

EXECUTIVE REORGANIZATION ORDER (EXCERPT)
E.R.O. No. 2005-1

445.2021 Creation of state office of administrative hearings (SOAHR) as type I agency within department of labor and economic growth; duties; services; hearings; functions and personnel not subject to transfer; transfer of administrative rule processing and review function by type III transfer.

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

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 that the Governor considers necessary for efficient administration;

WHEREAS, Section 5 of Article XI of the Michigan Constitution of 1963 empowers the Civil Service Commission to fix rates of compensation for all classes of positions, to approve or disapprove all disbursements for personal services, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the state classified service;

WHEREAS, the People of the State of Michigan deserve a regulatory and administrative hearing process that is efficient, effective, understandable, and responsive;

WHEREAS, it is organizationally sound and appropriate to concentrate the review and legal certification of administrative rules and administrative hearing functions in one office;

WHEREAS, the centralization of state government functions relating to the processing and promulgation of administrative rules and the conduct of administrative hearings will eliminate unnecessary duplication and facilitate more effective implementation of policy;

WHEREAS, better coordination of administrative hearing functions can contribute to the development of expertise in the requisite areas of law and foster more extensive knowledge of relevant statutes, rules, governing court cases and precedent;

WHEREAS, improvements in the organization of state government are necessary to provide Michigan residents and job providers with improved delivery of state services;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

A. As used in this Order:

1. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

2. "Commissioner of Financial and Insurance Services" means the head of the Office of Financial and Insurance Services, created under Executive Order 2000-4, MCL 445.2003.

3. "Contested Case" means that term as defined in Section 3(3) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.203.

4. "Department or Agency" includes each principal department of state government, an agency, a board, a commission, a tribunal, or other entity within the Executive Branch of state government. "Department or Agency" does not include the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, or the Executive Office of the Governor.

5. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011.

6. "Department of State" means the principal department of state government created under Section 25 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.125.

7. "Hearing Officer" means an individual who conducts or handles administrative hearings or administrative hearing functions for a Department or Agency, including, but not limited to, a hearing officer, hearings officer, hearing examiner, administrative law judge, or a presiding officer. "Hearing Officer" does not include an elected state official, a member of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

8. "Office of Regulatory Reform" means the entity created within the Executive Office of the Governor

under Executive Order 1995-6, MCL 10.151, as codified within the Department of Management and Budget under Section 34 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.234 (as added by 1999 PA 262), transferred to the Executive Office of the Governor under Executive Order 2000-1, MCL 10.152, and re-transferred to the Department of Management and Budget under Executive Order 2002-11, MCL 10.153.

9. "State Office of Administrative Hearings and Rules" or "SOAHR" means the Type I Agency created within the Department of Labor and Economic Growth under Section II.

10. "Type I Agency" means an agency established consistent with Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

11. "Type III Transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. CREATION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

A. The State Office of Administrative Hearings and Rules (SOAHR) is created as a Type I Agency within the Department of Labor and Economic Growth. The SOAHR shall be headed by a director known as the Executive Director of the State Office of Administrative Hearings and Rules. The appointing authority for the Executive Director of the SOAHR shall be the Governor. The Executive Director of the SOAHR shall administer the personnel functions of the SOAHR and be the appointing authority for employees of the SOAHR.

B. As a Type I Agency, the State Office of Administrative Hearings and Rules shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication independently of the Director of the Department of Labor and Economic Growth. The budgeting, procurement, and related management functions of the SOAHR shall be performed under the direction and supervision of the Director of the Department of Labor and Economic Growth.

C. The State Office of Administrative Hearings and Rules shall lead state efforts to continually evaluate policies and procedures for conducting administrative hearings and for the processing and review of administrative rules with the goal of developing best practices in these areas.

D. The State Office of Administrative Hearings and Rules shall provide services related to administrative hearing functions including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, for a Department or Agency affected by the transfers under Section III. To assure the timely and effective delivery of services related to administrative hearing functions, compliance with state and federal law, the promulgation of administrative rules, and the assignment of personnel to perform administrative hearing functions with expertise in the appropriate subject areas and the law, the SOAHR shall develop an interagency agreement relating to the provision of services with each principal department that includes a Department or Agency affected by the transfers under Section III.

