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Executive Branch Transfer Authority

The legislature has given the executive branch authority to transfer functions, employees, and appropriations within and among executive agencies. This information brief summarizes laws granting that authority. An appendix lists executive branch reorganization orders.

When the legislature creates an executive branch agency, it assigns the agency specific powers and duties. The agency has only those powers and duties assigned to it by law. An agency cannot perform duties the law grants to another agency. Similarly, when the legislature appropriates money to an agency for a particular program, the agency can spend the money only for purposes authorized in the appropriation.

The legislature has enacted general laws that provide the executive branch limited authority to transfer powers, duties, and appropriations without specific legislative approval.

Laws authorizing the executive to make transfers involve competing policy considerations.

- Laws granting transfer authority give the executive branch tools for effective and efficient management of state government, which may be particularly useful when the legislature is not in session.
- When the legislature authorizes the executive branch to transfer a function or appropriation that the legislature has assigned to a specified agency, the legislature is delegating power to the executive. It may be difficult for the legislature to ensure that transfers made by the executive branch comply with legislative intent.

The Commissioner of Administration may transfer functions and employees among executive agencies.

Minnesota Statutes, section 16B.37, authorizes the Commissioner of Administration to transfer personnel, powers, or duties from a state agency to another state agency. Many transfers do not require legislative approval, either before or after the transfer takes effect.

The law provides several substantive limits on this authority.

- A transfer can be made “to improve efficiency and avoid duplication.”
- A transfer may be made only to an executive branch agency that has existed for at least one year.
- Legislative approval is required before the commissioner can transfer all or substantially all of the powers, duties, or personnel of an agency called a “department,” or of the Housing Finance Agency or the Pollution Control Agency.

There are several procedural limits on this reorganization authority.

- A transfer must receive prior approval of the governor.
- A transfer must be in the form of a reorganization order. A proposed order must be submitted to the chairs of the House and Senate governmental operations committees at least 30 days before taking effect.
- Reorganization orders take effect upon filing with the secretary of state. Copies of filed orders must be given to the secretary of the Senate, the chief clerk of the House, and the chairs of the governmental operations committees.
- By January 15 each year, the Commissioner of Administration must submit to the legislature a bill making statutory changes required by reorganization orders during the prior year. However, the reorganization order remains in effect even if the legislature does not pass the bill making the statutory changes. The legislature, of course, can pass a bill reversing the reorganization order, but the bill would be subject to gubernatorial veto.

When a reorganization order transfers duties to a new agency, the appropriation that accompanies the duties also is transferred to the new agency.

The legislature first gave the executive branch authority to transfer functions among departments in 1969. Subsequent legislation added conditions contained in current law, including restrictions on the ability to transfer duties of major departments, the duty to submit a bill making any statutory changes required by reorganization orders, and the requirement to submit a proposed order to the governmental operations committees at least 30 days before the order takes effect. The appendix contains a list of reorganization orders issued under authority of section 16B.37.

Various laws permit agencies to exchange or share employees.

The laws described below do not require the executive branch to notify or receive approval of the legislature.

Agency work for another agency: “To avoid duplication and improve efficiency” the Commissioner of Administration may direct an agency to do work for another agency or direct one unit of an agency to do work for another part of the same agency. The receiving agency must reimburse the providing agency for the work. ([Minn. Stat. § 16B.37, subd. 4](#))

Employee assigned to another agency: An agency employee may be employed by or assigned to perform duties for another agency. This requires approval of the governor and agreement of the affected agencies. ([Minn. Stat. § 16B.37, subd. 5](#))

Intergovernmental and private sector employee interchange: A state agency may send or receive employees to or from a unit of local or federal government for up to two years. There also is a provision governing employee interchanges with private employers. ([Minn. Stat. §§ 15.51 to 15.59](#))

Joint powers agreement: Two or more governmental units may agree to jointly exercise common authority. A joint powers agreement might provide for sharing employees. ([Minn. Stat. § 471.59](#))

The legislature has given the executive branch limited authority to transfer appropriations among programs.

