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BILL



ANALYSIS

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Senate Bill 822 (Substitute S-1 as reported)
Sponsor: Senator Mike Shirkey
Committee: Elections and Government Reform

Date Completed: 3-28-18

RATIONALE

It is common for a document called a memorandum of understanding (MOU) to be used by individuals, businesses, agencies, and governments to reflect an agreement or understanding between two or more parties. An MOU 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 is more formal than a "handshake agreement" but typically less formal than a contract, although an MOU 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 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 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, require them to be maintained in a central location, or indicate how long they are in effect. Because MOUs that the State enters into can have an impact on members of the public, it has been suggested that the law should require these MOUs to be filed in a central place, shared with the Legislature, and made available to the public, as well as limit the duration of an MOU signed by a Governor to his or her term, or the term of a successor Governor who ratifies it.

CONTENT

The bill would create a new law to require a memorandum of understanding between the State and another party, signed by the Governor, to be in effect only for the time the Governor held office, and to be filed with the Office of the Great Seal; require copies of it to be given to the Senate and House leaders and each house of the Legislature; and require the MOU to be posted online.

Specifically, beginning 90 days after its effective date, the bill would require the Governor, before signing a memorandum of understanding, would have to ensure that it contained a provision that the MOU was in effect only for the time that the Governor held office as Governor, unless ratified by the successive Governor. If an MOU were ratified by a successive Governor, then that ratification would be effective only for the time that Governor held office as Governor.

A copy of a memorandum of understanding signed by the Governor under the proposed law would have to be filed in the Office of the Great Seal and made available to the public. Copies of each MOU also would have to be posted on the Department of State internet website.

The Department would be required to file a copy of each memorandum of understanding under the proposed law with each house of the Legislature and the Senate Majority Leader, the Senate

Minority Leader, the Speaker of the House of Representatives, and the Minority Leader of the House.

"Memorandum of understanding" would mean an informal agreement between the State and another party that does not impose contractual duties or obligations on the State.

"Office of the Great Seal" would mean the Office of the Great Seal located with the executive office of the Michigan Department of State.

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 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 2016, for example, Governor Snyder and the Premier of Ontario signed a memorandum of understanding "to promote, foster sustainable growth and support innovation in the Ontario-Michigan automotive cluster". One year earlier, the State of Michigan and four Chinese provinces entered into an MOU 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.

An example of an interdepartmental MOU is a 2008 agreement 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 identity. 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. Executive Order 2016-2 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 they are used. Despite their relatively common use, however, the documents containing these agreements cannot be easily located, nor are they required to be. Because the MOUs reflect activities of the government and may have an impact on residents of the State, it would be appropriate to facilitate public access to them. The bill would do so, and enhance governmental transparency, by requiring MOUs signed by the Governor to be posted online and made available to the public, and requiring copies to be given to the Legislature as well as the Senate and House majority and minority leaders. An MOU signed by the Governor also would have to be filed with the Office of the Great Seal, which functions as the official repository for public acts, executive orders, administrative rules, and other types of public records.

In addition, because current law does not set any limit on the duration of an MOU (although the document itself may contain an expiration date), the bill provides that an MOU signed by the Governor would be effective only for the time that the Governor held office. If the next Governor ratified an MOU, it would remain in effect only while he or she held office. These limitations would prevent any ambiguity as to whether an MOU 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.