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February 14, 2019

Senate Government Operations Committee
Senator Mike Shirkey, Chairman
PO Box 30036
Lansing, MI 48909

Dear Chairman Shirkey:

The Senate Oversight Committee has completed its review of Executive Order 2019-02 (EO) as requested by your committee. The EO affects the structure, policies, and initiatives of various departments, particularly the current Department of Environmental Quality (DEQ), and was issued by the governor pursuant to Article V, Section 2 of the State Constitution of 1963.

Article V, Section 2 of the State Constitution of 1963 also provides the Legislature with the authority to review executive orders within 60 days, and it is the responsibility of the Legislature to not only do so carefully and judiciously, but also to disapprove when warranted. The Oversight Committee has conducted hearings specific to the EO accordingly, which have included a review of the recently passed laws that the EO seeks to overhaul. The findings of the Committee are as follows:

- Michigan is blessed with unique, abundant, and pristine natural resources. The responsibility of protecting and conserving the State's air, water, and other natural resources falls primarily upon the *Legislature* under the State Constitution. Article V, Section 52 states, "The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction." Article V, Section 51 of the State Constitution similarly charges the *Legislature* with passing suitable laws for the protection and promotion of the public health.

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- Through appropriations and the enactment of public policies, the Legislature has been, and remains, committed to fulfilling its constitutional and moral obligations to ensure the health and safety of Michigan's citizens and families. Striving for a state with a clean environment, energy needs that are met, and drinking water that is safe is not a partisan endeavor; it must be a universal effort consisting of cooperation and coordination between the legislative and executive branches of government. The Governor's stated efforts to that end are commendable.

- The success of any republican form of government depends on the strength of its most democratic institutions, the consent of the governed, and the rule of law. While the executive branch serves the critical function of administering laws, it is the Legislature, as the branch closest to, and representative of, the people that expresses the intent of the citizenry through the creation of laws. The tendency of executive branch entities, particularly those with significant enforcement powers such as the DEQ, to self-aggrandize and progress towards detached determinations is incontrovertible. Administrative rules and procedures become tools to impede public and legislative involvement, creating a quasi-legislative process without the consent of the governed. It is incumbent on the Legislature, as an extension of the people, to check those tendencies and ensure accountability in government. A responsibility it arguably does not take on often enough.

- The Legislature created the Environmental Permit Review Commission, Environmental Rules Review Committee, and Environmental Science Advisory Board in June 2018 after hearing repeated examples of citizens in this state struggling with inconsistent enforcement and ever-changing regulatory schemes within the DEQ. These entities were designed to provide an avenue for citizens to be heard without having to capitulate in a sue-and-settle situation or spend hundreds-of-thousands of dollars pursuing administrative or court appeals to simply receive a permit. These panels were modeled after those in other states that have been highly successful in creating collaboration between groups of varied opinions, obtaining consensus, and expediting rules benefiting all interested parties.

- Elimination of these essential panels, as well as the oversight and transparency that they provide, does not provide justice or improve government for the citizens of this state. Abolishing the boards is an objectionable step backward, especially for property owners, farmers, and businesses large and small who have experienced an unclear and often unreasonable permitting or regulatory process, sometimes with a predetermined outcome.

- The EO, coupled with the veto by the previous administration of senate bills 100 and 101, leaves the department in the more powerful position in litigation because it costs the departments and its personnel nothing to enter litigation against a citizen or to defend its decision. Meanwhile, without these panels or the vetoed laws, the citizen has to bear the full costs to attain justice through the courts.

- The EO creates new entities made up of persons within the primary department and other executive agencies. These entities do not contain the transparency or accountability of citizen-member boards, nor do they seek to assure fidelity to laws regarding the issuance of permits or create a mechanism for appeal of administrative determinations and denials. In short, while they may serve admirable goals, they do little to ensure a simple, citizen-accessible regulatory system.

- The EO creates panels and positions, along with mandates to existing officers and offices, to aggressively advance an undefined conceptual idea of environmental justice. It is inherently antithetical to republican government and its democratic processes to allow an agency with police powers to function under such a broad mandate with no statutorily defined parameters.

The citizens of Michigan deserve a government that is responsive to their needs. While we respect the Governor's authority to reorganize that branch of government, the changes proposed will not accomplish the stated goals of less bureaucracy and more transparency. The evidence of trouble within the DEQ predates the laws the EO alters without allowing them to be implemented while returning the structure predating those laws. However, there are parts of the EO which create new panels, change names, and relocate divisions which are not necessarily reasons to reject the EO and are fair starting points for future discussions on improving the agencies tasked with protecting our natural resources.

Therefore, this Committee recommends that the Senate, in concurrence with House of Representatives, by HCR 1, disapprove Executive Order 2019-2.

Rather than abolishing the panels by executive decree before they have begun to function, it is more appropriate, transparent, and accountable to the citizens to address any specific problem or objection to the laws governing those panels through the ordinary legislative process. It is also critical that concepts such as environmental justice be defined by law so the regulatory and penal actions not be subjectively implemented.

Should you have any questions, the chair is pleased to meet with you and your committee.

Respectfully,

E. McFerson, chair

Peter J. Lund

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