

HOUSE BILL No. 5566

May 8, 2014, Introduced by Rep. Walsh and referred to the Committee on Detroit's Recovery and Michigan's Future.

A bill to create the oversight commission act; to provide for the operation of certain commissions; to create funds and accounts; to prescribe the powers and duties of certain commissions, the state treasurer, certain other state officials and state employees, and certain local officials; to provide for the dissolution of certain commissions; and to make certain appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "oversight commission act".

3 Sec. 2. The legislature finds and declares the following:

4 (a) It is the public policy of this state to exercise its
5 sovereign powers with regard to debt issuance and matters of

1 statewide concern in a manner calculated to foster the fiscal
2 integrity of all municipal governments to assure that those
3 municipalities provide for the health, safety, and welfare of their
4 citizens; pay principal and interest owed on debt obligations when
5 due; meet financial obligations to their existing and former
6 employees, vendors, and suppliers; and provide for proper financial
7 planning procedures and budgeting practices. The inability of a
8 municipal government to provide essential services to its citizens
9 as a result of fiscal emergencies is determined to affect adversely
10 the health, safety, and welfare of not only that municipality's
11 citizens, but also other citizens of this state.

12 (b) The police and fire retirement system of certain qualified
13 cities and the general retirement system of certain qualified
14 cities are currently underfunded, causing communities across the
15 state to face higher costs to borrow and invest funds, and have
16 caused bondholders, bond insurers, and financial institutions
17 anxiety over the financial health of not only certain qualified
18 cities, but communities across this state.

19 (c) Absent prospective state oversight over certain qualified
20 municipalities, there exists a threat of increased costs in
21 borrowing, reductions in credit or bond ratings, reduced faith from
22 existing creditors of municipalities and of this state, and dire
23 financial circumstances from which this state and its political
24 subdivisions may never fully recover.

25 (d) There are numerous residents of this state who have
26 accrued pension benefits from a qualified city's pension systems,
27 and those pensioners reside throughout this state. The settlement

1 of certain municipal bankruptcy cases will have a substantial
2 positive impact statewide.

3 (e) Establishing the commission and execution by the
4 commission of its powers granted under this act fulfill in all
5 respects a public and governmental purpose for the benefit of the
6 people of this state.

7 (f) Ongoing fiscal oversight over certain qualified cities is
8 a reasonable and sufficiently narrow regulation and serves a
9 significant and legitimate public purpose because it inures to the
10 benefit of all of this state's residents and aids in the remedy of
11 a broad and general social problem.

12 (g) Fiscal oversight over certain qualified cities will ensure
13 that those cities do not engage in the financial practices that led
14 to financial emergencies and insolvency, and ultimately, entry into
15 receivership and bankruptcy, which will ensure that those cities
16 can provide basic and essential municipal services to their
17 residents.

18 Sec. 3. As used in this act:

19 (a) "Applicable contract" means a contract for goods or
20 services proposed or entered into by a qualified city or retirement
21 system that either exceeds \$750,000.00 or is for a term exceeding 2
22 years. Applicable contract also includes multiple contracts for
23 less than \$750,000.00 with 1 entity that, in the aggregate, exceed
24 \$750,000.00 within a 12-month period.

25 (b) "Commission" or "oversight commission" means the oversight
26 commission created in section 4.

27 (c) "Federal bankruptcy code" means the federal bankruptcy

1 code, 11 USC 101 to 1330.

2 (d) "Operating expenses" means the reasonable operating
3 expenses of the commission, including without limitation the cost
4 of preparing accounting and other reports, costs of commission
5 meetings or other required activities of the commission, counsel
6 fees, including fees of the attorney general, and fees and expenses
7 incurred for consultants and fiduciaries required to carry out the
8 purposes of this act.

9 (e) "Person" means an individual, corporation, limited or
10 general partnership, association, joint venture, limited liability
11 company, a governmental entity, including this state.

12 (f) "Plan for adjustment" means the plan for the adjustment of
13 debts of a qualified city approved and entered by a United States
14 bankruptcy court under chapter 9 of title 11 of the United States
15 Code, 11 USC 901 to 946.

16 (g) "Professional services" means services that require a high
17 degree of intellectual skill, an advanced degree, or professional
18 licensing or certification. Those providing the professional
19 services are distinguished based on their specialized knowledge,
20 experience, and expertise. Professional services include, but are
21 not limited to, accounting, actuarial, appraisal, auditing,
22 investment advisor, and legal services.

23 (h) "Qualified city" means a city with a population of more
24 than 600,000 for which a plan for adjustment was approved and
25 entered by a United States bankruptcy court.