E. Hearings conducted by the State Office of Administrative Hearings and Rules shall be conducted in an impartial manner. A Contested Case hearing, or the hearing portion of a Contested Case, conducted by the SOAHR shall be conducted in an impartial manner, as required under Section 79 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.279. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the SOAHR shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. When a presiding officer is disqualified or it is impracticable for the officer to continue the hearing, another presiding officer may be assigned by the Executive Director of the SOAHR unless it is shown that substantial prejudice to the party will result therefrom.

F. A Hearing Officer of the State Office of Administrative Hearings and Rules may administer an oath or affirmation to a witness in a matter before the SOAHR, certify to official acts, and take depositions, in the same manner as authorized under Section 74 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.274. To the extent authorized by law, a Hearing Officer of the SOAHR may issue a subpoena requiring a party or a witness to attend and testify at a hearing and to require the production of records.

G. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform administrative hearing functions for the Michigan Public Service Commission from a list of Hearing Officers approved by the Michigan Public Service Commission to perform administrative hearing functions for the Michigan Public Service Commission. If the Michigan Public Service Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Public Service Commission. Personnel reviews of Hearing Officers performing administrative hearing functions for the Michigan Public Service Commission shall be conducted jointly by the SOAHR and the Michigan Public Service Commission or its designee from within the Commission. The Executive Director of the SOAHR shall be the appointing

authority for Hearing Officers subject to this paragraph.

H. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform administrative hearing functions for the Michigan Employment Relations Commission from a list of Hearing Officers approved by the Michigan Employment Relations Commission to perform administrative hearing functions for the Michigan Employment Relations Commission. If the Michigan Employment Relations Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Employment Relations Commission. The Executive Director of the SOAHR shall be the appointing authority for Hearing Officers subject to this paragraph.

I. At the request of a Department or Agency not affected by the transfers under Section III, the SOAHR may provide services related to administrative hearing functions, including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, and related functions under an interagency agreement between the SOAHR and the Department or Agency.

III. TRANSFER OF ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL

A. Except as otherwise provided in Sections II.G, II.H, and IV, all authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of a Department or Agency involved in any of the following activities related to administrative hearing functions are transferred to the State Office of Administrative Hearings and Rules:

1. The conduct or handling of administrative hearings by a Hearing Officer, including, but not limited to, a Contested Case hearing or the hearing portion of a Contested Case, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

2. The designation, authorization, appointment, or selection of Hearing Officers.

3. The development, writing, and submission of any proposal for decision or report following an administrative hearing by a Hearing Officer.

4. The functions related to administrative hearings performed by a Hearing Officer or other individual such as staff support for hearings or Hearing Officers, or the management or administration of hearings or Hearing Officers.

IV. ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL NOT SUBJECT TO TRANSFER

A. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources related to the appeal, review of, or final determination regarding a decision or proposed decision issued by a Hearing Officer for a Department or Agency shall remain with the Department or Agency, and are not transferred under Section III.

B. No authority, powers, duties, functions, responsibilities, property, records, personnel, or funds held by the Civil Service Commission solely under the authority granted to the Commission by Section 5 of Article XI of the Michigan Constitution of 1963 are transferred under Section III, unless approved by the Civil Service Commission.

C. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources involved in any of the following activities related to administrative hearing functions are not transferred to the State Office of Administrative Hearings and Rules under Section III:

1. Hearings conducted by an elected state officer, a member or members of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

2. An informal conference not subject to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, under Michigan law.

3. Any hearings conducted by the State Administrative Board or a committee of the State Administrative Board.

4. Hearings conducted by an independent hearing officer under Part 5 of The Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1501 to 550.1518.

5. Hearings conducted by an independent hearing officer under Part 6 of the Nonprofit Healthcare Corporation Reform Act, 1980 PA 350, MCL 550.1601 to 550.1619, except for an administrative hearing conducted under Section 1605 of the Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1605.

6. Hearings conducted by independent hearings officers selected by the Commissioner of Financial and Insurance Services from a list submitted by the American Arbitration Association under Subsection (3) of Section 2030 of The Insurance Code of 1956, 1956 PA 218, MCL 500.2030.

