

ATTORNEY GENERAL REVIEW OF CROSS-BOUNDARY AGREEMENTS; OFFICE OF GREAT SEAL RESPOSITORY

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House Bill 5916

Sponsor: Rep. Paul Opsommer

Committee: Oversight, Reform, and Ethics

Complete to 11-26-12

A SUMMARY OF HOUSE BILL 5916 AS INTRODUCED 9-19-12

[Note: This bill is identical to the House-passed version of House Bill 4116 (H-6), a bill subsequently enrolled by the legislature (as Substitute S-1) on June 14, 2012, but vetoed by the governor on July 18, 2012. Both bills concern cross-boundary memoranda of agreement, which are agreements between Michigan governmental units and the federal government or an out-of-state unit of government.

House Bill 5916 would add Section 32a to an act entitled, "Of Certain State Officers" (MCL 14.28 to 14.35), to do all of the following:

- Require a governmental unit or an officer to forward a memorandum of agreement (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 of an MOA.
- Provide that an unexecuted MOA that is forwarded to the attorney general 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 be retroactive and 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.

Before Executing MOA/Consultation with AG

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 would 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.

Attorney-Client Privilege

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.

After Executing Agreement

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.

Office of the Great Seal

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.

Central Repository

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 within one year after making inter-local agreements created under the Urban Cooperation Act accessible to the public via the internet.

Public Disclosure/Confidentiality

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.

No Limitation on Governmental Unit

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.

FISCAL IMPACT:

The bill will have a fiscal impact on the Department of Attorney General by adding to its responsibilities. The amount of the increased costs has yet to be determined.

House Bill 5916 would have an indeterminate fiscal impact on the Department of State's Office of the Great Seal. The Office of the Great Seal would be given the authority to file the cross boundary memoranda of agreement and would be required to file in a central repository. According to the Department of State a central repository exists that would be used to file the memoranda and would require no additional costs. The provisions of the bill also require the central repository to be publicly accessible via the Internet by one year after the Office of the Great Seal makes interlocal agreements accessible to the public via the Internet. According to the Department of State, since they are creating a publicly accessible central repository for interlocal agreements, adding cross boundary memoranda of agreement would not increase the costs of operating the system.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.