



January 26, 2021

## **EXECUTIVE REORGANIZATION ORDERS**

This memorandum provides general background information on Executive Reorganization Orders (EROs) and the actions the Legislature may take on EROs. The memorandum also contains information on EROs proposed by the Governor since 1973 and more detailed information on recent proposed and approved EROs. [Note: On January 26, 2021, EROs No. 47 and 48 were introduced in the Kansas House of Representatives and Kansas Senate. This memorandum will be updated with summary information.]

### **Background**

EROs are provided for in Article 1, Section 6 of the *Kansas Constitution*. They enable a Governor to transfer, abolish, consolidate, or coordinate agencies and functions within the executive branch of state government. Legislative and judicial agencies and constitutionally delegated functions of state officers and boards are exempt from EROs. An ERO becomes effective July 1 following its transmittal to the Legislature, unless within 60 calendar days either the Senate or the House adopts a resolution disapproving the ERO. After an ERO takes effect, the Legislature also has the option of amending an ERO in the same way it would amend any other legislation or statute. When reorganization of the executive branch is initiated by the Governor, EROs are frequently the vehicle used. The use of EROs began in the 1970s, a decade that saw the creation of the cabinet form of government in Kansas and the beginning of efforts to streamline the operations of state government.

### **Legislative Action**

EROs must be transmitted to both houses of the Legislature on the same day within the first 30 calendar days of a legislative session. An ERO becomes effective on July 1, following its transmittal to the Legislature, unless within 60 calendar days and before the adjournment of the legislative session either the Senate or the House, by a majority vote of the members, adopts a resolution disapproving it. Portions of an order may become effective at a later time than the order is otherwise effective. An ERO may be amended or repealed in the same way a statute would be. Further action sometimes is required after an ERO takes effect in order to clarify details and resolve unanticipated issues arising from the reorganization.

House and Senate rules provide that an ERO is assigned to an appropriate committee. The committee must report its recommendations no later than the 60th calendar day of the session or no later than 15 (House) or 30 (Senate) calendar days after the order has been received, whichever occurs first. [See House Rule 4502, Senate Rule 75.] This report is in the form of a simple resolution. In the House, if the committee fails to report in accord with these

deadlines, the ERO is deemed to have been recommended for approval by the committee. In the Senate, the ERO and the resolutions pertaining thereto are deemed returned without recommendation. Within the applicable time constraints, the House and Senate must act to approve or reject each such order, unless the other chamber already has acted to disapprove the order. Such action is scheduled as a special order of business. [Note: The introduced version of the House (2021-2022) and Senate (2021-2024) rules do not change the above-described rules for consideration of EROs.]

### Executive Reorganization Order History

Of the 46 EROs issued through 2020, 16 were issued in the 1970s, including 3 that were used to create cabinet agencies: the Department of Social and Rehabilitation Services (1973), the Department of Health and Environment (1974), and the Department of Human Resources (1976). The Department of Wildlife, Parks and Tourism was created by an ERO in 1987, and further reorganized by an ERO in 2011. Excluding the administration of Governor Docking, who was in his second term when EROs came into use, 30 of 41 EROs, or 73 percent, have been introduced in the first 2 years of an administration.

Of the 46 EROs considered by the Legislature, 29, or 63 percent, have been approved and 17, or 37 percent, have been disapproved. Since the 2000 Legislative Session, 17 EROs have been presented to the Legislature. Of those 17 EROs, 13 have been approved and 4 have been disapproved. The following table reflects the number of EROs each Governor has presented and what the legislative disposition was to the EROs.

#### Executive Reorganization Orders by Administration

Governor	Number of EROs	EROs Approved	EROs Disapproved
Docking	5	2	3
Bennett	11	8	3
Carlin	5	2	3
Hayden	1	1	0
Finney	3	2	1
Graves	4	1	3
Sebelius	4	3	1
Parkinson	0	0	0
Brownback	10	9	1
Kelly	3	1	2
<b>TOTAL</b>	<b>46</b>	<b>29</b>	<b>17</b>

## **2012 Executive Reorganization Orders**

### ***Executive Reorganization Order No. 41***

**ERO 41** consolidated the financing arm of Medicaid in the Kansas Department of Health and Environment Division of Health Care Finance. The ERO renamed the former Department on Aging as the Department for Aging and Disability Services and consolidated all disability waiver and mental health services from the Department of Social and Rehabilitation Services into the newly created Department for Aging and Disability Services. Additionally, ERO No. 41 renamed the Department of Social and Rehabilitation Services as the Department for Children and Families (DCF).