The Minnesota Constitution provides that no money may be spent from the state treasury except pursuant to an appropriation by law. ([Minn. Const. art. XI, § 1](#)) Minnesota Statutes implement this constitutional requirement by providing that money may be spent only for the purpose for which it was appropriated. ([Minn. Stat. § 16A.139](#))

Typically, the legislature appropriates money to specific programs within an agency. In 1993, the legislature provided limited authority for an agency in the executive, legislative, or judicial branch to transfer money.

There are several conditions on this transfer authority.

- The transfer must involve only operational money (e.g., not pass-through grants).
- The transfer must be within the same fund (e.g., involving two programs funded through the state general fund).
- The agency must first notify the Commissioner of Management and Budget.
- The transfer must be “consistent with legislative intent.”
- Money appropriated for a particular “item” within a program activity cannot be transferred.

The Commissioner of Management and Budget must report appropriation transfers to the chairs of the Senate finance and House ways and means committees. The commissioner has reported about five transfers a year in recent years. The law does not require legislative approval of the appropriation transfers, either before or after the transfer. ([Minn. Stat. § 16A.285](#))

This authority illustrates the trade-offs inherent in giving the executive branch flexibility. The legislature may want the executive branch to be able to use funds efficiently to carry out the intent of the law, and perhaps to be able to spend more than appropriated for one program, if there is money available from another program. However, in granting this flexibility, it can be difficult to ascertain and enforce legislative intent.

Appendix
Reorganization Orders
under [Minnesota Statutes, section 16B.37](#)

Subject/Order Number	Sending Agency	Receiving Agency
2010		
Firewood labeling (196)	Commerce	Natural Resources and Agriculture
2008		
Management analysis (195)	Administration	Finance
2007		
Minnesota Veterans Homes (194)	Veterans Home Board	Veterans Affairs
2005		
Construction and building code licenses and regulation (193)	Administration, Health, Board of Electricity, Commerce, Public Safety	Labor and Industry
Municipal boundary adjustments (192)	Administration	Office of Administrative Hearings
2004		
Disaster and terrorism preparedness, and emergency management and response (191)	Division of Homeland Security and Emergency Management (in Department of Public Safety)	Emergency Response Commission
2003		
Veterans training programs (190)	Education	Veterans Affairs
Duties of the former Department of Economic Security (189)	Economic Security	Trade and Economic Development, Administration, Public Safety
Strategic and long-range planning (188)	Office of Strategic and Long-Range Planning	Administration
Crime victim assistance and criminal and juvenile justice system (187)	Ombudsman for Mental Health and Retardation, Center for Crime Victim Services, Strategic and Long-Range Planning, Children, Families and Learning	Public Safety
Fourteen programs providing services for children, families, and individuals in need (186)	Children, Families and Learning	Human Services

Subject/Order Number	Sending Agency	Receiving Agency
Duties of the former constitutional office of State Treasurer (185)	State Treasurer	Finance
2002		
Crime victim oversight (184)	Public Safety	Ombudsman for Mental Health and Mental Retardation
2000		
Energy conservation and energy assistance (183)	Children, Families and Learning	Economic Security
1999		
Certain crime victim services (182)	Crime Victim Ombudsman	Public Safety
Telecommunications and energy functions (181)	Public Service	Commerce
1998		
Administration of crime victim programs (180)	Corrections, Public Safety, Administration	Crime Victim Ombudsman
1997		
Administration of oil overcharge, residential weatherization, emergency energy assistance, fuel funds, transitional housing, early childhood learning and child protection facilities, lead abatement, and food shelf programs (179)	Economic Security	Children, Families and Learning
(178)	Not available	Not available
1996		
Duties of the council (177)	Intergovernmental Information Systems Advisory Council	Administration
Duties of the board (176)	Transportation Regulation Board	Transportation
Financial and administrative support of the state archaeologist (175)	Historical Society	Administration
Hydropower and wind energy incentive payment program (174)	Finance	Public Service
Review of pollution prevention progress reports (173)	Emergency Response Commission	Office of Environmental Assistance
Construction of indoor national shooting center (172)	Amateur Sports Commission	Natural Resources

