

EXECUTIVE REORGANIZATION ORDER

E.R.O. No. 2009-38

324.99920 Transfer of certain powers and duties of department of agriculture to commission of agriculture; duties of director of department of agriculture; creation of Michigan agriculture preservation fund board; powers and duties of natural resources commission previously vested in commission on natural resources; renaming of Michigan trails advisory council to Michigan snowmobile and trails advisory council.

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 8 of Article V of the Michigan Constitution of 1963 provides that each principal department of state government shall be under the supervision of the Governor, unless otherwise provided in the Constitution;

WHEREAS, appropriate organization of the Commission of Agriculture will help assure the protection, promotion, and preservation of the food, agricultural, conservation, and economic interests of the People of the State of Michigan;

WHEREAS, changes in the organization of the Michigan Trails Advisory Council will help assure adequate representation of persons in Michigan interested in recreational activities involving snowmobiles;

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

As used in this Order:

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

B. "Commission of Agriculture" means the commission created under Section 1 of 1921 PA 13, MCL 285.1, and continued under Section 179 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.279.

C. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

D. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

E. "Department of Natural Resources and Environment" means the principal department of state government created under Executive Order 2009-45.

F. "Michigan Agriculture Preservation Fund Board" means the board created within the Department of Agriculture under Section II.C of this Order.

G. "Natural Resources Commission" means the commission created under Section 1 of 1921 PA 17, MCL 299.1, continued under Section 254 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.354, transferred to the Department of Natural Resources under Executive Order 1991-22, MCL 299.13, continued under Section 501 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.501, and renamed the Natural Resources Commission by Executive Order 2009-45.

H. "ORV" means that term as defined under Section 81101 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.81101.

I. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. DEPARTMENT OF AGRICULTURE

A. Commission of Agriculture

1. Except as otherwise provided in this Order, all of the authority, powers, duties, functions, responsibilities, and budgetary resources of the Department of Agriculture under all of the following are transferred to the Commission of Agriculture:

a. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Sections 8c and 8e of the Michigan Renaissance Zone Act, 1996 PA 376, MCL 125.2688c and 125.2688e, and transferred to the Department of Agriculture under Executive Order 2009-45.

b. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Sections 2 and 2a of the Julian-Stillle Value-Added Act, 2000 PA 322, MCL 285.302 and 285.302a, and transferred to the Department of Agriculture under Executive Order 2009-45.

c. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 6 of The Insect and Plant Disease Act, 1931 PA 189, MCL 286.206, and transferred to the Department of Agriculture under Executive Order 2009-45.

d. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Sections 2, 3, and 4 of the Michigan Right to Farm Act, 1981 PA 93, MCL 286.472, 286.473, and 286.474, and transferred to the Department of Agriculture under Executive Order 2009-45, including, but not limited to, the definition of generally accepted agricultural and management practices.

e. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 14 of the Michigan Seed Law, 1965 PA 329, MCL 286.714, and transferred to the Department of Agriculture under Executive Order 2009-45.

f. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 5 of the Anhydrous Ammonia Security Act, 2006 PA 417, MCL 286.775, and transferred to the Department of Agriculture under Executive Order 2009-45.

g. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 15 of the Michigan Organic Products Act, 2000 PA 316, MCL 286.915, and transferred to the Department of Agriculture under Executive Order 2009-45.

h. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 9 of the Animal Industry Act, 1988 PA 466, MCL 287.709, and transferred to the Department of Agriculture under Executive Order 2009-45.

i. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 27 of the Pseudorabies and Swine Brucellosis Control and Eradication Act, 1992 PA 239, MCL 287.827, and transferred to the Department of Agriculture under Executive Order 2009-45.

j. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under the Seal of Quality Act, 1961 PA 70, MCL 289.631 to 289.646, and transferred to the Department of Agriculture under Executive Order 2009-45.

k. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under the Michigan Agricultural Processing Act, 1998 PA 381, MCL 289.821 to 289.825, and transferred to the Department of Agriculture under Executive Order 2009-45.

l. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 4111 of the Food Law of 2000, 2000 PA 92, MCL 289.4111, and transferred to the Department of Agriculture under Executive Order 2009-45.

m. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 2 of 1970 PA 29, MCL 290.422, and transferred to the Department of Agriculture under Executive Order 2009-45.

n. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 3 of 1965 PA 114, MCL 290.553, and transferred to the Department of Agriculture under Executive Order 2009-45.

o. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 7 of the Agricultural Commodities Marketing Act, 1965 PA 232, MCL 290.657, and transferred to the Department of Agriculture under Executive Order 2009-45.

p. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Sections 3120, 8201, 8322, 8328, 8501, 8517, 8703, 8707, 9304a, 30303, 32701, 32708a, 36111b, 36202, 40103, and 41302 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.3120, 324.8201, 324.8322, 324.8328, 324.8501, 324.8517, 324.8703, 324.8707, 324.9304a, 324.30303, 324.32701, 324.32708a, 324.36111b, 324.36202, 324.40103, and 324.41302, and transferred to the Department of Agriculture under Executive Order 2009-45.

q. The authority, powers, duties, functions, responsibilities, and budgetary resources previously vested in the Commission of Agriculture under Section 20 of the Horse Racing Law of 1995, 1995 PA 279, MCL 431.320, and transferred to the Department of Agriculture under Executive Order 2009-45.

3. The Commission of Agriculture may provide advice to the Director of the Department of Agriculture or express its views on matters relating to the Department, including, but not limited to, agricultural policy. The

Director of the Department shall consult with the Commission on agricultural policy matters. The Commission may perform additional duties as provided by this Order, other law, or as requested by the Director or the Governor.

4. Members of the Commission of Agriculture shall be knowledgeable about modern agriculture or food supply and committed to the protection, promotion, and preservation of the food, agricultural, conservation, and economic interests of the People of the State of Michigan.

6. The Commission of Agriculture may promulgate rules and regulations as may be necessary to carry out functions vested in the Commission under this Order or other law in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

7. The Commission of Agriculture shall utilize administrative law judges and hearing officers employed by the State Office of Administrative Hearings and Rules created by Executive Order 2005-1, MCL 445.2021, to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

8. A final decision of the Commission of Agriculture in any matter where the Commission exercises authority, powers, duties, and functions vested in the Commission under this Order or other law shall be made by the Commission. Decisions by the Commission shall be subject to judicial review as provided by law and in accordance with applicable court rules.

9. The Commission of Agriculture shall be staffed and assisted by personnel from the Department of Agriculture, subject to available funding. The budgeting, procurement, or related management functions of the Commission shall be performed under the direction and supervision of the Director of the Department.

10. Not later than March 31st of each year, the Commission of Agriculture shall designate a member of the Commission of Agriculture to serve as the Chairperson of the Commission until the next March 31st. A member of the Commission shall not be designated as Chairperson for consecutive annual periods. The Commission also may designate a member of the Commission to serve as vice-chairperson of the Commission.

11. The Commission of Agriculture shall adopt procedures consistent with Michigan law and this Order governing its organization and operations.

12. A majority of the members of the Commission of Agriculture serving constitutes a quorum for the transaction of the Commission's business. The Commission shall act by a majority vote of its serving members.

13. The Commission of Agriculture shall meet at the call of the Chairperson and as may be provided in procedures adopted by the Commission.

14. The Commission of Agriculture may, as appropriate, make inquiries, studies, and investigations, hold hearings, and receive comments from the public. Subject to available funding, the Commission also may consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, organized labor, government agencies, and at institutions of higher education.

15. Members of the Commission of Agriculture shall serve without compensation. Members of the Commission may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the Civil Service Commission and the Department of Management and Budget, subject to available funding.