## **2013 Executive Reorganization Orders**

### ***Executive Reorganization Order No. 42***

**ERO 42** abolishes the Juvenile Justice Authority (JJA) and transfers the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to the Department of Corrections (KDOC) and the Secretary of Corrections, effective July 1, 2013. All officers and employees of the JJA engaged in the exercise of the powers, duties, and functions transferred by the ERO will be transferred to KDOC, unless they are not performing necessary services. KDOC will succeed to the property and records of the JJA. The balance of all JJA funds will be transferred to KDOC and used only for the purpose for which the appropriation was originally made. KDOC will assume all jurisdiction, powers, functions, and duties relating to juvenile correctional facilities and institutions and will be responsible for rules and regulations; educational services; passes, furlough, or leave; institutional security plans; and a rigid grooming code and uniforms for such institutions. Finally, the ERO specifies KDOC will be responsible for JJA-related duties in various other areas, including juvenile intake; the Revised Kansas Juvenile Justice Code; regional youth care and rehabilitation facilities; supplemental youth care facilities; residential care facilities; community planning teams, juvenile justice programs, the Juvenile Justice Community Planning Fund, and the Juvenile Justice Community Initiative Fund; grants; community graduated sanctions and prevention programs and the community advisory committee; and the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention.

## **2015 Executive Reorganization Orders**

### ***Executive Reorganization Order No. 43***

**ERO 43** transfers Medicaid eligibility processing responsibility from DCF to the Kansas Department of Health and Environment (KDHE), effective January 1, 2016. The ERO also transfers foster care licensing duties from KDHE to DCF, effective July 1, 2015.

The ERO deems, beginning January 1, 2016, all powers, duties, and functions of the DCF Economic and Employment Services Section that determines eligibility for Medicaid services are transferred to and imposed upon KDHE and the Secretary of Health and Environment. KDHE shall be the successor to the powers, duties, and functions of DCF concerning duties and functions of the DCF Economic and Employment Services Section that

determines eligibility for Medicaid services and eligibility for services for state-funded medical services and have the same force and effect as if performed by DCF, in which such powers, duties, and functions were vested prior to January 1, 2016. Rules and regulations authority, account balances, property and property rights, and liabilities regarding Medicaid eligibility will be transferred from DCF to KDHE.

The ERO also deems, beginning July 1, 2015, all the powers, duties, and functions of the KDHE Division of Public Health, Bureau of Family Health, Child Placing Agency and Residential Facilities Section, which licenses and regulates foster care and other residential facilities, are transferred to and imposed upon DCF and the Secretary for Children and Families. DCF shall be the successor to the powers, duties, and functions of the Bureau of Family Health, Child Placing Agency and Residential Programs Section and have the same force and effect as if performed by KDHE, in which the same powers, duties, and functions were vested prior to July 1, 2015. Rules and regulations authority, account balances, property and property rights, and liability regarding foster care licensing will be transferred from KDHE to DCF.

Any conflict that arises regarding the transfers described above will be resolved by the Governor, whose decision will be final. Finally, the ERO speaks to the status of lawsuits or other proceedings, status of related criminal actions, and other details regarding the transfer of KDHE and DCF officers and employees.

## **2020 Executive Reorganization Orders**

### ***Executive Reorganization Order No. 45***

**ERO 45** moves the State Employee Health Plan (SEHP) and the State Self Insurance Fund (SSIF) from KDHE to the Kansas Department of Administration (KDOA). [*Note: The SEHP administers the Kansas employee health insurance benefit program and supports the Kansas Health Care Commission, which sets rates and programs for state employee health insurance benefits. The SSIF administers workers' compensation claims for state employees when they are injured on the job working for the State.*]

ERO 45 establishes the Division of the State Employee Health Benefits Plan (Division) within KDOA, transferring to KDOA all powers, duties, and functions of the KDHE staff currently administering the SEHP and SSIF.

The head of the Division established by ERO 45 is the Director of the State Employee Health Benefits Plan (Director), who is appointed by and serves at the pleasure of the Secretary of Administration and is an unclassified employee under the Kansas Civil Service Act. Section 1(a) of ERO No. 45 requires the Director's salary to be approved by the Governor. All officers and employees involved with the administration and support of the SEHP and SSIF within the KDHE will transfer to KDOA. State employee benefits, including retirement benefits, leave balances, and rights that had accrued, or vested, prior to the ERO's effective date will transfer along with those officers and employees. Transferred employees who were classified will retain their classified status.

With respect to related fund and account balances, ERO 45 transfers all relevant funds within the State Treasury to KDOA for the Division, to be used for the purpose for which the appropriation was originally made. The Division also succeeds to all relevant property, property rights, contracts, and records, and the Governor will be the final authority in resolving any

conflict surrounding this succession. ERO 45 also states no lawsuits, proceedings, or criminal actions that have begun or have the potential to begin by or against any state agency or program are abated by the reorganization taking place under ERO No. 45.

