EXECUTIVE BRANCH REORGANIZATION

Early Efforts

One of Michigan's earliest attempts at reorganizing and integrating the growing number of state agencies, boards, and commissions was initiated by Governor **Alexander J. Groesbeck** in 1920. At his urging, the legislature enacted a statute creating the State Administrative Board to set administrative policy for more than 100 independent departments, bureaus, commissions, and agencies. The board, which consisted of the governor, secretary of state, state treasurer, auditor general, attorney general, highway commissioner, and superintendent of public instruction, merged 33 boards and agencies into 5 new departments — Agriculture, Conservation, Labor, Public Safety, and Welfare. Other efforts at administrative consolidation were initiated by Governor **Frank Murphy** in 1936, under the Commission on Reform and Modernization of Government. And in 1949, the Joint Legislative Committee on Reorganization of State Government, sometimes referred to as the "little Hoover commission," was created to study the issue of executive branch reorganization. One of the committee's recommendations — allowing the governor to propose a reorganization subject to legislative disapproval — was later embodied in Act 125 of 1958, which established a method by which the governor could submit plans for the reorganization of executive agencies to the legislature, subject to disapproval by either house:

> Sec. 1. Within the first 30 days of any regular legislative session, the governor may submit to both houses of the legislature at the same time, 1 or more formal and specific plans for the reorganization of executive agencies of state government.
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> Sec. 2. A reorganization plan so submitted shall become effective by executive order not sooner than 90 days after the final adjournment of the session of the legislature to which it is submitted, unless it is disapproved within 60 legislative days of its submission by a senate or house resolution adopted by a majority vote of the respective members-elect thereof.
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> Sec. 3. The presiding officer of the house in which a resolution disapproving a reorganization plan has been introduced, unless the resolution has been previously accepted or rejected by that house, shall submit it to a vote of the membership not later than 60 legislative days after the submission by the governor to that house of the reorganization plan to which the resolution pertains.

A reorganization plan not disapproved by one or the other house of the legislature in the manner set forth in the act was to be considered for all purposes as the equivalent in force, effect, and intent of a public act of the state upon its taking effect by executive order. In addition, a reorganization plan not disapproved by one or the other house of the legislature was to be subject to the provisions of the state constitution respecting the exercise of the referendum power reserved to the people in the same manner as prescribed for the approval or rejection of any legislative enactment subject to the referendum power.

Both Governor **G. Mennen Williams** and Governor **John B. Swainson** submitted reorganization plans to the legislature under authority of Act 125 of 1958, but, with one exception, all were rejected by the legislature.

The Constitution of 1963

Concerns over what many considered an unwieldy structure of state government under the Constitution of 1908 were cited by advocates of a new constitution. The question of what authority should be granted the governor to reorganize state government was debated again at the Constitutional Convention of 1961. After debate in which some delegates were concerned about how to balance the "tremendous political power" that could result from reorganization authority, the constitution was adopted with a process that gave responsibility to both the executive and the legislative branches.

The legislature was given the authority to undertake the initial reorganization. If the legislature failed to complete the reassignments in two years, the governor was authorized to make the initial reorganization within one year thereafter. The **mandatory reorganization of executive offices and agencies** into no more than 20 principal departments was to follow these provisions:

> All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated

> by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes. (Const., Schedule and Temporary Provisions, sec. 12.)

After that "initial allocation" of agencies by law, the governor

> . . . may 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. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor. [Const. 1963, art. V, sec. 2.]

Executive Organization Act of 1965

In fact, the initial allocation of executive branch offices, agencies, and instrumentalities among 19 principal departments was effected by the legislature through the enactment of the Executive Organization Act of 1965, MCL 16.101, *et seq.* Consequently, the governor was never required to undertake the allocation of agencies, although on several occasions, our governors have used this reorganization power to make changes in the organization of the executive branch.

The act provides a general mechanism for placing existing agencies into the framework of the 19 principal departments. Three types of transfers could be effectuated. Under a **Type I transfer**, an agency is merely identified as being within a particular department; the agency continues to perform its functions as prescribed by statute. Under a **Type II transfer**, the agency loses autonomous control of its functions — "all its statutory authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement [are] transferred to that principal department." Under a **Type III transfer**, the agency is abolished. (MCL 16.103).

Notable Reorganization Efforts

Although previous governors made use of the executive reorganization power, none used it more frequently or as extensively as Governor **John Engler** to reshape the executive branch of state government. During his tenure as governor (1991-2002), he issued more than 100 executive reorganization orders considered necessary for efficient administration. These included orders to revamp the state's job-creating agencies and orders to create entirely new departments, including the Department of Information Technology and the Department of History, Arts and Libraries in 2001.

In 1991, various environmental protection functions were split off from the Department of Natural Resources and a new Department of Environmental Quality was created. The Department of Natural Resources was also reshaped with the governor given authority to appoint the head of the Natural Resources Commission. The executive reorganization order that created the Department of Environmental Quality — Executive Order No. 1991-31 — was challenged by the Speaker of the House and 2 not-for-profit corporate plaintiffs on the grounds that the order exceeded the governor's limited legislative authority under Const. 1963, art. 5, sec. 2. The case ultimately required the Michigan Supreme Court to determine the scope of authority granted to the governor to effect subsequent changes in the structure of the executive branch; specifically, whether the governor, through an executive order not disapproved by the legislature, could constitutionally transfer the authority, powers, and duties of the legislatively created Department of Natural Resources to a new, gubernatorially created Department of Natural Resources. The court found that Const. 1963, art. 5, sec. 2 authorized the governor to make such broad changes in the organization of the executive branch and that neither the separation of powers doctrine nor the Executive Organization Act of 1965 could be interpreted to prevent the governor from exercising his constitutionally mandated powers. (See *House Speaker* v *Governor*, 443 Mich 560 (1993)).

Governor **Jennifer Granholm** utilized the reorganization authority to reshape the executive branch to reflect changed conditions in the state. Executive Order No. 2003-18 (creation of the Department of Labor and Economic Growth, which was renamed the Department of Energy, Labor and Economic Growth by Executive Order 2008-20) brought about major changes among the agencies faced with responsibilities involving the work place, regulatory matters, and the state's economic development and work force training efforts. Executive Order No. 2007-30 consolidated human resources services, abolished the Department of Civil Service, and transferred the functions of the

Civil Service Commission and the State Personnel Director to the Department of Management and Budget.

In 2009, Executive Order 2009-36, amended by Executive Order 2009-43, abolished the Department of History, Arts and Libraries and transferred its responsibilities and agencies to various departments. Executive Order 2009-45 combined the Department of Natural Resources and the Department of Environmental Quality to create the new Department of Natural Resources and Environment. Executive Order 2009-55 combined the Department of Management and Budget and the Department of Information Technology to create the new Department of Technology, Management, and Budget.

Governor **Rick Snyder** continued the tradition of aligning the executive departments to suit his strategy and style of management. Shortly after taking office, Executive Order 2011-1 split the Department of Natural Resources and the Department of Environmental Quality into 2 units (they had been combined into a single department by Executive Orders in 2009). He also established the Department of Licensing and Regulatory Affairs (Executive Order 2011-4) and abolished the Department of Energy, Labor and Economic Growth.