7. Administrative hearings conducted by the Department of Civil Rights consistent with the power of the Civil Rights Commission to conduct hearings under Section 29 of Article V of the Michigan Constitution of

1963.

8. Administrative hearings conducted by the Department of State under any of the following:
 - a. 1978 PA 472, MCL 4.411 to 4.431 (lobbyists, lobbying agents, and lobbying activity).
 - b. The Michigan Notary Public Act, 2003 PA 238, MCL 55.261 to 55.315.
 - c. The Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992.
 - d. The Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 to 169.282.
 - e. The Driver Education and Training Schools Act, 1974 PA 369, MCL 256.601 to 256.612.
 - f. The Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923.
 - g. The Motor Vehicle Service and Repair Act, 1974 PA 300, MCL 257.1301 to 257.1340.
 - h. Section 80190 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.80190 (marine safety).
 - i. Section 81140 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.81140 (off-road recreation vehicles).
 - j. Part 821 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.82101 to 324.82160 (snowmobiles).

V. TRANSFER OF ADMINISTRATIVE RULE PROCESSING AND REVIEW FUNCTIONS

A. All authority, powers, duties, functions, responsibilities, and rule-making authority of the Office of Regulatory Reform are transferred by Type III Transfer to the State Office of Administrative Hearings and Rules created under Section II, including, but not limited to, any authority, powers, duties, functions, responsibilities, or rule-making authority of the Office of Regulatory Reform under any of the following:

1. The Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328.
2. 1970 PA 193, MCL 8.41 to 8.48 (compilation of laws and rules).
3. The Legislative Council Act, 1986 PA 268, MCL 4.1101 to 4.1901.
4. Executive Order 1995-6, MCL 10.151.
5. Executive Order 2000-1, MCL 10.152.
6. Executive Order 2002-11, MCL 10.153.

B. The position of Administrative Rules Manager is created within the State Office of Administrative Hearings and Rules. The powers, duties, functions, responsibilities, and rule-making authority transferred under this Section V shall be administered within the SOAHR under the direction of the Administrative Rules Manager.

C. The Director of the Department of Labor and Economic Growth, in consultation with the Director of the Department of Management and Budget, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under this Section V.

D. The Director of the Department of Management and Budget shall immediately initiate coordination with the Department of Labor and Economic Growth to facilitate the transfers and 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 Department of Management and Budget or the Office of Regulatory Reform related to the transfers under this Section V.

E. The Office of Regulatory Reform is abolished.

VI. MISCELLANEOUS

A. An individual designated by the Governor as the Administrative Hearing Consolidation Transition Director shall be responsible for coordination of the implementation of Section III. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall jointly identify the positions that will be transferred to the State Office of Administrative Hearings and Rules under Section III, consistent with this Order. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall make every effort to develop agreements specifying the positions that will be transferred under Section III by the effective date of this Order. In the event of a failure to reach agreement on the positions to be transferred under Section III, the Administrative Hearing Consolidation Transition Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the SOAHR shall be consistent with this Order and documented by a memorandum of understanding between the director of the principal department that includes a Department or Agency affected by this Order and the Director of the Department of Labor and Economic Growth.

B. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under Section III.

C. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall immediately initiate coordination with Departments and Agencies to facilitate the transfers under Section III. Each principal department that includes a Department or Agency affected by the transfers under Section III shall issue, after consultation with the Administrative Hearings Consolidation Transition Director, 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 transferring departments and agencies related to the transfers under Section III.

D. Departments and Agencies and state officers shall fully and actively cooperate with the State Office of Administrative Hearings and Rules and the Administrative Hearings Consolidation Transition Director in the implementation of this Order. The Executive Director of the SOAHR may request the assistance of other Departments and Agencies and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other management-related functions, and such departments and agencies shall provide such assistance.

E. The Executive Director of the State Office of Administrative Hearings and Rules shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

F. The Executive Director of the State Office of Administrative Hearings and Rules in writing may delegate within the SOAHR a duty or power conferred on the Executive Director of the SOAHR by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Executive Director of the SOAHR.