26 (i) "State treasurer" means the treasurer of this state or his
27 or her designee who shall be designated by a written instrument

1 signed by the state treasurer and maintained in a permanent file
2 and whose signature shall have the same force and effect as the
3 signature of the state treasurer for all purposes under this act.

4 Sec. 4. The oversight commission is created within the
5 department of treasury to carry out the purposes and intent of this
6 act. The commission shall exercise its duties, rights, and
7 responsibilities independent of the state treasurer. The staffing,
8 budgeting, procurement, and related administrative functions of the
9 commission shall be performed under the direction and supervision
10 of the state treasurer, and the department of treasury shall
11 provide the commission with its necessary operating expenses.

12 Sec. 5. (1) The commission shall consist of the following 7
13 members:

14 (a) The governor, or his or her designee, who shall serve for
15 the duration of his or her term of office.

16 (b) The state treasurer, who shall serve for the duration of
17 his or her term of office.

18 (c) The director of the department of technology, management,
19 and budget or successor agency, or his or her designee, who shall
20 serve for the duration of his or her term of office.

21 (d) One member appointed by the governor, who has knowledge,
22 skill, or experience in the field of business or finance, including
23 relevant actuarial expertise, and who is a resident of a qualified
24 city.

25 (e) The mayor or chief executive officer of a qualified city,
26 or his or her designee, who shall serve for the duration of his or
27 her term of office.

1 (f) One member appointed by the governor from a list of 3 or
2 more individuals nominated by the senate majority leader who have
3 knowledge, skill, or experience in the field of business or
4 finance, including relevant actuarial expertise, and 1 of whom is a
5 resident of a qualified city.

6 (g) One member appointed by the governor from a list of 3 or
7 more individuals nominated by the speaker of the house of
8 representatives who have knowledge, skill, or experience in the
9 field of business or finance, including relevant actuarial
10 expertise, and 1 of whom is a resident of a qualified city.

11 (2) The appointed members shall serve for a term of 4 years,
12 except that of the 3 members first appointed, the appointee of the
13 governor shall serve a term of 1 year, the appointee of the
14 governor who was nominated by the speaker of the house of
15 representatives shall serve a term of 2 years, and the appointee of
16 the governor who was nominated by the senate majority leader shall
17 serve a term of 3 years. Appointed members serve at the pleasure
18 of, and may be removed by, their respective appointing official.

19 (3) Members of the commission shall serve without compensation
20 but may receive reasonable reimbursement for necessary travel and
21 expenses incurred in the discharge of their official duties.

22 (4) The governor or his or her designee shall serve as
23 chairperson of the commission.

24 (5) A majority of the members of the commission shall
25 constitute a quorum of the commission for the transaction of
26 business. The commission shall meet no less than monthly and at
27 times and places designated by the chairperson. Actions of the

1 commission shall be approved by a majority of the members.

2 (6) The commission shall conduct its business at public
3 meetings in compliance with the open meetings act, 1976 PA 267, MCL
4 15.261 to 15.275. However, members of the commission may attend and
5 participate in a meeting of the commission by the use of
6 telecommunication or other electronic equipment if their attendance
7 and participation by the use of telecommunication or other
8 electronic equipment is authorized by the bylaws of the commission
9 and that meeting is otherwise conducted in compliance with the open
10 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

11 (7) A writing prepared, owned, used, in the possession of, or
12 retained by the commission in the performance of an official
13 function is subject to the freedom of information act, 1976 PA 442,
14 MCL 15.231 to 15.246.

15 (8) The commission shall adopt bylaws for governance of the
16 commission, which shall, at a minimum, address the procedures for
17 conducting meetings, including voting procedures, and the
18 requirements of its members to attend meetings. Procedural rules
19 required by this section are not subject to the administrative
20 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

21 (9) The commission may contract for professional services, as
22 it requires, and shall determine the qualifications it considers
23 necessary. Notwithstanding any other provision of law to the
24 contrary, the commission is not required to competitively bid
25 contracts for professional services.

26 (10) The members of the commission and contractors or agents
27 of the commission are subject to 1968 PA 317, MCL 15.321 to 15.330,

1 and 1968 PA 318, MCL 15.301 to 15.310.

2 (11) A member of the commission, and any person the commission
3 contracts with, shall discharge the duties of his or her position
4 in a nonpartisan manner, with good faith, and with that degree of
5 diligence, care, and skill that an ordinarily prudent person would
6 exercise under similar circumstances in a like position. The
7 commission shall adopt an ethics policy governing the conduct of
8 commission members and officers and employees of the commission.

