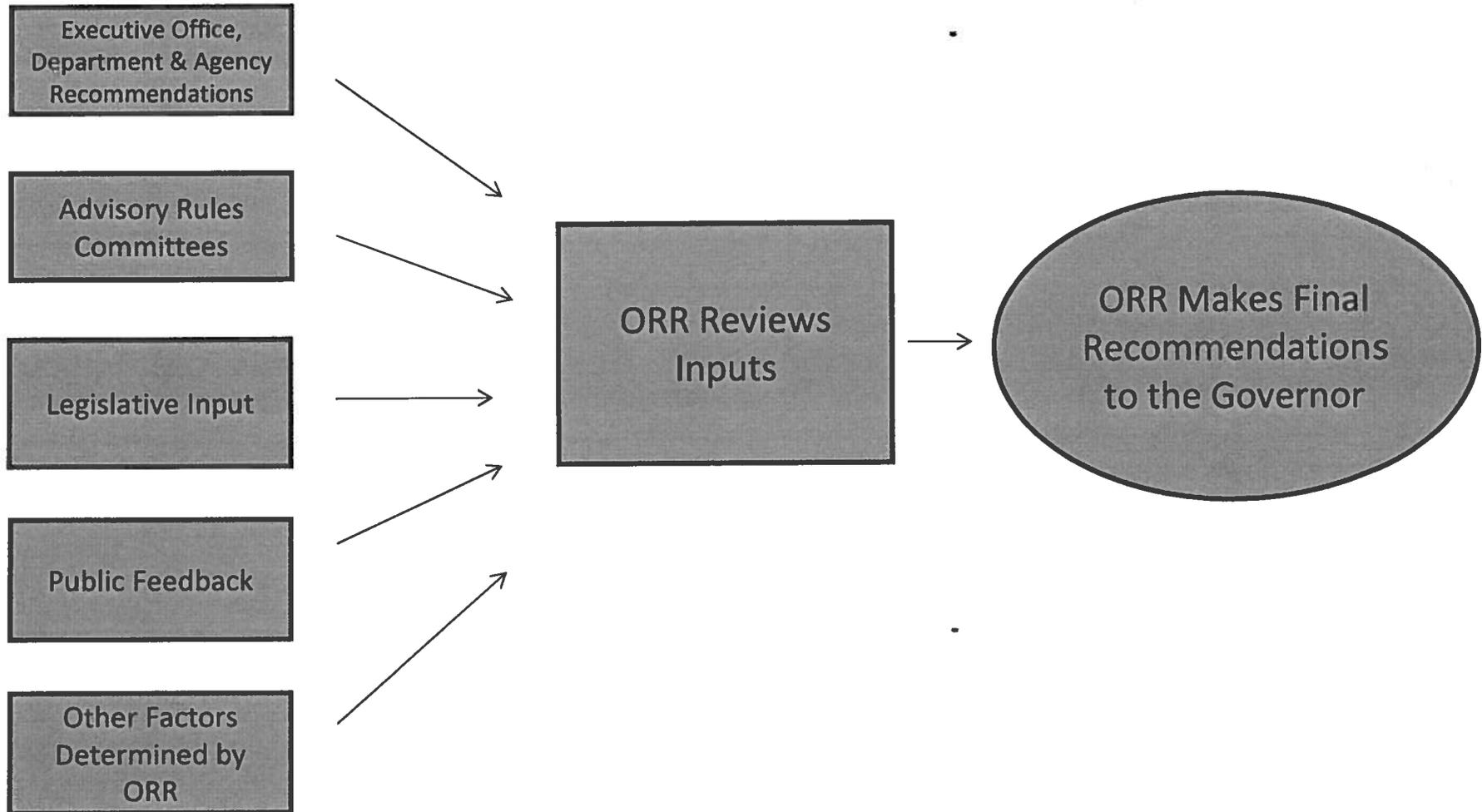
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Rule Evaluation Criteria

- Under EO 2011-5, every rule will be evaluated by the following 7 factors:
 1. Health or safety benefits
 2. Whether rules mandated by constitution/statutory provision
 3. Cost of compliance (complexity, reporting and other factors)
 4. Whether conflict with/duplicate similar state or federal rules
 5. Extent to which exceed national or regional compliance standards
 6. Date of last evaluation and impact of technology, economic or other conditions
 7. Other changes or developments that demonstrate no continued need for the rule

Rule Review Process



Mechanics of ARCs

- Advisory Rules Committees (ARCs) are advisory in nature, and focus on evaluation of regulations under 7 factors included in EO 2011-5
- Five ARCs have begun their work – Insurance and Finance, Workplace Safety, Environmental, Liquor Control, and Occupational Licensing
- One is close to beginning – Natural Resources
- ARCs consist of 10-20 members including regulators, regulated community members and public; 120 day term unless extended by ORR
- ORR selects and appoints members, and chairs each ARC
- Currently accepting applications for Inspections & Permitting ARC



ARCs - Progress to Date

- The Environmental ARC and its subcommittees have met a total of 21 times and have identified nearly 100 issues that may result in recommendations for reform.
- The Insurance and Finance ARC and its subcommittees have met seven times and have identified over 50 issues that may result in recommendations for reform.
- The Workplace Safety ARC has met five times and is reviewing all instances where MIOSHA rules exceed federal standards, using the seven factors set forth in EO 2011-5.
- The Occupational Licensing ARC has met three times and is evaluating whether any of the 90+ occupations regulated by the state can be de-regulated.