Subject/Order Number	Sending Agency	Receiving Agency
1995		
Approval of discretionary PACER grant funds (171)	Children, Families and Learning	Strategic and Long-Range Planning
Management of Mississippi River corridor critical areas (170)	Environmental Quality Board (EQB)	Natural Resources
1993		
Solid waste management (169)	Office of Waste Management	Pollution Control Agency (PCA)
Renovation of Minneapolis veterans home campus (168)	Veterans home board	Administration
OSHA health consulting services (167)	Health	Labor and Industry
Elevator licensure and inspection (166)	Labor and Industry	Administration
1992		
Bulk purchasing of medical supplies for Medical Assistance program (165)	Human Services	Administration
1991		
Duties of board (164)	Public Employment Relations Board	Mediation Services
Dispute resolution (163)	State Planning	Administration
1990		
OSHA health consulting program (162)	Health	Labor and Industry
Specified employment position (161)	Iron Range Resources and Rehabilitation Board (IRRRB)	Attorney General
Personnel functions of personnel/payroll computer system (160)	Finance	Employee Relations
1989		
Tax data entry (159)	Administration	Revenue
Conservation reserve program (158)	Agriculture	Board of Water and Soil Resources
Commission duties (157)	Racing Commission	Gambling
Processing gambling license applications (156)	Revenue	Gambling
1988		
Waste management (155)	Waste Management Board	PCA, EQB

Subject/Order Number	Sending Agency	Receiving Agency
Legal advice for employee benefit programs (154)	Employee Relations	Attorney General
Leasing of state-owned mineral and oil rights in Montana (153)	Commerce	Natural Resources
Administrative duties (152)	Charitable Gambling Board	Revenue
Hill Annex Mine state park (151)	IRRRB	Natural Resources
1987		
Loans for purchase of used oil processing equipment; grants to counties for used oil storage tanks (150)	Trade and Economic Development	Waste Management Board
Minnesota veterans homes (149)	Veterans Affairs	Human Services
Client advocacy in regional treatment centers (148)	Human Services	Ombudsman for Mental Health and Mental Retardation
State employment and training policy (147)	Jobs and Training, Human Services	State Planning
State employee workers' compensation administration (146)	Labor and Industry	Employee Relations
Domestic agricultural trade (145)	Trade and Economic Development	Agriculture
Waste tire abatement and permitting, and waste tire recycling loans and grants (144)	PCA, State Planning	Waste Management Board, Trade and Economic Development
Governor's council on youth (143)	Human Services	Education
Washington, D.C., office duties relating to economic development and international trade (142)	Governor	Energy and Economic Development
Treasurer functions affected by 1986 Supreme Court decision (141)	Finance	Treasurer
1986		
Energy (140)	Energy and Economic Development	Public Service
Agricultural trade, communications, export services, international trade, export finance, special trade representative (139)	Agriculture	Energy and Economic Development
Tax compliance (138)	Revenue	Attorney General
Debt collection (137)	Attorney General	Transportation

Subject/Order Number	Sending Agency	Receiving Agency
Federal juvenile justice and youth intervention programs (136)	Energy and Economic Development	Jobs and Training
1984		
State employee workers' compensation claims (135)	Labor and Industry	Employee Relations
Environmental resource development (134)	Energy and Economic Development	State Planning
Palucci planetarium (133)	Community College Board	IRRBB
Review and certification of certain property appraisals (132)	Administration	Natural Resources
Industrial hygiene testing and enforcement (131)	Labor and Industry	Health
1983		
Certain duties relating to administrative cases (130)	Transportation Regulation Board	Public Utilities Commission (PUC)
Various state and federal grant and programs (129)	State Planning	Energy and Economic Development
Indian business loans	Energy and Economic Development	Indian Affairs Intertribal Board
Financial resource management, public investment, transportation	Governor	State Planning
Energy-biomass research	Natural Resources	Energy and Economic Development
Administration of payment for fire department services on state highways (128)	Public Safety	Transportation
Certain duties relating to Minnesota History Center (127)	Administration	Capitol Area Architectural and Planning Board
Capitol complex landscaping (126)	Administration	Capitol Area Architectural and Planning Board
Staff for Environmental Quality Board (125)	EQB	State Planning
Audit and direct aids (124)	Commerce	Revenue
Business development (123)	Energy, Planning, and Development	Commerce

