EXECUTIVE REORGANIZATION ORDER (EXCERPT)

E.R.O. No. 2011-5

445.2031 Creation of office of regulatory reinvention in department of licensing and regulatory affairs; transfer of powers and duties of administrative rules manager to chief regulatory officer; review of existing and proposed rules and rule making processes; oversight of non-rule regulatory actions.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power in the Governor; and

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, it is necessary in the interest of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of Government; and

WHEREAS, it is in the best interests of the people of the state of Michigan to have a regulatory environment and regulatory processes that are fair, efficient, transparent, and conducive to business growth and job creation; and

WHEREAS, the elimination or amendment of duplicative, obsolete, unnecessary, or unduly restrictive rules will lead to the creation of more businesses and job opportunities for Michigan citizens; and

WHEREAS, the rule making process should be the direct responsibility of the Director of the Department of Licensing and Regulatory Affairs or other person designated by the Governor as the Chief Regulatory Officer, as provided below;

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, pursuant to the powers vested in me by the constitution of state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

I. CREATION

A. The Office of Regulatory Reinvention is created within the Department of Licensing and Regulatory Affairs.

B. The Director of the Department of Licensing and Regulatory Affairs shall also serve as the Director of the Office of Regulatory Reinvention and Chief Regulatory Officer of the state of Michigan, unless otherwise designated by the Governor.

C. The Office of Regulatory Reinvention shall be responsible for creating a regulatory environment and regulatory processes that are fair, efficient, and conducive to business growth and job creation through its oversight and review of current rules and regulations and proposed rule making and regulatory activities by all departments and agencies.

II. AUTHORITY OF THE OFFICE OF REGULATORY REINVENTION

A. The Office of Regulatory Reinvention shall possess all authority, powers, duties, functions, responsibilities, and rule making authority previously transferred to the State Office of Administrative Hearings and Rules under Section V of Executive Order 2005-1 and under Executive Order 2005-26 relative to the review, approval, processing, compilation, publication, and coordination of administrative rules, in addition to all authority, powers, duties, responsibilities, and rule making authority described below.

B. The authority, powers, duties, functions, and responsibilities of the Administrative Rules Manager created by Section V. B. of Executive Order 2005-1 are transferred to the Chief Regulatory Officer.

III. SYSTEMATIC REVIEW OF MICHIGAN RULES AND RULE MAKING

A. The Office of Regulatory Reinvention shall be responsible for completing a systematic review of all existing and proposed rules and rule making processes.

B. The Office of Regulatory Reinvention shall make a written report to the Governor with respect to its recommendations concerning existing rules and regulations, and proposed rule making and regulatory activities. In forming its recommendations, the Office of Regulatory Reinvention shall consider such factors and information it deems useful, including recommendations made by certain Advisory Rules Committees to be formed by the Office of Regulatory Reinvention in consultation with the directors of other departments or agencies. The Advisory Rules Committees may consider, as determined by the Office of Regulatory Reinvention, rules areas such as Workplace Safety, Insurance and Banking, Utilities, Environment, Natural Resources, Occupational Licensing, Agriculture, and Health Care. Membership in all Advisory Rules Committees shall be established by the Office of Regulatory Reinvention with the expectation that a broad spectrum of stakeholders, including members of the regulated community and the general public, will be included in their membership.

C. The Office of Regulatory Reinvention shall post the names of the Advisory Rules Committees and the names of their members on an internet site with information regarding the anticipated scope of the rules and regulations to be reviewed by each Advisory Rules Committee. The internet site shall include an opportunity for the public to offer comments and suggestions on rules being reviewed. Comments and suggestions will also be accepted in writing when mailed to the Department of Licensing and Regulatory Affairs, 611 W. Ottawa, P.O. Box 30004, Lansing, MI 48909-7504, Attn: Office of Regulatory Reinvention.

D. The Office of Regulatory Reinvention shall review and evaluate all promulgated and proposed rules by considering, without limitation, the following factors:

1. The health or safety benefits of the rules;

2. Whether the rules are mandated by any applicable constitutional or statutory provision;

3. The cost of compliance with the rules, taking into account their complexity, reporting requirements, and other factors;

4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government;

5. The extent to which the rules exceed national or regional compliance requirements or other standards;

6. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions or other factors have changed regulatory activity covered by the rules since the last evaluation;

7. Other changes or developments since implementation that demonstrate there is no continued need for the rules;

8. The recommendations of any Advisory Rules Committees formed pursuant to this Order, which shall consider the factors set forth in paragraphs 1-7 of this Section III. D.;

9. The recommendations of any departments or agencies that are or will be charged with the implementation or enforcement of the rules. Those departments or agencies shall also review the rules and shall consider the factors set forth in paragraphs 1-7 of this Section III. D.;

10. Comments received from the public under Section III of this Order;

11. The nature of any complaints or comments the Office of Regulatory Reinvention receives, or any departments or agencies receive, from the public concerning the rules; and

12. Other factors the Office of Regulatory Reinvention considers necessary or appropriate.

E. The requirements contained in Section III. D. do not apply to rules promulgated pursuant to Sections 44 and 48 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.244 and 24.248.

F. An Advisory Rules Committee shall submit a report detailing its findings and making recommendations to the Office of Regulatory Reinvention within 120 days of the formation of the Committee. The Chief Regulatory Officer may grant a 120-day extension of the 120-day report requirement. Upon issuance of its report, the Advisory Rules Committee shall be dissolved.