G. The Executive Director of the State Office of Administrative Rules, or his or her designee, may hire or retain such contractors, subcontractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of powers and performance of the duties of the SOAHR and its Executive Director. Under this provision, the Executive Director of the SOAHR, or his or her designee, may specifically hire or retain such contractors, sub-contractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary to provide legal advice, legal services, arbitration services or mediation services, to provide for research and development activity, and to provide strategic planning services, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget.

H. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the State Office of Administrative Hearings and Rules are transferred to the State Office of Administrative Hearings and Rules.

I. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

J. All rules, orders, contracts, and agreements relating to the functions transferred to the State Office of Administrative Hearings and Rules under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

K. 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.

L. After the effective date of this Order, and as necessary to accomplish the missions and goals of executive branch departments and agencies, the Executive Director of the State Office of Administrative Hearings and Rules or the director of a principal department of state government may petition the State Administrative Board to detail an employee or a position transferred to the SOAHR from a department under the provisions of this Section III back to the department of origin, or a successor department. Consistent with the authority of the State Administrative Board under Section 3 of 1921 PA 2, MCL 17.3, to exercise general supervisory control over the functions and activities of all administrative departments, boards, commissions, and officers of this state and to order an interchange or transfer of employees between departments, boards, commissions, and state institutions when necessary, the State Administrative Board may, in its discretion and to the extent authorized by law, order the requested transfer.

M. Nothing in this Order shall be construed to diminish or limit the power of the Civil Service Commission to exercise authority granted to the Commission under Section 5 of Article XI of the Michigan

Constitution of 1963.

N. 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.

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

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 that the Governor considers necessary for efficient administration;

WHEREAS, Section 5 of Article XI of the Michigan Constitution of 1963 empowers the Civil Service Commission to fix rates of compensation for all classes of positions, to approve or disapprove all disbursements for personal services, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the state classified service;

WHEREAS, the People of the State of Michigan deserve a regulatory and administrative hearing process that is efficient, effective, understandable, and responsive;

WHEREAS, it is organizationally sound and appropriate to concentrate the review and legal certification of administrative rules and administrative hearing functions in one office;

WHEREAS, the centralization of state government functions relating to the processing and promulgation of administrative rules and the conduct of administrative hearings will eliminate unnecessary duplication and facilitate more effective implementation of policy;

WHEREAS, better coordination of administrative hearing functions can contribute to the development of expertise in the requisite areas of law and foster more extensive knowledge of relevant statutes, rules, governing court cases and precedent;

WHEREAS, improvements in the organization of state government are necessary to provide Michigan residents and job providers with improved delivery of state services;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

A. As used in this Order:

1. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

2. "Commissioner of Financial and Insurance Services" means the head of the Office of Financial and Insurance Services, created under Executive Order 2000-4, MCL 445.2003.

3. "Contested Case" means that term as defined in Section 3(3) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.203.

4. "Department or Agency" includes each principal department of state government, an agency, a board, a commission, a tribunal, or other entity within the Executive Branch of state government. "Department or Agency" does not include the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, or the Executive Office of the Governor.

5. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011.

6. "Department of State" means the principal department of state government created under Section 25 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.125.

7. "Hearing Officer" means an individual who conducts or handles administrative hearings or administrative hearing functions for a Department or Agency, including, but not limited to, a hearing officer, hearings officer, hearing examiner, administrative law judge, or a presiding officer. "Hearing Officer" does not include an elected state official, a member of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

8. "Office of Regulatory Reform" means the entity created within the Executive Office of the Governor under Executive Order 1995-6, MCL 10.151, as codified within the Department of Management and Budget under Section 34 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.234 (as added by 1999 PA 262), transferred to the Executive Office of the Governor under Executive Order 2000-1, MCL.

10.152, and re-transferred to the Department of Management and Budget under Executive Order 2002-11, MCL 10.153.

9. "State Office of Administrative Hearings and Rules" or "SOAHR" means the Type I Agency created within the Department of Labor and Economic Growth under Section II.

