



**Senate Fiscal Agency**  
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**BILL ANALYSIS**

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Senate Bill 594 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Mike Shirkey  
Committee: Elections and Government Reform

Date Completed: 4-12-16

**RATIONALE**

It is common for a document called a memorandum of understanding (MOU) or memorandum of agreement (MOA) to be used by individuals, businesses, agencies, and governments to reflect an agreement or understanding between two or more parties. An MOU or MOA might be used, for example, to define a relationship between the parties, establish their expectations or roles, set forth a course of action, or create a public statement of cooperation. An MOU or MOA is more formal than a "handshake agreement" or a "gentlemen's agreement" but typically is less formal than a contract, although an MOU or MOA might contain all of the elements of a contract or be used to set the groundwork for a contract. Whether the document is legally binding depends on how it is written and the intent of the parties.

As other entities do, the State of Michigan and its departments and agencies enter into MOUs and MOAs for various purposes, sometimes with other parties, including local units of government, other states, the United States, and foreign countries, and sometimes among departments themselves. Although a number of statutes refer to MOUs or MOAs, or call for departments to enter into them under certain circumstances, Michigan law does not otherwise specify how or when these documents are to be executed, contain requirements for them to be approved, require them to be maintained in a central location, or indicate how long they are in effect. Because MOUs and MOAs that the State enters into can have an impact on members of the public, it has been suggested that the law should prescribe requirements for their approval by the Governor and filing with the Secretary of State, similar to what is currently required if the State is a party to an agreement to exercise powers jointly with another government.

**CONTENT**

**The bill would amend the Urban Cooperation Act to do the following:**

- Require a memorandum of understanding or memorandum of agreement, including any associated grant application, to be submitted to the Governor before it could take effect, if the MOU or MOA were between State departments or between offices within a State department or if it involved the State and the Federal government or an out-of-State unit of government.**
- Require the Governor to determine whether an MOU or MOA submitted to him or her was in proper form and compatible with the laws of the State.**
- Permit the Governor not to approve an MOU or MOA, including an associated grant application, submitted to him or her.**
- Prohibit the Governor from approving an MOU or MOA, including any associated grant application, if it were not in proper form or compatible with the laws of the State.**
- Provide that an approved MOU or MOA, including any grant requirements, if intended to be a legally binding contract, would be binding only for the term of office of the Governor who approved it or the term described in the MOU or MOA, whichever was shorter.**

**-- Require an MOU or MOA, including any associated grant application, that was subject to the Governor's approval or that was intended to be a legally binding contract, to be filed with the Secretary of State before it took effect.**

"Memorandum of understanding" or "memorandum of agreement" would mean a written statement detailing the understanding of individuals representing parties who enter into certain agreements, and would include certain grant applications involving the State. An MOU or MOA could be preliminary in nature.

The Act allows a public agency (a political subdivision) of Michigan to exercise jointly with any other public agency of Michigan, any other state, Canada, or the U.S. government, any power, privilege, or authority that the agencies share in common and that each might exercise separately. A joint exercise of power must be made by contract in the form of an interlocal agreement.

If funds of this State are to be allocated to carry out an interlocal agreement, or if the State, an agency of the U.S. government, any other state or political subdivision of any other state, or Canada or a political subdivision of Canada is a party to an interlocal agreement, the agreement must be submitted to the Governor before it takes effect. The Governor must determine whether the interlocal agreement is in proper form and compatible with Michigan law. The Governor is required to approve the interlocal agreement unless he or she finds that it does not meet the conditions of the Act or is not compatible with the laws of the State.

Under the bill, if a memorandum of understanding or memorandum of agreement were between State departments or between offices within a State department, or if an MOU or MOA involved this State and the Federal government or this State and a unit of government located outside of Michigan, including any grant application associated with an MOU or MOA involving this State and the Federal government or this State and a unit of government located outside of Michigan, the MOU or MOA would have to be submitted to the Governor before and as a condition precedent to its effectiveness. The Governor would have to determine whether the MOU or MOA was in proper form and compatible with the laws of the State.

The Governor could choose not to approve a memorandum of understanding or memorandum of agreement, including any grant application associated with an MOU or MOA, submitted to him or her. The Governor would be prohibited from approving a memorandum of understanding or memorandum of agreement, including any grant application associated with an MOU or MOA, that was not in proper form or compatible with the laws of the State.

If the Governor approved a memorandum of understanding or memorandum of agreement, including any grant application associated with an MOU or MOA, submitted to him or her, the MOU or MOA, including any grant requirements, if intended to be a legally binding contract, would be binding only for the term of office of the Governor who approved it or for the term described in the MOU or MOA, whichever was shorter.

Before its effectiveness, a memorandum of understanding or memorandum of agreement, including any grant application associated with an MOU or MOA, would have to be filed with the Secretary of State, if it were subject to the requirements for submission to the Governor or were intended to be a legally binding contract.

The bill would take effect 90 days after enactment.

MCL 124.502 & 124.510

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

A memorandum of understanding or agreement can provide a mutually beneficial framework for two or more parties to achieve shared goals, establish expectations, document transactions, and accomplish myriad other functions for which a formal contract might not be necessary or appropriate. In addition to private parties, governmental entities at all levels use MOUs in different situations. In August 2015, for example, the State of Michigan and four Chinese provinces entered into a memorandum of understanding to increase cooperation and expand economic activity. In April 2014, the Michigan Medical Services Administration and the Centers for Medicare and Medicaid Services entered into an MOU establishing the Medicare-Medicaid Alignment Initiative. In March 2012, Governor Snyder signed an agreement with several other states and Federal agencies requiring various entities to identify their regulatory regimes for offshore wind projects.

An example of an interdepartmental MOU is a 2008 agreement entered into between the Michigan Department of State and the Michigan Department of Corrections regarding the use of prisoner identification cards for the purpose of applying for driver licenses, and the exchange of information necessary to verify an applicant's identify. More recently, Executive Directive 2015-1 was issued to establish State procurement procedures, and required the Department of Technology, Management, and Budget (DTMB) and each principal department and agency performing procurement functions to enter into a standardized memorandum of understanding described in the Executive Directive. In addition, Executive Order 2016-4 created the Office of Performance and Transformation (OPT) in the State Budget Office, transferred functions of the Office of Good Government to the OPT, and required the transfer to be documented in an MOU between the DTMB Director and the executive director of the OPT.

These are just a few examples of the types of MOUs that the State enters into and the purposes for which the documents are used. Because the documents reflect activities of the government and may have an impact on residents of the State, especially if the MOUs are binding contracts, it would be appropriate to establish requirements for the Governor's approval of MOUs and MOAs between Michigan and the Federal government or out-of-State governments, as well as those between State departments and offices, as the bill proposes. The approval requirement would ensure that these documents were in the proper form and consistent with State law. Also, to promote transparency and give members of the public access to the documents, the bill would require MOUs and MOAs to be filed with the Secretary of State if they were approved by the Governor or intended to be legally binding. These provisions would mirror current requirements for interlocal agreements.

In addition, because current law does not set any limit on the duration of an MOU or MOA (although the document itself may contain an expiration date), the bill provides that an approved MOU or MOA that was intended to be a legally binding contract would be binding only for the term of office of the Governor who signed it or the term described in the document, whichever was shorter. This would prevent any ambiguity as to whether an MOU or MOA entered into during a previous administration would continue to bind the current Governor.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.