16. A member of the Commission of Agriculture shall discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. A member of the Commission shall not make or participate in making a decision, or in any way attempt to use his or her position as a member of the Commission to influence a decision, on a matter before the Department of Agriculture or the Commission regarding a loan, grant, or other expenditure in which the member is directly or indirectly interested. A member of the Commission shall not be interested directly or indirectly in any contract with the Department of Agriculture or the Commission that would cause a substantial conflict of interest. Members of the Commission shall comply, and the Commission shall adopt policies and procedures for members to comply, with the requirements of this paragraph and all of the following:

- a. 1978 PA 472, MCL 4.411 to 4.430.
- b. 1978 PA 566, MCL 15.181 to 15.185.
- c. 1968 PA 318, MCL 15.301 to 15.310.
- d. 1968 PA 317, MCL 15.321 to 15.330.
- e. 1973 PA 196, MCL 15.341 to 15.348.
- f. Section 2(10) of the Julian-Stille Value-Added Act, 2000 PA 322, MCL 285.302.

18. Members of the Commission of Agriculture shall refer all legal, legislative, and media contacts relating to the duties of the Commission to the Department of Agriculture.

B. Director of the Department of Agriculture

1. Consistent with Section 8 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.108, the Director of the Department of Agriculture shall not engage in any business, vocation, or employment other than the office of Director of the Department of Agriculture and shall receive compensation as prescribed by law.

2. Except as otherwise provided in this Order, the Director of the Department of Agriculture shall establish the internal organization of the Department and allocate and reallocate duties and functions to promote economical and efficient administration and operation of the Department.

3. Except as otherwise provided in this Order, the Director of the Department of Agriculture may promulgate rules and regulations as may be necessary to carry out functions vested in the Department in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

4. Except as otherwise provided in this Order, the Director of the Department of Agriculture may delegate within the Department of Agriculture a duty or power conferred on the Director 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 Director.

5. Except as otherwise provided in this Order, the Director of the Department of Agriculture shall utilize administrative law judges and hearing officers employed by the State Office of Administrative Hearings and Rules created by Executive Order 2005-1, MCL 445.2021, to conduct contested case hearings and to issue proposals for decisions as provided by law or rule.

6. Except as otherwise provided in this Order, a final decision of the Department of Agriculture shall be made by the Director or a person to whom the Director has lawfully delegated decision-making authority. Decisions by the Director shall be subject to judicial review as provided by law and in accordance with applicable court rules.

C. Michigan Agricultural Preservation Fund Board

1. The Michigan Agriculture Preservation Fund Board is created in the Department of Agriculture.

2. The Michigan Agriculture Preservation Fund Board shall consist of the following members:

a. The Director of the Department of Agriculture or his or her designee from within the Department of Agriculture.

b. The Director of the Department of Natural Resources and Environment or his or her designee from within the Department of Natural Resources and Environment.

c. Five residents of this state appointed by the Governor, including 2 members representing agricultural interests.

3. Members of the Michigan Agriculture Preservation Fund Board shall be appointed for terms of 4 years. A member of the Board shall continue to serve until a successor is appointed and qualified. A vacancy on the Board occurring other than by expiration of a term shall be filled by the Governor in the same manner as the original appointment for the balance of the unexpired term.

4. The powers, duties, functions, authority, responsibilities, and budgetary resources of the Agricultural Preservation Fund Board created under Section 36204 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 32.36204, and transferred by Type III transfer to the Department of Agriculture under Executive Order 2009-45, are transferred to the Michigan Agriculture Preservation Fund Board.

5. The Michigan Agriculture Preservation Fund Board shall be staffed and assisted by personnel from the Department of Agriculture, subject to available funding. The budgeting, procurement, or related management functions of the Board shall be performed under the direction and supervision of the Director of the Department.

6. The Director of the Department of Agriculture or his or her designee from within the Department of Agriculture shall serve as the Chairperson of the Michigan Agriculture Preservation Fund Board. The Board may select from among the members of the Board a vice-chairperson and other officers as the Board deems necessary.

7. The Michigan Agriculture Preservation Fund Board shall adopt procedures consistent with applicable law governing its organization and operations.