G. The Office of Regulatory Reinvention shall review the submissions of the Advisory Rules Committees and the other factors set forth above, and shall submit a report outlining recommended actions to the Governor as soon as practicable after such submissions are reviewed.

H. In addition to the systematic review described above, the Office of Regulatory Reinvention is granted authority to direct additional, targeted reviews of selected rule areas utilizing new Advisory Rules Committees or such other processes as the Office of Regulatory Reinvention deems necessary or appropriate, and may submit its findings and recommendations to the Governor.

I. The Office of Regulatory Reinvention shall establish a dedicated web site to inform the public and seek input on matters outlined in Section III.

IV. OVERSIGHT OF NON-RULE REGULATORY ACTIONS

A. In order to reduce regulatory burdens on the citizens of Michigan, the Office of Regulatory Reinvention shall have oversight authority over non-rule regulatory actions adopted by departments and agencies. At its discretion, the Office of Regulatory Reinvention may exercise its oversight authority by selecting non-rule regulatory actions for review. Following that review, the Office of Regulatory Reinvention may order the elimination, suspension, or modification of the non-rule regulatory action based on any of the following:

1. The Office of Regulatory Reinvention determines that a non-rule regulatory action is being used to support a department or agency's decision to act or refusal to act.'s

2. The Office of Regulatory Reinvention determines that a non-rule regulatory action exceeds the department's or agency's constitutional or statutory scope.

3. The Office of Regulatory Reinvention determines that a non-rule regulatory action is unduly burdensome or otherwise not consistent with the purposes set forth in this Order.

B. As used in this section, "non-rule regulatory action" means 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.

V. BEST REGULATORY MANAGEMENT PRACTICES

The Office of Regulatory Reinvention shall strive to ensure that all rule making comports with best regulatory management practices by requiring departments and agencies to do the following:

1. Complete a detailed cost-benefit analysis for all proposed rules that specifies the methodologies utilized in determining the existence and extent of the costs and benefits of the proposed rules as well as an assessment of any disproportionate impact of the rules based upon industrial sector, segment of the public, business size, geographic location, environmental resource, or other factors determined from time to time by the Office of Regulatory Reinvention.

2. Establish broadly representative stakeholder advisory groups and seeking the input of these groups on proposed rules as the department or agency deems appropriate or as directed by the Office of Regulatory Reinvention.

3. Detail all provisions in rules that exceed federal or regional standards and explain the rationale for the deviation and the specific costs and benefits of the deviation.

The Office of Regulatory Reinvention shall post the information required by this section, together with the Regulatory Impact Statement required under MCL 24.245, at least 21 calendar days before the public hearing on proposed rule changes.

VI. MISCELLANEOUS

A. To further reduce regulatory burdens and complexities, the Office of Regulatory Reinvention shall work with departments and agencies to reduce the number of forms and applications used by departments and agencies to fulfill their regulatory objectives. As part of this charge, the Office of Regulatory Reinvention shall work with the Michigan Economic Development Corporation and other stakeholders.

B. To encourage input from the public on reducing regulatory burdens and increasing customer satisfaction with the regulatory process, the Office of Regulatory Reinvention shall create an online suggestion box soliciting proposals and ideas on improving or reducing rule and non-rule regulatory requirements and forms.

C. The Office of Regulatory Reinvention shall establish, in consultation with state departments and agencies, dashboard metrics that track the performance of certain regulatory processes utilized by state departments and agencies.

VII. IMPLEMENTATION

1. The Director of the Department of Licensing and Regulatory Affairs shall provide executive direction and supervision necessary to ensure compliance with this Order.

2. The Director of the Department of Licensing and Regulatory Affairs, with the assistance of the Executive Director of the Michigan Administrative Hearing System, shall develop and issue a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Office of Regulatory Reinvention in its separation from the State Office of Administrative Hearings and Rules under Executive Order 2011-4.

3. The Director of the Department of Licensing and Regulatory Affairs shall administer the transferred powers, duties, functions and responsibilities in such ways as to promote effective administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. The Department of Technology, Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of this fiscal year concerning the transfers made under this Order.

5. All records, personnel, property, and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to SOAHR for the activities, powers, duties, functions and responsibilities transferred by this Order are hereby transferred to the Director of the Office of Regulatory Reinvention.

6. All rules, orders, contracts and agreements related to the assigned functions that were lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or terminated.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit,

action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

8. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements of Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order shall be effective 60 days after the filing of this Order.

History: 2011, E.R.O. No. 2011-5, Eff. Apr. 25, 2011

Compiler's Notes: Executive Reorganization Order No. 2011-5 was promulgated February 23, 2011 as Executive Order No. 2011-5, Eff. Apr. 25, 2011.For transfer of powers and duties of office of regulatory reinvention to the office of performance and transformation, and abolishment of the office of regulatory reinvention, see E.R.O. No. 2016-2, compiled at MCL 18.446.For transfer of powers and duties of director of department of licensing and regulatory affairs as executive director of office regulatory reinvention and chief regulatory officer of the state of Michigan to the executive director of office of performance and transformation, see E.R.O. No. 2016-2, compiled at MCL 18.446.In subsection “A.1.” under the heading “IV. OVERSIGHT OF NON-RULE REGULATORY ACTIONS”, “act.'s” evidently should read “act.”