



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

June 28, 2012

Michigan House of Representatives  
State Capitol Building  
Lansing, Michigan 48913

Ladies and Gentlemen:

Today I am returning to you Enrolled House Bill 4116 without signature. While I support the bill's objective of increasing transparency and openness in government, the bill raises separation of powers concerns by directing executive branch officers and agencies on how to undertake a legal analysis that should rest within the discretion of the executive. Furthermore, the legal analysis the bill would require might be costly and difficult for an agency lacking internal legal counsel to conduct.

Enrolled House Bill 4116 requires that before entering into a "cross boundary memorandum of agreement" a state officer or governmental unit forward the agreement to the Attorney General with a preliminary review that addresses whether it is legally binding or enforceable. For those agreements that "appear to be" legally binding or enforceable, the unit of government or state officer must also provide to the Attorney General a "written full review" that includes an analysis of "state and federal constitutional requirements and limitations" and the existence of statutory authority for the agreement, among other things.

The agreements the bill covers involve the exercise of inherent executive branch power and responsibility. Undertaking an extensive legal review of those agreements should be left to the sound discretion of the agency in carrying out its executive role and purpose. Imposing such a requirement through legislative action invades the proper role of the executive branch in "executing" the law. Simply put, executive branch agencies should be left to determine when such a review is proper or necessary, as they are constitutionally charged with carrying out the law and following the dictates of the constitution in doing so.

Furthermore, the bill puts executive branch agencies in the odd position of appearing to have to justify their actions to their own lawyer, namely, the Attorney General. By requiring that the agencies submit a legal review of legally binding or enforceable agreements to the Attorney General, the bill places the client agency in the odd position of supplying a legal analysis to its own attorney.

In addition to the requirement of a legal analysis, Enrolled House Bill 4116 would require the Office of the Great Seal to create a central repository for all such agreements and eventually make them publicly available on the internet. I wholeheartedly support this effort to create more openness and transparency in government and would be happy to work with you on a bill to achieve this laudatory objective. In the meantime, I will work with the Secretary of State to achieve the goal of greater transparency set forth in Enrolled House Bill 4116, whether that goal is statutorily required or not.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Snyder", written in a cursive style.

Rick Snyder  
Governor