ERO 45 also establishes the State Workplace Health and Safety Program within KDOA's SSIF program. The Secretary of Administration is to implement, and the Kansas Department of Labor Division of Industrial Health and Safety is to assist with, a program to include, but not be limited to, these activities: workplace health and safety hazard surveys in all state agencies, including on-site interviews with employees; workplace health and safety hazard prevention services, including inspection and consultation services; procedures for identifying and controlling workplace hazards; development and dissemination of health and safety informational materials, plans, rules, and work procedures; and training for supervisors and employees in healthful and safe work practices.

### **Kansas Executive Reorganization Orders**

The EROs, along with a short description of what they were about and whether they were adopted, are listed below.

<b>ERO No.</b>	<b>Governor</b>	<b>Approved or Disapproved (Year)</b>	<b>Short Description</b>
1	Robert B. Docking	Approved (1973)	Created the State Department of Social and Rehabilitation Services headed by an appointed Secretary. The Secretary and the Department were the successor to the existing State Board of Social Welfare, State Department of Social Welfare, and other entities. The ERO also created statutory units within the Department.
2	Robert B. Docking	Disapproved (1973)	Would have changed certain functions of the State Finance Council pertaining to approval of the salary of the Secretary of Administration and of certain plans of the Governor for improvements in state agencies. In addition, it would have changed functions of the State Finance Council related to the Kansas Civil Service Act.
3	Robert B. Docking	Approved (1974)	Created the State Department of Health and Environment headed by an appointed Secretary. The Secretary and the Department were successors to the existing State Department of Health and other entities. The ERO also created statutory units within the Department.

4	Robert B. Docking	Disapproved (1974)	Would have created the Mined-Land Conservation and Reclamation Board within the State Corporation Commission.
5	Robert B. Docking	Disapproved (1974)	Would have transferred duties of the State Auditor and the State Board of Canvassers to other state officials.
6	Robert F. Bennett	Approved (1975)	Removed the State Board of Tax Appeals from the State Department of Revenue and established it as an independent agency.
7	Robert F. Bennett	Approved (1975)	Consolidated duties performed by the State Department of Economic Development, the Director of the Department of Economic Development, and the Kansas Economic Development Commission into the new State Department of Economic Development headed by an appointed Secretary.
8	Robert F. Bennett	Approved (1975)	Abolished the State Podiatry Board of Examiners and transferred its powers and duties to the Kansas Board of Healing Arts.
9	Robert F. Bennett	Approved (1975)	Abolished the State Education Commission and transferred its powers and duties relating to student assistance programs to the Kansas Board of Regents.
10	Robert F. Bennett	Approved (1975)	Transferred the Office of Emergency Medical Services from the Office of the Governor to the State Department of Health and Environment.
11	Robert F. Bennett	Approved (1975)	Abolished the existing Governor's Committee on Criminal Administration and created a new Governor's Committee on Criminal Administration under the control and jurisdiction of the Governor.
12	Robert F. Bennett	Disapproved (1975)	Would have abolished the elective office of State Treasurer and established a State Department of the Treasury headed by a State Treasurer appointed by the Governor and confirmed by the Senate.

13	Robert F. Bennett	Disapproved (1975)	Would have abolished the elective office of Commissioner of Insurance and established a State Department of Insurance headed by a Commissioner of Insurance appointed by the Governor and confirmed by the Senate.
14	Robert F. Bennett	Approved (1976)	Created the State Department of Human Resources headed by an appointed Secretary. The Secretary and the Department were successors to a number of existing state offices and entities. The ERO also created statutory units within the Department.
15	Robert F. Bennett	Approved (1977)	Transferred the Crippled Children's Commission to the State Department of Health and Environment.
16	Robert F. Bennett	Disapproved (1977)	Would have established a Division of Services to the Aging within the State Department of Social and Rehabilitation Services.
17	John Carlin	Approved (1980)	Reorganized and clarified various functions within the State Department of Social and Rehabilitation Services.
18	John Carlin	Disapproved (1981)	Would have reorganized various boards, divisions, and sections of existing water agencies into one agency to be known as the Kansas Water Resources Authority.
19	John Carlin	Disapproved (1982)	Would have abolished the Kansas Energy Office and established a Division of Energy within the State Department of Administration.
20	John Carlin	Approved (1982)	Established Juvenile Offender Services within the State Department of Social and Rehabilitation Services.
21	John Carlin	Disapproved (1986)	Would have created the State Department of Agriculture headed by an appointed Secretary.
22	Mike Hayden	Approved (1987)	Created the State Department of Wildlife and Parks headed by an appointed Secretary. The ERO also created statutory units within the Department.

