

GUBERNATORIAL MEMORANDA OF UNDERSTANDING

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Senate Bill 822 as enrolled

Sponsor: Sen. Mike Shirkey

House Committee: Oversight

Senate Committee: Elections and Government Reform

Complete to 2-1-19

Analysis available at
<http://www.legislature.mi.gov>

(Vetoed by the Governor 12-28-18)

SUMMARY:

Senate Bill 822 would create a new act concerning the effectiveness of, and filing requirements for, a memorandum of understanding signed by the governor.

Under the bill, if a *memorandum of understanding* (MOU) signed by a governor would, according to its provisions, apply after the date that governor leaves office, the MOU would stay in effect during successive administrations until either a successive governor rejected it or it expired on its own.

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

The bill would require a copy of an MOU “signed by the governor under this act” to be filed in the Office of the Great Seal and made available to the public. [Note: the bill contains no provisions concerning the signing of an MOU.] Copies of each MOU would have to be posted on the Department of State internet website, and the Department of State would have to file a copy with each house of the legislature and with the Senate Majority Leader, the Senate Minority Leader, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

BRIEF DISCUSSION:

Generally speaking, a memorandum of understanding, or MOU, is a formal, albeit nonbinding, agreement between two or more parties, often acting similarly to a letter of intent. MOUs often are used by governments and governmental agencies, private businesses, even foreign governments to forge partnerships in a project or mutually beneficial goal. As an example, in April, 2018, Governor Snyder and Minister Richard Harrington of the House of Commons of the United Kingdom signed an MOU to support advancements in the automotive sector by, among other things, sharing data and best practices. In 2016, the Governor signed a similar MOU with the Government of Ontario to increase cooperation in automotive matters, enhance the interconnected automotive supply chain, and promote the demonstration and deployment of innovative technologies and processes in the automotive sector, according to the MOU document.

As many, but not all, MOUs contain an expiration date and provide for termination of the document either with or without cause, the bill should not add new limitations or restrictions to the language or function of an MOU. Typically, either party to an MOU can modify the terms or terminate it with proper notice. An MOU without a termination date would likely be reviewed and continued through successive governors in the same manner as one with a termination date that fell in a successor governor's term of office.

The bill would require a copy of each MOU signed by a governor to be filed with the Office of the Great Seal, posted on the Department of State's website, and filed with each chamber of the Legislature. This would make it easier for policymakers and the public to see and read the MOUs a governor enters into. It also resolves the problem encountered a few years ago when a search for a copy of a particular MOU regarding a trash agreement with Canada took more than a year to locate (it was eventually found in England).

It should be noted that the bill would only apply to an MOU signed by the governor. MOUs utilized by governmental agencies, such as a now-expired one between the Michigan Department of Community Health and the Centers for Medicare & Medicaid Services regarding a demonstration to integrate care for persons eligible for Medicare and Medicaid, would not be subject to the bill's posting and filing requirements.

FISCAL IMPACT:

The bill would have no fiscal impact on state or local units of government.

Vetoed 12-28-18:

In his veto message, Governor Snyder wrote, "Senate Bill 822 on its face appears to have a noble purpose—transparency. But it also has the potential to lead the way toward more routine legislative encroachment into regulating the activity of future governors. Therefore, I return Senate Bill 822 to you without my approval."

He also noted that the MOUs he had signed as governor "are available on the MEDC's website."

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.