10. "Type I Agency" means an agency established consistent with Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

11. "Type III Transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. CREATION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

A. The State Office of Administrative Hearings and Rules (SOAHR) is created as a Type I Agency within the Department of Labor and Economic Growth. The SOAHR shall be headed by a director known as the Executive Director of the State Office of Administrative Hearings and Rules. The appointing authority for the Executive Director of the SOAHR shall be the Governor. The Executive Director of the SOAHR shall administer the personnel functions of the SOAHR and be the appointing authority for employees of the SOAHR.

B. As a Type I Agency, the State Office of Administrative Hearings and Rules shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication independently of the Director of the Department of Labor and Economic Growth. The budgeting, procurement, and related management functions of the SOAHR shall be performed under the direction and supervision of the Director of the Department of Labor and Economic Growth.

C. The State Office of Administrative Hearings and Rules shall lead state efforts to continually evaluate policies and procedures for conducting administrative hearings and for the processing and review of administrative rules with the goal of developing best practices in these areas.

D. The State Office of Administrative Hearings and Rules shall provide services related to administrative hearing functions including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, for a Department or Agency affected by the transfers under Section III. To assure the timely and effective delivery of services related to administrative hearing functions, compliance with state and federal law, the promulgation of administrative rules, and the assignment of personnel to perform administrative hearing functions with expertise in the appropriate subject areas and the law, the SOAHR shall develop an interagency agreement relating to the provision of services with each principal department that includes a Department or Agency affected by the transfers under Section III.

E. Hearings conducted by the State Office of Administrative Hearings and Rules shall be conducted in an impartial manner. A Contested Case hearing, or the hearing portion of a Contested Case, conducted by the SOAHR shall be conducted in an impartial manner, as required under Section 79 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.279. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the SOAHR shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. When a presiding officer is disqualified or it is impracticable for the officer to continue the hearing, another presiding officer may be assigned by the Executive Director of the SOAHR unless it is shown that substantial prejudice to the party will result therefrom.

F. A Hearing Officer of the State Office of Administrative Hearings and Rules may administer an oath or affirmation to a witness in a matter before the SOAHR, certify to official acts, and take depositions, in the same manner as authorized under Section 74 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.274. To the extent authorized by law, a Hearing Officer of the SOAHR may issue a subpoena requiring a party or a witness to attend and testify at a hearing and to require the production of records.

G. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform administrative hearing functions for the Michigan Public Service Commission from a list of Hearing Officers approved by the Michigan Public Service Commission to perform administrative hearing functions for the Michigan Public Service Commission. If the Michigan Public Service Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Public Service Commission. Personnel reviews of Hearing Officers performing administrative hearing functions for the Michigan Public Service Commission shall be conducted jointly by the SOAHR and the Michigan Public Service Commission or its designee from within the Commission. The Executive Director of the SOAHR shall be the appointing authority for Hearing Officers subject to this paragraph.

H. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform administrative hearing functions for the Michigan Employment Relations Commission from a list of Hearing

Officers approved by the Michigan Employment Relations Commission to perform administrative hearing functions for the Michigan Employment Relations Commission. If the Michigan Employment Relations Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Employment Relations Commission. The Executive Director of the SOAHR shall be the appointing authority for Hearing Officers subject to this paragraph.

I. At the request of a Department or Agency not affected by the transfers under Section III, the SOAHR may provide services related to administrative hearing functions, including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, and related functions under an interagency agreement between the SOAHR and the Department or Agency.

III. TRANSFER OF ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL

A. Except as otherwise provided in Sections II.G, II.H, and IV, all authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of a Department or Agency involved in any of the following activities related to administrative hearing functions are transferred to the State Office of Administrative Hearings and Rules:

1. The conduct or handling of administrative hearings by a Hearing Officer, including, but not limited to, a Contested Case hearing or the hearing portion of a Contested Case, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

2. The designation, authorization, appointment, or selection of Hearing Officers.

3. The development, writing, and submission of any proposal for decision or report following an administrative hearing by a Hearing Officer.

4. The functions related to administrative hearings performed by a Hearing Officer or other individual such as staff support for hearings or Hearing Officers, or the management or administration of hearings or Hearing Officers.