Subject/Order Number	Sending Agency	Receiving Agency
1982		
Rural credit (122)	Banks	Natural Resources
Accounting functions of rural rehabilitation fund (121)	Administration	Energy, Planning, and Development
Soil and Water Conservation Board (120)	Natural Resources	Agriculture
Productivity improvement program (119)	Finance	Administration
1981		
Certain duties relating to workers' compensation hearings (118)	Labor and Industry	Administration
Approval of municipal industrial development projects (117)	Securities and Real Estate	Energy, Planning, and Development
Specified functions (116)	PUC	Public Service
Review of land appraisals (115)	Natural Resources	Administration
Specified duties (114)	Local and Urban Affairs/State Planning	Economic Development
Specified employment positions (113)	Administration	Community college system
Specified functions (112)	PUC	Public Service
Legal secretarial positions (111)	Attorney General	Transportation
Employment training (110)	Administration	Economic Security
Specified employment position (109)	Attorney General	Transportation
1979		
Administrative duties (108)	Occupational information system board	Education
Railroad track scales (107)	Transportation	Public Service
Railroad track scales (106)	Transportation	Public Service
State employee assistance program (105)	Public Welfare	Administration
Legal services employees, according to 1979 legislation (104)	Various agencies	Attorney General
Governor's task force on education policy (103)	Governor	State Planning
Employees, according to 1979 legislation (102)	Public Service	Agriculture
Services for crippled children (101)	Public Welfare	Health

Subject/Order Number	Sending Agency	Receiving Agency
Land appraisals (100)	Administration	Natural Resources
Upper Great Lakes Regional Commission and public investment project (99)	Economic Development	Governor
1978		
Iron Range trail (98)	Natural Resources	IRRRB
Environmental Education Board (97)	Natural Resources	State Planning
Investigative staff unit (96)	Revenue	Public Safety
Not specified (95)	Public Welfare	Attorney General
Minnesota Education Council (94)	Governor	Education
Office of Volunteer Services (93)	Governor	Administration
Access to public buildings (92)	Fire Marshal	Administration
Community development corporations (91)	State Planning	Economic Development
Petroleum and gasoline dealers (90)	Revenue	Public Service
Great Lakes Commission/public investment project (89)	Governor	Economic Development
Financial assistance for persons suffering from hemophilia (88)	Public Welfare	Health
Forest resources, wildlife habitat, recreational development, management plans (partially revised in 1982) (87)	IRRRB	Natural Resources
1977		
Statewide water management information system (86)	Administration	Energy
Coordination of social and financial services for Indochinese refugees (85)	Governor	Public Welfare
Aesthetic environment program (84)	Administration/Governor	Natural Resources
Merit fellowship grants, nonmedical and health services research grants, health policy studies (83)	Health	State Planning
Legal services (based on 1977 legislation) (82)	Various	Attorney General
Other specified positions relating to various functions reorganized by the 1977 Legislature	Various	Various
Employment Training Act (CETA) (81)	Various	Administration

Subject/Order Number	Sending Agency	Receiving Agency
1976		
Rail Services Improvement Act (80)	State Planning	Transportation
State consulting contracts (79)	State Planning and Personnel	Administration
Capital budget preparation (78)	Administration	Finance
State records management (77)	Historical Society	Administration
Public Employment Relations Board (76)	Mediation Services	Labor and Industry
Overtime expenses associated with previous orders (75)	Administration	Finance
Correction of order 68 (74)	Administration	Governor
Cost improvement program (73)	Administration	Public Welfare
Metric standards and implementation (72)	Administration	Education
Specified program management and evaluation functions (71)	Administration	Finance
Verification of state employee salary and other economic benefits (70)	Administration	Finance
Fiscal notes (69)	Administration	Finance
Support of human services boards (68)	Governor	Administration
Program budgeting (67)	Administration	Finance
Indian Affairs Board (66)	Administration	Indian Affairs Board
Change in effective date of previous order (65)	—	—
Functions related to application for federal funds (64)	State Planning	Finance
Hearings related to income assistance programs (63)	Office of Hearing Examiners	Public Welfare
Economic opportunity programs (62)	Public Welfare	Governor's Manpower Office
Applications for nonstate funds (61)	Administration	Finance
Program budgeting (60)	Administration	Finance
1975		
Indian Affairs Board (59)	Board	Administration
Natural resources land acquisition (58)	Administration	Natural Resources