9 (12) Commission members shall take and subscribe to the
10 constitutional oath of office under section 1 of article XI of the
11 state constitution of 1963. The oath shall be filed with the
12 secretary of state.

13 Sec. 6. (1) The commission shall provide oversight for a
14 qualified city beginning on the effective date of the plan for
15 adjustment or of this act, whichever is later.

16 (2) The commission shall ensure that a qualified city is
17 complying with the terms and conditions of this act and of the plan
18 for adjustment, if applicable. Except as otherwise provided in
19 section 8, the commission shall by October 1 each year certify that
20 a qualified city is in substantial compliance with the provisions
21 of this act.

22 (3) The commission shall ensure that, where applicable, a
23 qualified city complies with the provisions of all of the following
24 and may request verification of compliance:

25 (a) Section 8 of the publicly funded health insurance
26 contribution act, 2011 PA 152, MCL 15.568.

27 (b) Sections 4i, 4p, 4s, and 4t of the home rule city act,

1 1909 PA 279, MCL 117.4i, 117.4p, 117.4s, and 117.4t.

2 (c) The revised municipal finance act, 2001 PA 34, MCL
3 141.2101 to 141.2821.

4 (d) The uniform budgeting and accounting act, 1968 PA 2, MCL
5 141.421 to 141.440a.

6 (4) During the period of oversight, the commission shall
7 review and approve the qualified city's 4-year financial plan
8 required by section 4t of the home rule city act, 1909 PA 279, MCL
9 117.4t. The commission may require adjustments to the financial
10 plan to modify expenditures to satisfy debt service, adjust
11 projected revenues to comply with financial controls or accounting
12 practices, and reduce expenditures to conform to consensus revenue
13 estimates if required in section 7 to comply with the provisions of
14 section 4t of the home rule city act, 1909 PA 279, MCL 117.4t. If
15 the qualified city fails to submit an acceptable financial plan,
16 the commission may adopt and impose upon the qualified city a
17 financial plan satisfying the requirements of this act and section
18 4t of the home rule city act, 1909 PA 279, MCL 117.4t, until that
19 time as the qualified city submits an acceptable financial plan.

20 (5) The commission shall establish and maintain programs and
21 requirements for the responsible fiscal management of a qualified
22 city. The commission's programs and requirements shall include all
23 of the following:

24 (a) Increased managerial accountability.

25 (b) The streamlining of the provision of city services.

26 (c) Improved collection of outstanding tax revenues.

27 (d) Revisions to the procurement practices including

1 competitive bidding procedures.

2 (e) Review of the compensation and benefits of city employees
3 and recommendation of adjustments where necessary.

4 (6) Notwithstanding any charter provision or local ordinance
5 to the contrary, all applicable contracts are subject to review and
6 approval by the commission. Only applicable contracts that are
7 first approved by the governing body and mayor of a qualified city
8 as required by law, charter, ordinance, or policy may be approved
9 by the commission. If an applicable contract is not approved by the
10 commission within 45 days of its submission, that contract is
11 rejected and must be resubmitted for commission approval.

12 (7) A qualified city, when required by the commission, shall
13 present written reports regarding its financial stability and shall
14 permit the commission to audit or inspect financial statements,
15 actuarial reports, revenue estimates, and any and all other
16 documents, data, reports, or findings that the commission considers
17 necessary to carry out its purpose under this act.

18 (8) The commission shall, on June 1 and December 1 of each
19 year in which the commission has oversight over a qualified city,
20 has oversight over compliance with the terms and conditions of this
21 act, or has oversight over the plan for adjustment providing for
22 the state's contribution, file a written report with the governor.
23 A copy of the report shall be submitted to the senate majority
24 leader and the speaker of the house of representatives.

25 (9) The commission shall approve all collective bargaining
26 agreements to which a qualified city is a party after approval by
27 the governing body and mayor of the qualified city as required by

1 charter or law. The commission shall approve or reject collective
2 bargaining agreements submitted to it within 45 days of submission.
3 Collective bargaining agreements submitted to the commission shall
4 not be executed unless and until the commission approves those
5 agreements.

6 (10) A decision of an arbitration panel pursuant to 1969 PA
7 312, MCL 423.231 to 423.247, to which a qualified city is a party
8 shall not be effective unless approved by the commission. The
9 commission's approval shall be in addition to any other
10 requirements provided by law. When determining whether to approve
11 or reject a decision under this subsection, the commission shall
12 consider whether the qualified city has the financial ability,
13 within its 4-year financial plan, to comply with that decision.