IV. ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL NOT SUBJECT TO TRANSFER

A. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources related to the appeal, review of, or final determination regarding a decision or proposed decision issued by a Hearing Officer for a Department or Agency shall remain with the Department or Agency, and are not transferred under Section III.

B. No authority, powers, duties, functions, responsibilities, property, records, personnel, or funds held by the Civil Service Commission solely under the authority granted to the Commission by Section 5 of Article XI of the Michigan Constitution of 1963 are transferred under Section III, unless approved by the Civil Service Commission.

C. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources involved in any of the following activities related to administrative hearing functions are not transferred to the State Office of Administrative Hearings and Rules under Section III:

1. Hearings conducted by an elected state officer, a member or members of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

2. An informal conference not subject to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, under Michigan law.

3. Any hearings conducted by the State Administrative Board or a committee of the State Administrative Board.

4. Hearings conducted by an independent hearing officer under Part 5 of The Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1501 to 550.1518.

5. Hearings conducted by an independent hearing officer under Part 6 of the Nonprofit Healthcare Corporation Reform Act, 1980 PA 350, MCL 550.1601 to 550.1619, except for an administrative hearing conducted under Section 1605 of the Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1605.

6. Hearings conducted by independent hearings officers selected by the Commissioner of Financial and Insurance Services from a list submitted by the American Arbitration Association under Subsection (3) of Section 2030 of The Insurance Code of 1956, 1956 PA 218, MCL 500.2030.

7. Administrative hearings conducted by the Department of Civil Rights consistent with the power of the Civil Rights Commission to conduct hearings under Section 29 of Article V of the Michigan Constitution of 1963.

8. Administrative hearings conducted by the Department of State under any of the following:

a. 1978 PA 472, MCL 4.411 to 4.431 (lobbyists, lobbying agents, and lobbying activity).

- b. The Michigan Notary Public Act, 2003 PA 238, MCL 55.261 to 55.315.
- c. The Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992.
- d. The Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 to 169.282.
- e. The Driver Education and Training Schools Act, 1974 PA 369, MCL 256.601 to 256.612.
- f. The Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923.
- g. The Motor Vehicle Service and Repair Act, 1974 PA 300, MCL 257.1301 to 257.1340.
- h. Section 80190 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.80190 (marine safety).
- i. Section 81140 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.81140 (off-road recreation vehicles).
- j. Part 821 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.82101 to 324.82160 (snowmobiles).

V. TRANSFER OF ADMINISTRATIVE RULE PROCESSING AND REVIEW FUNCTIONS

A. All authority, powers, duties, functions, responsibilities, and rule-making authority of the Office of Regulatory Reform are transferred by Type III Transfer to the State Office of Administrative Hearings and Rules created under Section II, including, but not limited to, any authority, powers, duties, functions, responsibilities, or rule-making authority of the Office of Regulatory Reform under any of the following:

- 1. The Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328.
- 2. 1970 PA 193, MCL 8.41 to 8.48 (compilation of laws and rules).
- 3. The Legislative Council Act, 1986 PA 268, MCL 4.1101 to 4.1901.
- 4. Executive Order 1995-6, MCL 10.151.
- 5. Executive Order 2000-1, MCL 10.152.
- 6. Executive Order 2002-11, MCL 10.153.

B. The position of Administrative Rules Manager is created within the State Office of Administrative Hearings and Rules. The powers, duties, functions, responsibilities, and rule-making authority transferred under this Section V shall be administered within the SOAHR under the direction of the Administrative Rules Manager.

C. The Director of the Department of Labor and Economic Growth, in consultation with the Director of the Department of Management and Budget, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under this Section V.

D. The Director of the Department of Management and Budget shall immediately initiate coordination with the Department of Labor and Economic Growth to facilitate the transfers and 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 Department of Management and Budget or the Office of Regulatory Reform related to the transfers under this Section V.

