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 Swainson** submitted reorganization plans to the legislature under authority of Act 125 of 1958, but, with one exception, all were rejected by the legislature.

Constitutional Convention of 1961

The extent of constitutional authority to be granted the governor to reorganize state government was debated again at the Constitutional Convention of 1961. While a minority of delegates believed that the executive branch committee **proposal requiring a two-house veto of executive reorganization orders** would allow a governor to wield "tremendous political power," a majority favored the proposal, believing it would lead to a stronger chief executive. The adopted proposal provided that after the "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.]

The record of the constitutional convention indicates that the convention's purpose in including this provision was to facilitate economy and efficiency in the executive agencies. The convention felt that the legislature previously had failed to effectuate a reorganization itself, and that the governor was in the best position to accomplish the desired ends, having intimate knowledge of the administrative problems in state government. And, although the convention recognized that the reorganization power granted the governor was *legislative in nature*, the delegates chose to include this delegation to the governor in the constitution, subject to checks and balances considered necessary to restrain the broad grant of power.

In 1963, the people of the State of Michigan adopted the new constitution, which, in addition to granting the governor the power to reorganize by executive order, provided for the **mandatory reorganization of executive offices and agencies** into no more than 20 principal departments:

> 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.

The legislature was given the authority to undertake the initial reorganization. But if the legislature failed to complete the reassignments in two years, the governor was authorized to make the initial reorganization within one year thereafter.

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, he has used his 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(c); MSA 3.29(3)(c). While the supreme court has noted that the governor should use these transfer mechanisms when issuing a reorganization plan, it has nevertheless recognized he is not bound to follow such procedures.

Separation of Powers

It has been argued that broad legislative power to reorganize the executive branch granted the governor could not have been intended by the framers of the 1963 Constitution since it violates the doctrine of separation of powers by commingling executive and legislative functions within one branch of the government.

In *Soap and Detergent Association* v *NRC*, 415 Mich 728 (1982), the supreme court noted that the doctrine of separation of powers is generally attributed to Montesquieu who pinpointed the fault with the vesting of both legislative and executive functions in one branch of the government:

> When the legislative and executive powers are united in the same person of body . . . there can be no liberty; because *apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner*. (Emphasis added.)

But Madison, in the Federalist No. 47, clarifies Montesquieu, explaining that he did not mean there could be no overlapping of functions between branches, or no control over the acts of the other. Rather,

> . . . [h]is meaning . . . can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted. [The Federalist No. 47 (J. Madison).]

These principles have been adopted in Michigan. Thus, while Const. 1963, art. 3, sec. 2, provides for strict separation of powers, this has not been interpreted to mean that the branches must be kept wholly separate. Additionally, where, as in Const. 1963, art. 5, sec. 2, the constitution explicitly grants powers of one branch to another, there can be no separation of powers problem.

Further, Const. 1963, art. 5, sec. 2, does not vest all or any considerable legislative power in the executive. While broad legislative power has been delegated to the governor to effectuate executive reorganization, this power is clearly limited. First, the area of executive exercise of legislative power is very limited and specific; second, the executive branch is not the sole possessor of this power; the legislature has concurrent power to transfer functions and powers of the executive agencies; and third, the legislature is specifically granted the power to veto executive reorganization orders before they become law.

Recent 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, including those:

1) abolishing the Department of Licensing and Regulation and transferring its powers, duties and functions to the Department of Commerce (now Department of Consumer and Industry Services);
2) abolishing the Corrections Commission and transferring its powers, duties, and functions to the Department of Corrections, except the power to appoint the Director, which is now vested in the Governor;
3) transferring the duties and functions of the Department of Treasury's Tax Fraud Division to the Department of State Police;
4) essentially abolishing the existing Department of Natural Resources and creating a "new" Department of Natural Resources, with the head of the new department continuing to be the Commission of Natural Resources, but the governor having authority to appoint the chair of the commission; abolishing several legislatively-established boards and commissions and transferring their authority over natural resources and environmental protection to the director of the "new" Department of Natural Resources;
5) creating the Department of Environmental Quality;
6) transferring the Michigan Employment Security Agency's statutory authority, powers, duties, functions, and responsibilities to perform unemployment insurance program functions to the Department of Consumer and Industry Services as an autonomous entity to be known as the Unemployment Agency;
7) creating the Department of Career Development; transferring all remaining authority, powers, duties, functions, responsibilities, and personnel from the Department of the Michigan Jobs Commission to the Department of Career Development; and abolishing the Department of the Michigan Jobs Commission;
8) transferring the Michigan Strategic Fund to the Department of Management and Budget (DMB) as an autonomous entity within DMB; and
9) creating the Department of Information Technology.

The executive reorganization order described in (5) above — Executive Order No. 1991-31 — was challenged by the Speaker of the House and two not-for-profit corporate plaintiffs on the ground 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).