

Legislative Analysis



REVIEW OF CROSS-BOUNDARY AGREEMENTS; OFFICE OF GREAT SEAL REPOSITORY

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House Bill 4026
Sponsor: Rep. Gail Haines
Committee: Oversight

Complete to 2-25-13

A SUMMARY OF HOUSE BILL 4026 AS INTRODUCED 1-22-13

House Bill 4026 would establish a review protocol for cross-boundary memorandums of agreement before those agreements are entered into by state agencies.

Further, the bill would require that a central repository for such agreements be created by the Office of the Great Seal before September 1, 2014, and then be made electronically accessible to the public via the Internet within one year. The bill is an amendment to Chapter 12 of the Revised Statutes of 1846 (RS 12), which deals with the responsibilities of state officers.

A cross-boundary agreement, under the bill, is an 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. The bill would take effect September 1, 2013. A more detailed description of the bill follows.

Attorney General notified before executing agreement. House Bill 4026 would require that before a governmental unit or officer entered into a cross-boundary memorandum of agreement, all of the following information be forwarded to the attorney general:

- A copy of the cross-boundary memorandum of agreement.
- A written preliminary review of the cross boundary memorandum of agreement that addresses whether it is a legally binding or enforceable agreement.
- For a cross boundary memorandum of agreement that appears to be a legally binding or enforceable agreement, a written full review that includes both of the following considerations: (1) state and federal constitutional requirements and limitations; and (2) the existence of statutory authority for the agreement, and the extent of the authority, if any, granted to the department, agency, division, subunit, or officer executing the cross-boundary memorandum of agreement.

After executing agreement. The bill requires that within 10 days after executing a cross-boundary memorandum of agreement, the governmental unit or officer forward it to the Office of the Great Seal with a copy to the attorney general.

Office of the Great Seal Central Repository; Internet Access. The Office of the Great Seal would accept and officially file a cross-boundary memorandum of agreement.

Further, by September 1, 2016, each state governmental unit would be required to forward a copy of any cross boundary memorandum of agreement that it entered into before September 1, 2014, and that was legally binding and still in effect, to the Office of the Great Seal for inclusion in the central repository.

In addition, by September 1, 2014, the Office of the Great Seal would be required to establish and maintain a publicly accessible central repository that included each cross-boundary memorandum of agreement forwarded to it. Under the bill, the repository would have to be accessible via the Internet one year after the repository was created.

Privileged Information. The bill specifies that public accessibility would not require the disclosure of a public record that is otherwise prohibited by law from public disclosure, is privileged, or is exempt from disclosure under the Freedom of Information Act. Further, it should not be construed to prohibit or preempt from public disclosure any cross boundary memorandum of agreement 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 government.

Legal Advice from the Attorney General. Finally, the bill specifies that this legislation would not limit, nor should it be construed to limit, the ability of any governmental unit to conduct an internal review or to seek legal advice from the attorney general.

Definitions. The bill would define two phrases: "cross boundary memorandum of agreement" and "governmental unit." Under the bill, "cross boundary memorandum of agreement" means 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.

Further, "governmental unit" is defined to mean a state department, agency, division, or any other entity or subunit derived from those public bodies.

Proposed MCL 14.32a

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.

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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.