

HOUSE BILL No. 5916

September 19, 2012, Introduced by Rep. Opsommer and referred to the Committee on Oversight, Reform, and Ethics.

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

1 ON A TIME SCHEDULE AT THE DISCRETION OF THE GOVERNMENTAL UNIT. IF
2 THE CROSS BOUNDARY MEMORANDUM OF AGREEMENT IS A LEGALLY BINDING OR
3 ENFORCEABLE AGREEMENT, THE GOVERNMENTAL UNIT SHALL CONDUCT A FULL
4 REVIEW AND MAY REQUEST CONSULTATION WITH THE ATTORNEY GENERAL. A
5 FULL REVIEW SHALL INCLUDE ALL OF THE FOLLOWING CONSIDERATIONS:

6 (i) STATE AND FEDERAL CONSTITUTIONAL REQUIREMENTS AND
7 LIMITATIONS.

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

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

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

25 (4) THE OFFICE OF THE GREAT SEAL SHALL ACCEPT AND OFFICIALLY
26 FILE A CROSS BOUNDARY MEMORANDUM OF AGREEMENT. BY JUNE 30, 2014,
27 EACH STATE GOVERNMENTAL UNIT SHALL FORWARD A COPY OF ANY CROSS

1 BOUNDARY MEMORANDUM OF AGREEMENT THAT IT ENTERED INTO BEFORE JUNE
2 30, 2012, AND THAT IS LEGALLY BINDING AND STILL IN EFFECT, TO THE
3 OFFICE OF THE GREAT SEAL FOR INCLUSION IN THE CENTRAL REPOSITORY
4 CREATED IN SUBSECTION (5).

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

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

23 (7) AS USED IN THIS ACT:

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

1 GOVERNMENT OR A UNIT OF GOVERNMENT LOCATED OUTSIDE OF THIS STATE.

2 (B) "GOVERNMENTAL UNIT" MEANS A STATE DEPARTMENT, AGENCY,
3 DIVISION, OR ANY OTHER ENTITY OR SUBUNIT DERIVED FROM THOSE PUBLIC
4 BODIES.

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

9 Enacting section 1. This amendatory act takes effect June 30,
10 2012.