



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4116 (Substitute H-6 as passed by the House)
Sponsor: Representative Paul Opsommer
House Committee: Oversight, Reform, and Ethics
Senate Committee: Government Operations

Date Completed: 5-22-12

CONTENT

The bill would add Section 32a to an act entitled, "Of certain state officers", to do the following with respect to a cross boundary memorandum of agreement (an MOA between a Michigan governmental unit and the Federal government or an out-of-State unit of government):

- **Require the governmental unit or officer to forward the MOA to the Attorney General, conduct a preliminary review, and, if the MOA were legally binding, conduct a full review.**
- **Allow a governmental unit to request consultation with the Attorney General on its full review.**
- **Provide that an unexecuted MOA forwarded to the Attorney General would be subject to the attorney-client privilege.**
- **Require an executed MOA to be forwarded to the Attorney General and the Office of the Great Seal.**
- **Require each governmental unit to forward to the Office of the Great Seal a copy of any cross boundary MOA entered into before June 30, 2012, that was still in effect.**
- **Require the Office of the Great Seal to create a publicly accessible central repository of cross boundary MOAs.**

The bill would take effect on June 30, 2012.

The bill would define "cross boundary memorandum of agreement" as a memorandum of agreement, memorandum of understanding, memorandum of record, compact, or similar agreement that a governmental unit of this State proposes to enter into or enters into with the Federal government or a unit of government located outside of this State. "Governmental unit" would mean a State department, agency, division, or any other entity or subunit derived from those public bodies.

Specifically, before a governmental unit or officer of this State entered into a cross boundary MOA, the unit or officer would have to forward a copy of the MOA to the Attorney General and conduct a preliminary internal review of the MOA to determine if it was a legally binding or enforceable agreement. The review would have to be carried out on a time schedule at the discretion of the governmental unit.

If the MOA were legally binding or enforceable, the governmental unit could have to conduct a full review and could request consultation with the Attorney General. A full review would

have to consider State and Federal constitutional requirements and limitations. It also would have to consider the existence of statutory authority for the MOA and the extent of that authority, if any, granted to the officer, department, agency, division, or subunit that would execute the MOA.

An unexecuted cross boundary MOA that was forwarded to the Department of Attorney General or any internal review done in consultation with the Department would be subject to the same attorney-client privilege as exists between the executive branch and the Department.

Within 10 days after a governmental unit executed a cross boundary MOA, the governmental unit would have to forward it to the Attorney General. The Attorney General would have to forward the MOA to the Office of the Great Seal within 10 days after receipt, and retain a copy of it. The Office of the Great Seal would have to accept and officially file a cross boundary MOA.

By June 30, 2014, each State governmental unit would have to forward to the Office of the Great Seal a copy of any cross boundary MOA that the governmental unit entered into before June 30, 2012, and that was legally binding and still in effect.

By June 30, 2012, the Office of the Great Seal would have to establish and maintain a publicly accessible central repository that included each cross boundary MOA forwarded to it under proposed Section 32a. The Office of the Great Seal would have to make the repository accessible via the internet by one year after making interlocal agreements created under the Urban Cooperation Act accessible to the public via the internet.

The bill specifies that Section 32a would not require the disclosure of a public record that was otherwise prohibited by law from public disclosure, was privileged, or was exempt from disclosure under the Freedom of Information Act. The section also would not, and could not be construed to prohibit or preempt from public disclosure any cross boundary MOA for the sole reason that it was executed by the Governor or the Lieutenant Governor, or an agent or employee of the Governor or Lieutenant Governor.

Section 32a would not limit, and could not be construed to limit, the ability of any governmental unit to conduct an internal review or to seek legal advice beyond the requirements in the section.

Proposed MCL 14.32a

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Additional reviews of cross boundary agreements would increase the costs of the Department of Attorney General by a minimal amount, which could be absorbed within existing appropriations.

Additionally, there could be an increase in costs to the Department of State associated with the establishment and maintenance of a publicly accessible central repository. The amount of the potential costs is currently unavailable and is being determined by the Department.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.