8. A majority of the serving members of the Michigan Agriculture Preservation Fund Board constitutes a quorum for the transaction of the Board's business. The Board shall act by a majority vote of the serving members of the Board.

9. The Michigan Agriculture Preservation Fund Board shall meet at the call of the Chairperson and as may be provided in procedures adopted by the Board.

10. The business of the Michigan Agriculture Preservation Fund Board shall be conducted at public meetings held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of all meetings of the Board shall be given in the manner required by the Open Meetings Act.

11. A writing prepared, owned, used, in the possession of, or retained by the Michigan Agriculture Preservation Fund Board in the performance of official business shall be made available to the public under the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.

12. The Michigan Agriculture Preservation Fund Board may, as appropriate, make inquiries, studies, investigations, hold hearings, and receive comments from the public. The Board also may consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, organized labor, government agencies, and at institutions of higher education.

13. The Michigan Agriculture Preservation Fund Board may establish advisory workgroups composed of members of the public who are not members of the Board to assist the members of the Board in performing duties under this Order. The Board may adopt, reject, or modify any recommendations proposed by an advisory workgroup.

14. Members of the Michigan Agriculture Preservation Fund Board shall serve without compensation. Members of the Board may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the Civil Service Commission and the Department of Management and Budget, subject to available funding.

16. Members of the Michigan Agriculture Preservation Fund Board shall refer all legal, legislative, and media contacts to the Department of Agriculture.

III. DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

A. Natural Resources Commission

1. The Natural Resources Commission, to the greatest extent practicable, shall continue to use principles of sound scientific management in making decisions regarding the taking of fish and game in this state. Consistent with the intention of the People of the State of Michigan expressed through the adoption of Proposal G of 1996, the Natural Resources Commission shall have and continue to exercise the authority, powers, duties, functions, and responsibilities previously vested in the Commission on Natural Resources under all of the following:

a. Part 435 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.43501 to 324.43561.

b. Section 40111a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40111a, or any successor to this statute in effect on the effective date of this Order.

c. Section 40113a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40113a.

3. The Natural Resources Commission may provide advice to the Director of the Department of Natural Resources and Environment on matters relating to conservation policy. The Director of the Department shall consult with the Commission on conservation policy matters. The Commission may perform additional duties as provided by this Order, other law, or as requested by the Director or the Governor.

5. A member of the Natural Resources Commission shall discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. A member of the Commission shall not make or participate in making a decision, or in any way attempt to use his or her position as a member of the Commission to influence a decision, on a matter before the Department of Natural Resources and Environment or the Commission regarding a loan, grant, or other expenditure in which the member is directly or indirectly interested. A member of the Commission shall not be interested directly or indirectly in any contract with the Department of Natural Resources and Environment or the Commission that would cause a substantial conflict of interest. Members of the Commission shall comply, and the Commission shall adopt policies and procedures for members to comply, with the requirements of this paragraph and all of the following:

a. 1978 PA 472, MCL 4.411 to 4.430.

b. 1978 PA 566, MCL 15.181 to 15.185.

c. 1968 PA 318, MCL 15.301 to 15.310.

d. 1968 PA 317, MCL 15.321 to 15.330.

e. 1973 PA 196, MCL 15.341 to 15.348.

IV. MISCELLANEOUS

A. 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.

B. 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.

C. All rules, regulations, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

D. This Order shall not abate any criminal action commenced by this state prior to the effective date of this Order.

E. 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 Executive Order are effective March 15, 2010 at 12:01 a.m.

History: 2009, E.R.O. No. 2009-38, Eff. Mar. 15, 2010

Compiler's Notes: In section II.C.4., the citation to "Section 36204 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 32.36204" evidently should read "Section 36204 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.36204". Sections II(A)(2), II(A)(5), II(A)(17), II(B)(7), II(B)(8), II(B)(9), II(C)(15), III(A)(2), III(A)(4), and III(B) of Executive Order No. 2009-54, compiled as Executive Reorganization Order No. 2009-38, were rescinded by E.R.O. No. 2011-2, Eff. Mar. 13, 2011.