

SUBSTITUTE FOR
HOUSE BILL NO. 4116

A bill to amend 1846 RS 12, entitled
"Of certain state officers,"
(MCL 14.28 to 14.35) by adding section 32a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 32A. (1) BEFORE A GOVERNMENTAL UNIT OR OFFICER OF THIS
2 STATE ENTERS INTO A CROSS BOUNDARY MEMORANDUM OF AGREEMENT, IT
3 SHALL DO BOTH OF THE FOLLOWING:

4 (A) FORWARD A COPY OF THE CROSS BOUNDARY MEMORANDUM OF
5 AGREEMENT TO THE ATTORNEY GENERAL.

6 (B) CONDUCT A PRELIMINARY INTERNAL REVIEW OF THE CROSS
7 BOUNDARY MEMORANDUM OF AGREEMENT TO DETERMINE IF IT IS A LEGALLY
8 BINDING OR ENFORCEABLE AGREEMENT. THE REVIEW SHALL BE CARRIED OUT
9 ON A TIME SCHEDULE AT THE DISCRETION OF THE GOVERNMENTAL UNIT. IF
10 THE CROSS BOUNDARY MEMORANDUM OF AGREEMENT IS A LEGALLY BINDING OR

1 ENFORCEABLE AGREEMENT, THE GOVERNMENTAL UNIT SHALL CONDUCT A FULL
2 REVIEW AND MAY REQUEST CONSULTATION WITH THE ATTORNEY GENERAL. A
3 FULL REVIEW SHALL INCLUDE ALL OF THE FOLLOWING CONSIDERATIONS:

4 (i) STATE AND FEDERAL CONSTITUTIONAL REQUIREMENTS AND
5 LIMITATIONS.

6 (ii) THE EXISTENCE OF STATUTORY AUTHORITY FOR THE CROSS
7 BOUNDARY MEMORANDUM OF AGREEMENT AND THE EXTENT OF SUCH AUTHORITY,
8 IF ANY, GRANTED TO THE DEPARTMENT, AGENCY, DIVISION, SUBUNIT, OR
9 OFFICER THAT WOULD EXECUTE THE CROSS BOUNDARY MEMORANDUM OF
10 AGREEMENT.

11 (2) AN UNEXECUTED CROSS BOUNDARY MEMORANDUM OF AGREEMENT THAT
12 IS FORWARDED TO THE DEPARTMENT OF ATTORNEY GENERAL OR ANY INTERNAL
13 REVIEW DONE IN CONSULTATION WITH THE DEPARTMENT OF ATTORNEY GENERAL
14 UNDER SUBSECTION (1) IS SUBJECT TO THE SAME ATTORNEY-CLIENT
15 PRIVILEGE THAT ORDINARILY EXISTS BETWEEN THE EXECUTIVE BRANCH AND
16 THE DEPARTMENT OF ATTORNEY GENERAL.

17 (3) WITHIN 10 DAYS AFTER EXECUTING A CROSS BOUNDARY MEMORANDUM
18 OF AGREEMENT, THE GOVERNMENTAL UNIT SHALL FORWARD IT TO THE
19 ATTORNEY GENERAL. THE ATTORNEY GENERAL SHALL FORWARD THE EXECUTED
20 CROSS BOUNDARY MEMORANDUM OF AGREEMENT TO THE OFFICE OF THE GREAT
21 SEAL WITHIN 10 DAYS AFTER RECEIPT AND SHALL RETAIN A COPY OF THE
22 SIGNED CROSS BOUNDARY MEMORANDUM OF AGREEMENT.

23 (4) THE OFFICE OF THE GREAT SEAL SHALL ACCEPT AND OFFICIALLY
24 FILE A CROSS BOUNDARY MEMORANDUM OF AGREEMENT. BY JUNE 30, 2014,
25 EACH STATE GOVERNMENTAL UNIT SHALL FORWARD A COPY OF ANY CROSS
26 BOUNDARY MEMORANDUM OF AGREEMENT THAT IT ENTERED INTO BEFORE JUNE
27 30, 2012, AND THAT IS LEGALLY BINDING AND STILL IN EFFECT, TO THE

1 OFFICE OF THE GREAT SEAL FOR INCLUSION IN THE CENTRAL REPOSITORY
2 CREATED IN SUBSECTION (5) .

3 (5) BY JUNE 30, 2012, THE OFFICE OF THE GREAT SEAL SHALL
4 ESTABLISH AND MAINTAIN A PUBLICLY ACCESSIBLE CENTRAL REPOSITORY
5 THAT INCLUDES EACH CROSS BOUNDARY MEMORANDUM OF AGREEMENT FORWARDED
6 TO IT UNDER SUBSECTION (3) OR (4) . THE OFFICE OF THE GREAT SEAL
7 SHALL MAKE THE REPOSITORY ACCESSIBLE VIA THE INTERNET BY 1 YEAR
8 AFTER THE OFFICE OF THE GREAT SEAL OR ITS ASSIGNEES OR SUCCESSORS
9 MAKE INTERLOCAL AGREEMENTS CREATED UNDER THE URBAN COOPERATION ACT
10 OF 1967, 1967 (EX SESS) PA 7, MCL 124.501 TO 124.512, ACCESSIBLE TO
11 THE PUBLIC VIA THE INTERNET.

12 (6) THIS SECTION DOES NOT REQUIRE THE DISCLOSURE OF A PUBLIC
13 RECORD THAT IS OTHERWISE PROHIBITED BY LAW FROM PUBLIC DISCLOSURE,
14 IS PRIVILEGED, OR IS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
15 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. THIS SECTION
16 DOES NOT AND SHALL NOT BE CONSTRUED TO PROHIBIT OR PREEMPT FROM
17 PUBLIC DISCLOSURE ANY CROSS BOUNDARY MEMORANDUM OF AGREEMENT FOR
18 THE SOLE REASON THAT IT WAS EXECUTED BY THE GOVERNOR OR THE
19 LIEUTENANT GOVERNOR OR AN AGENT OR EMPLOYEE OF THE GOVERNOR OR
20 LIEUTENANT GOVERNOR.

21 (7) AS USED IN THIS ACT:

22 (A) "CROSS BOUNDARY MEMORANDUM OF AGREEMENT" MEANS A
23 MEMORANDUM OF AGREEMENT, MEMORANDUM OF UNDERSTANDING, MEMORANDUM OF
24 RECORD, COMPACT, OR SIMILAR AGREEMENT THAT A GOVERNMENTAL UNIT OF
25 THIS STATE PROPOSES TO ENTER INTO OR ENTERS INTO WITH THE FEDERAL
26 GOVERNMENT OR A UNIT OF GOVERNMENT LOCATED OUTSIDE OF THIS STATE.

27 (B) "GOVERNMENTAL UNIT" MEANS A STATE DEPARTMENT, AGENCY,

1 DIVISION, OR ANY OTHER ENTITY OR SUBUNIT DERIVED FROM THOSE PUBLIC
2 BODIES.

3 (8) THIS SECTION DOES NOT LIMIT, AND SHALL NOT BE CONSTRUED TO
4 LIMIT, THE ABILITY OF ANY GOVERNMENTAL UNIT TO CONDUCT AN INTERNAL
5 REVIEW OR TO SEEK LEGAL ADVICE BEYOND THE REQUIREMENTS IN THIS
6 SECTION.

7 Enacting section 1. This amendatory act takes effect June 30,
8 2012.