23	Joan Finney	Approved (1992)	Reorganized various housing programs into a Division of Housing within the renamed State Department of Commerce and Housing.
24	Joan Finney	Approved (1992)	Abolished the Kansas Savings and Loan Department and the Office of Savings and Loan Commissioner and transferred duties performed by the Department and Commissioner to the Office of the State Bank Commissioner.
25	Joan Finney	Disapproved (1992)	Would have separated the State Department of Health and Environment into the State Department of Health and the State Department of Environment, each headed by an appointed Secretary.
26	Bill Graves	Disapproved (1996)	Would have transferred functions relating to the marketing of agriculture products from the State Department of Agriculture to the State Department of Commerce and Housing.
27	Bill Graves	Disapproved (1996)	Would have transferred the responsibility for the Infants and Toddlers program from the State Department of Health and Environment to the State Board of Education.
28	Bill Graves	Disapproved (1996)	Would have reorganized the Kansas Human Rights Commission as the Kansas Commission on Diversity and Human Rights.
29	Bill Graves	Approved (1999)	Created the Commission on Emergency Planning and Response within the Adjutant General's Department.
30	Kathleen Sebelius	Approved (2003)	Shifted the Division of Housing to the Kansas Development Finance Authority from the Department of Commerce and Housing. Renamed the Department of Commerce and Housing to the Department of Commerce.
31	Kathleen Sebelius	Approved (2004)	Transferred the Employment and Training Division and all workforce development programs from the Department of Human Resources to the Department of Commerce.

32	Kathleen Sebelius	Approved (2004)	Transferred certain food safety programs of the Department of Health and Environment to the Department of Agriculture.
33	Kathleen Sebelius	Disapproved (2005)	Would have established the Kansas Health Policy Authority.
34	Sam Brownback	Approved (2011)	Consolidated parole review by abolishing the Parole Board and establishing the Prisoner Review Board within the Department of Corrections.
35	Sam Brownback	Approved (2011)	Transferred the functions of the Commission on Disability Concerns from the Department of Commerce to the Office of the Governor.
36	Sam Brownback	Approved (2011)	Transferred the Division of Travel and Tourism Development from the Department of Commerce to the Department of Wildlife and Parks and renamed the department the Department of Wildlife, Parks and Tourism.
37	Sam Brownback	Approved (2011)	Abolished Kansas, Inc., and authorized the Secretary of Administration to conclude the agency's business and satisfy any outstanding liabilities or commitments of Kansas, Inc.
38	Sam Brownback	Approved (2011)	Reorganized the Kansas Health Policy Authority into the Division of Health Care Finance within the Department of Health and Environment.
39	Sam Brownback	Disapproved (2011)	Would have abolished the Kansas Arts Commission and transferred its powers, duties and functions to the State Historical Society. (A governor's veto defunded the agency and eliminated staff.)

40	Sam Brownback	Approved (2011)	Transferred the Agriculture Products Development Division within the Department of Commerce to the Department of Agriculture and renamed it the Marketing and Promotions Program; consolidated the Kansas Animal Health Department and the Livestock Commissioner within the Department of Agriculture as the Animal Health Division; consolidated the State Conservation Commission within the Department of Agriculture as the Conservation Division.
41	Sam Brownback	Approved (2012)	Consolidated the financing arm of Medicaid in the Kansas Department of Health and Environment Division of Health Care Finance. Renamed the former Department on Aging the Department for Aging and Disability Services and consolidated all disability waiver and mental health services. Renamed the Department of Social and Rehabilitation Services as the Department for Children and Families.
42	Sam Brownback	Approved (2013)	Abolished the Juvenile Justice Authority (JJA) and transferred the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to the Department of Corrections (KDOC) and the Secretary of Corrections.
43	Sam Brownback	Approved (2015)	Transferred Medicaid eligibility processing responsibility from the Kansas Department for Children and Families (DCF) to the Kansas Department of Health and Environment (KDHE), effective January 1, 2016, and transferred foster care licensing duties from KDHE to DCF, effective July 1, 2015.
44	Laura Kelly	Disapproved (2020)	Would have transferred all jurisdiction, powers, functions, and duties of the Kansas Department for Aging and Disability Services (KDADS), Juvenile Services from the Department of Corrections (KDOC), and oversight of the Kansas Juvenile Correctional Complex to DCF, and renamed DCF the Kansas Department of Human Services (DHS), effective July 1, 2020.

45	Laura Kelly	Approved (2020)	Moved the State Employee Health Plan and the State Self Insurance Fund from the Kansas Department of Health and Environment to the Kansas Department of Administration.
46	Laura Kelly	Disapproved (2020)	Would have established the Kansas Energy Office (Energy Office) as an independent entity, effective July 1, 2020, rather than continue it within the Kansas Corporation Commission (Commission). The ERO would have transferred the balances of all funds and accounts appropriated to the Commission for activities related to the Energy Office from the Commission to the Energy Office.