E. The Office of Regulatory Reform is abolished.

VI. MISCELLANEOUS

A. An individual designated by the Governor as the Administrative Hearing Consolidation Transition Director shall be responsible for coordination of the implementation of Section III. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall jointly identify the positions that will be transferred to the State Office of Administrative Hearings and Rules under Section III, consistent with this Order. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall make every effort to develop agreements specifying the positions that will be transferred under Section III by the effective date of this Order. In the event of a failure to reach agreement on the positions to be transferred under Section III, the Administrative Hearing Consolidation Transition Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the SOAHR shall be consistent with this Order and documented by a memorandum of understanding between the director of the principal department that includes a Department or Agency affected by this Order and the Director of the Department of Labor and Economic Growth.

B. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under Section III.

C. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall immediately initiate coordination with Departments and Agencies to facilitate the transfers under Section III. Each principal department that includes a Department or

Agency affected by the transfers under Section III shall issue, after consultation with the Administrative Hearings Consolidation Transition Director, 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 transferring departments and agencies related to the transfers under Section III.

D. Departments and Agencies and state officers shall fully and actively cooperate with the State Office of Administrative Hearings and Rules and the Administrative Hearings Consolidation Transition Director in the implementation of this Order. The Executive Director of the SOAHR may request the assistance of other Departments and Agencies and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other management-related functions, and such departments and agencies shall provide such assistance.

E. The Executive Director of the State Office of Administrative Hearings and Rules shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

F. The Executive Director of the State Office of Administrative Hearings and Rules in writing may delegate within the SOAHR a duty or power conferred on the Executive Director of the SOAHR by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Executive Director of the SOAHR.

G. The Executive Director of the State Office of Administrative Rules, or his or her designee, may hire or retain such contractors, subcontractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of powers and performance of the duties of the SOAHR and its Executive Director. Under this provision, the Executive Director of the SOAHR, or his or her designee, may specifically hire or retain such contractors, sub-contractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary to provide legal advice, legal services, arbitration services or mediation services, to provide for research and development activity, and to provide strategic planning services, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget.

H. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the State Office of Administrative Hearings and Rules are transferred to the State Office of Administrative Hearings and Rules.

I. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

J. All rules, orders, contracts, and agreements relating to the functions transferred to the State Office of Administrative Hearings and Rules under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

K. 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.

L. After the effective date of this Order, and as necessary to accomplish the missions and goals of executive branch departments and agencies, the Executive Director of the State Office of Administrative Hearings and Rules or the director of a principal department of state government may petition the State Administrative Board to detail an employee or a position transferred to the SOAHR from a department under the provisions of this Section III back to the department of origin, or a successor department. Consistent with the authority of the State Administrative Board under Section 3 of 1921 PA 2, MCL 17.3, to exercise general supervisory control over the functions and activities of all administrative departments, boards, commissions, and officers of this state and to order an interchange or transfer of employees between departments, boards, commissions, and state institutions when necessary, the State Administrative Board may, in its discretion and to the extent authorized by law, order the requested transfer.

M. Nothing in this Order shall be construed to diminish or limit the power of the Civil Service Commission to exercise authority granted to the Commission under Section 5 of Article XI of the Michigan Constitution of 1963.

N. 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.

History: 2005, E.R.O. No. 2005-1, Eff. Mar. 27, 2005;—Am. 2005, E.R.O. No. 2005-4, Eff. Jan. 1, 2006.

Compiler's note: Part IV., entitled "IV. ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL NOT SUBJECT TO TRANSFER," was amended by E.R.O. No. 2005-4.

The introductory clauses of E.R.O. No. 2005-4 read as follows:

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

"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 that the Governor considers necessary for efficient administration;

"WHEREAS, the centralization of state government functions relating to the processing and promulgation of administrative rules and the conduct of administrative hearings in a State Office of Administrative Hearings and Rules ("SOAHR") has eliminated unnecessary duplication and facilitated more effective implementation of policy;

"WHEREAS, it is necessary and desirable to amend Executive Order 2005-1 to clarify those administrative hearing functions and personnel not subject to transfer and consolidation under Executive Order 2005-1;

"NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order:

"Section IV of Executive Order 2005-1 is amended to read as follows:"

For transfer of powers and duties of state office of administrative hearings and rules to Michigan administrative hearing system, and abolishment of state office of administrative hearings and rules, see E.R.O. No. 2011-4, compiled at MCL 445.2030.