14 Sec. 7. The commission may do 1 or more of the following:

15 (a) Review and approve the qualified city's consensus revenue
16 estimate under section 4t of the home rule city act, 1909 PA 279,
17 MCL 117.4t. The commission may also, after consultation with the
18 qualified city, revise a revenue estimate prepared in connection
19 with a budget, budget modification, financial plan, or financial
20 plan modification, if the commission determines that the revenue
21 estimate was not based on assumptions and methods of estimation
22 reasonable and appropriate under the circumstances and in view of
23 the objectives and purposes of this act. After consultation with
24 the city, the commission may determine the estimated revenues for
25 the qualified city, but any revenue estimate adopted by the
26 commission shall be based on the same requirements as the city's
27 initial revenue estimate.

1 (b) Require a qualified city to submit the 4-year financial
2 plan required in section 4t of the home rule city act 1909 PA 279,
3 MCL 117.4t, in a form and manner the commission considers
4 appropriate. The requirement to submit a 4-year financial plan is
5 not subject to waiver under section 8.

6 (c) Review and approve proposed and amended operational
7 budgets of a qualified city. A proposed budget or budget amendment
8 does not take effect unless approved by the commission.

9 (d) Require the chief financial officer of the qualified city
10 to provide the commission with information it requests related to
11 the qualified city's finances. The commission may also require the
12 chief financial officer to attend commission meetings. If the chief
13 financial officer fails to comply with the provisions of this
14 subdivision, the commission may require the qualified city to
15 remove the chief financial officer and appoint a successor.

16 (e) Review and approve requests by a qualified city to issue
17 debt under the revised municipal finance act, 2001 PA 34, MCL
18 141.2101 to 141.2821, or any other law governing the issuance of
19 bonds or notes. The commission may develop rules for the issuance
20 of debt, including limitations that are greater than those provided
21 in sections 401 to 405 of the revised municipal finance act, 2001
22 PA 34, MCL 141.2401 to 141.2405. The debt described in this
23 subdivision may not be issued unless and until approved by the
24 commission and the commission's approval shall be in addition to
25 any approval of the department of treasury as required by law.

26 (f) Require a qualified city to solicit competitive bids, in a
27 manner not inconsistent with article 2 of the management and budget

1 act, 1984 PA 431, MCL 18.1201 to 18.1299, wherever practicable to
2 efficiently and effectively meet the qualified city's need for the
3 procurement of goods and services.

4 (g) Review compliance by a qualified city with a deficit
5 elimination plan submitted under section 21 of the Glenn Steil
6 state revenue sharing act of 1971, 1971 PA 140, MCL 141.921.

7 (h) Approve the appointment of a qualified city's chief
8 financial officer. If that appointment is not approved by the
9 commission within 45 days of written submission of the appointment
10 by the qualified city, the appointment is denied. The commission
11 may require that any effort to terminate the chief financial
12 officer be subject to commission review and approval.

13 (i) Require the development and implementation of financial
14 best practices for a qualified city.

15 (j) Recommend the adoption or amendment of certain charter
16 provisions, bylaws, ordinances, policies, or operating procedures
17 for a qualified city.

18 (k) Require the pursuit of financial or managerial training to
19 ensure the proper discharge of duties for a qualified city.

20 (l) Make and execute contracts necessary to carry out the
21 purposes of this act.

22 (m) Sue or be sued. The commission may retain legal counsel to
23 enforce any provisions of this act.

24 (n) Require a qualified city and the employees or agents of a
25 qualified city to timely produce and share all information and
26 documents, and provide access to all information on assets,
27 services, records, and any other materials or documents the

1 commission determines are necessary to carry out its
2 responsibilities under this act. The commission may require the
3 officers or employees of the qualified city to attend commission
4 meetings for any purpose necessary to carry out its
5 responsibilities under this act.

6 (o) Perform any duty provided by law that a receivership
7 transition advisory board as described in section 23 of the local
8 financial stability and choice act, 2012 PA 436, MCL 141.1563, may
9 perform.

10 (p) Perform any other duties assigned by the governor that are
11 not inconsistent with the purposes of this act.

12 Sec. 8. (1) Notwithstanding section 6, the commission may, by
13 resolution, waive 1 or more of the requirements designated in
14 sections 6 and 7 as provided in subsection (2).

15 (2) The commission may grant a waiver under this section if
16 all of the following conditions are met:

17 (a) The commission certifies that a qualified city has adopted
18 and adhered to deficit-free budgets for 3 consecutive years that
19 comply with generally accepted accounting principles and are in
20 accordance with the uniform budgeting and accounting act, 1968 PA
21 2, MCL 141.421 to 141.440a.