Subject/Order Number	Sending Agency	Receiving Agency
Support of human services boards (57)	Public Welfare	Governor
Organized crime control unit (56)	Attorney General	Public Safety
Crime information systems (55)	Finance	Public Safety
Affirmative action office (54)	Administration	Personnel
Specified computer programming functions (53)	Finance	Administration
Liquor control (52)	Office of Liquor Control	Public Safety
1974		
Public service employment grant agents function (51)	Governor's Manpower Office	Employment Services
State employee payroll system (50)	Administration	Finance
State employee deferred compensation (49)	Administration	Personnel
Administrative services for nonhealth related boards (48)	Administration	Commerce
Approval of certain Health Department fees (47)	Administration	Finance
Refinement of order 32 (46)	—	—
State radio communication (45)	Natural Resources	Highways
Library functions (44)	State Planning	Education
Clerical position (43)	Administration	Personnel
Crime information system (42)	Administration	Finance
Not specified (41)	Pollution Control	Health
1973		
State employee Social Security (40)	Administration	Personnel
State employee insurance (39)	Administration	Personnel
State financial management (38)	Administration	Finance
Specified supplies and records services (37)	Highways	Public Safety
Crippled children services (36)	Public Welfare	Health
State labor negotiator (35)	Administration	Personnel
Reorganization of auditor functions (34)	State Auditor	Finance
State accounting functions (33)	State Auditor	Finance

Subject/Order Number	Sending Agency	Receiving Agency
State accounting functions (32)	State Auditor	Finance
Auditing functions (31)	Public Examiner	State Auditor, Legislative Auditor
Certification and reimbursements of certain premiums (30)	State Auditor and Public Examiner	Agriculture
Alcohol and drug abuse functions (29)	State Planning	Public Welfare, Public Safety
Not implemented (28)	—	—
Peace officers benefit fund (27)	State Auditor	Labor and Industry
Regulation of collection agencies (26)	Labor and Industry	Commerce
State accounting functions (25)	Administration	State Auditor
Weighing of livestock functions (24)	Public Service	Agriculture
Licensing of livestock buyers and dealers (23)	Public Service	Agriculture
Grain inspection (22)	Public Service	Agriculture
Forest pest control (21)	Agriculture	Natural Resources
1972		
Railroad engineering functions Valuation of railroad property (amendment of order 15) (20)	Public Service	Highways, Taxation
Workers' compensation administration (19)	Workmen's Compensation Commissioners	Labor and Industry
Collection of liquor taxes (18)	Liquor Control Commissioner	Taxation
Not implemented (17)	—	—
Water resources planning (16)	State Planning	Natural Resources
Railroad engineering (15) Valuation of railroad property	Public Service	Highways, Taxation
Unfair Cigarette Sales Act (14)	Taxation	Commerce
Not implemented (13)	—	—
Notaries public (12)	Governor	Commerce
Notaries public (11)	Governor	Commerce
1971		
State land ownership records (10)	IRRRB	Natural Resources
Organized crime control unit (9)	Public Safety	Attorney General

Subject/Order Number	Sending Agency	Receiving Agency
Mankato State College Laundry Services (8)	Mankato State	St. Peter State Hospital
Crime prevention and control (7)	State Planning	Governor's Commission
Accounting functions (6)	Highways	Public Safety
1970		
Enforcement of state parking (5) Reception services	Administration	Public Safety, Taxation
Data processing (4)	Highways	Administration
Accounting functions (3)	Highways	Public Safety
Collection of fire tax premiums (2)	Public Safety	Insurance
Track and hopper scale unit (1)	Public Service (Grain Inspection Division)	Public Service (Weights and Measures Division)

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