Departments – Progress to Date

- Pursuant to EO 2011-5, Departments have analyzed their existing rules and submitted their analyses to ORR
- We've aligned departmental incentives to our goals of rescinding unnecessary rules with the "Rule Amnesty Program"
- Traditionally, the Departments have paid an annual fee which was determined by each Department's share of the pages published in the Michigan Register in a given year. We believe these fees have negatively incentivized to departments to avoid rescinding the "low-hanging fruit."
- Beginning October 1, 2011 and continuing to September 30, 2012, Departments will not be charged by the ORR for rescission, amendment, or promulgation of rules



“Non-Rule Regulatory Actions”

- EO 2011-5 defines as follows:

“a regulatory action not adopted by a department or agency as a rule pursuant to the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201, et seq., that is utilized by a department or agency to govern or bind Michigan businesses, entities, or individuals including, but not limited to, guidelines, handbooks, manuals, instructional bulletins, forms with instructions, and operational memoranda.”

- ORR may order the elimination, suspension or modification of any “non-rule regulatory action” if ORR determines:
 - Is being used to support actions/decisions not to act
 - Exceeds constitutional or statutory scope
 - Is unduly burdensome or otherwise inconsistent with purposes of EO 2011-5
- Working with the Departments, ORR has identified over 35,000 pages of “non-rule regulatory actions.”



The Problem with “Non-Rule Regulatory Actions”

- From discussions with the Advisory Rules Committees, it appears that the problem is not the existence of “Non-Rule Regulatory Actions” per se
- Industry sees them as useful guidance, if handled properly. In some instances, they help to provide additional clarification and assist the regulated community in complying with statute and rules.
- **The problem** is that “non-rule regulatory materials” are:
 - Disorganized. Majority are available online, but are not organized in a consistent fashion across Departments or across divisions within Departments
 - Not transparent. Many are not available online, and typically stakeholders are not involved in their development
 - Can be modified at any time (some DEQ op memos are perpetually in “draft” form)
 - Legally ambiguous. Although they have no legal significance and are not binding on citizens, that may not always be understood by those reading them. In addition, the Departments may use them as a basis for decision making, whether they admit it or not



CUSTOMER DRIVEN. BUSINESS MINDED.

Solution

- Require Departments to promulgate “non-rule regulatory material” as Guidelines.
- Make Guidelines available to the public in a central online repository
- The ORR would issue a unique identifier to each Guideline (e.g., DEQ Guideline 2011 – 1, DEQ Guideline 2011-2, etc.)
- Require a disclaimer that they are not binding on Michigan citizens and businesses

“Best Regulatory Management Practices”

- EO 2011-5 requires Departments and Agencies to do the following:
 - Complete a detailed cost-benefit analysis for all proposed rules that specifies the methodologies used and an assessment of any disproportionate impact of the rules
 - Establish and seek input from broadly representative stakeholder advisory groups
 - Detail all provisions/rules that exceed federal or regional standards and justify deviation(s)
- Form of Regulatory Impact Statement has been revised to include these elements



Dashboard for ORR

	Reporting Period	Prior	Current	Progress
Number of existing administrative rules	Monthly	18,587	18,565	↑
Existing rules reviewed	Monthly	77	77	↔
Pages of non-rule regulatory actions collected*	Monthly	34,793	34,793	↔
Number of Departments that have collected non-rule regulatory actions	Monthly	14	14	↔
Advisory Rules Committees Convened	Quarterly	3	5	↑
Number of Public Comments Received at www.Michigan.Gov/ORR	Monthly	12	14	↑
Administrative Rules Rescinded	Monthly	148	170	↑
Administrative Rules Amended	Monthly	19	19	↔
Pages of non-rule regulatory actions eliminated	Monthly	0	TBD	↔

*Includes but not limited to guidelines, handbooks, manuals, instructional bulletins, forms with instructions, and operational memoranda.



Who to Contact at ORR

General Information (orr@michigan.gov; www.michigan.gov/orr)

- Steve Hilfinger (517.373.6334; hilfingers@michigan.gov)
- Rob Nederhood (571.335.9097; nederhoodr@michigan.gov)
- Phil Hendges (517.335.8658; hendgesp@michigan.gov)
- Liz Smalley (517.335.8658; smalleye1@michigan.gov)
- Deidre O’Berry (517.241.1671; o’berryd@michigan.gov)
- Ashley Kliewer (Administrative Assistant; 517.335.8658; kliewera@michigan.gov)
- In addition, we will work closely with the LARA Legislative Office Director Mike O’Brien (517.373.7486; ObrienM4@michigan.gov) and LARA Communications Representative John Groen (517.373.6963, groenj@michigan.gov)

• Thank You and We Look Forward to our Collaboration!



QUESTIONS?