22 (b) The state treasurer and the qualified city's chief
23 financial officer, if applicable, certify that both of the
24 following are met:

25 (i) All municipal securities or debt obligations sold by or for
26 the benefit of that qualified city in the general public market
27 during the immediately preceding fiscal year and current fiscal

1 year satisfied the capital and other financial requirements of the
2 qualified city during that period.

3 (ii) There is a substantial likelihood that municipal
4 securities or debt obligations can be sold in the general public
5 market during the remainder of the current fiscal year and the
6 immediately succeeding fiscal year in amounts sufficient to
7 substantially satisfy all of the capital and other financial
8 requirements of the qualified city during those periods in
9 accordance with the qualified city's financial plan.

10 (c) The qualified city's financial plan projects a balanced
11 budget for the current and succeeding 3 fiscal years using
12 generally accepted accounting principles and in accordance with the
13 uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to
14 141.440a, and section 4t of the home rule city act, 1909 PA 279,
15 MCL 117.4t.

16 (d) The qualified city has been assigned a credit rating
17 within the category of A- or higher or the equivalent by at least 1
18 nationally recognized rating agency or has otherwise demonstrated
19 to the commission's satisfaction that the qualified city has
20 sufficient ability to borrow in the municipal securities market.

21 (e) The qualified city did not violate the plan for adjustment
22 in the immediately preceding fiscal year and is not in violation in
23 the current fiscal year.

24 (f) The state treasurer certifies that the qualified city is
25 in compliance with the uniform budgeting and accounting act, 1968
26 PA 2, MCL 141.421 to 141.440a.

27 (g) The commission certifies that the qualified city is in

1 substantial compliance with this act.

2 (3) The commission shall, by resolution, rescind its waiver
3 under subsection (2) if it certifies that any of the following,
4 where applicable, has occurred or that there is a substantial
5 likelihood that any of the following will imminently occur:

6 (a) The qualified city fails to pay principal of or interest
7 on any municipal securities when due or payable.

8 (b) The qualified city incurs a budget deficit in a fiscal
9 year equal to or more than 5% of the total expenditures in that
10 year based on generally accepted accounting principles.

11 (c) The qualified city issues municipal securities without the
12 authorization of the commission or in violation of the revised
13 municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

14 (d) The qualified city violates this act or any mandatory
15 financial controls in a manner that substantially impairs that
16 qualified city's ability to pay principal of and interest on
17 municipal securities when due and payable or its ability to adhere
18 to a balanced budget.

19 (e) The qualified city violates any provision of the plan for
20 adjustment, if applicable.

21 (f) The state treasurer and the qualified city's chief
22 financial officer, if applicable, fail to certify that the criteria
23 in subsection (2)(b) are met.

24 (g) If the qualified city's chief financial officer has
25 resigned, been terminated, or been removed, or the office has
26 otherwise become vacant and a successor has not been appointed
27 within 180 days of that vacancy.

1 (4) If the commission finds that the circumstances under which
2 it rescinded its waiver of 1 or more of the requirements of
3 sections 6 and 7 as provided in subsection (3) no longer exist, the
4 commission may reverse the rescission as provided in subsection
5 (2).

6 Sec. 10. The commission, and the carrying out of its
7 authorized purposes under this act, is in all respects a public and
8 governmental purpose for the benefit of the people of this state
9 and for the improvement of their health, safety, welfare, comfort,
10 and security. These purposes are public purposes, and the
11 commission will be performing an essential governmental function in
12 the exercise of the powers provided by this act.

13 Sec. 11. For the fiscal year ending September 30, 2014,
14 \$900,000.00 is appropriated from the general fund/general purpose
15 to the department of treasury to be expended to provide the
16 commission with the resources to exercise its powers, duties, and
17 responsibilities under this act and as required by this state to
18 enforce this act and the plan for adjustment; to secure
19 professional services to assist in the implementation of this act;
20 and, any other purposes that the commission determines in its
21 discretion are necessary or implied to implement this act.

22 Sec. 12. If the commission has waived 1 or more of the
23 requirements of sections 6 and 7 under section 8 each year for the
24 immediately preceding 10 consecutive fiscal years, and the plan for
25 adjustment has expired, the commission may, by resolution, and with
26 the approval of the governing body and mayor of the qualified city,
27 dissolve itself. All property, funds, and assets of the commission,

1 if any, shall be transferred to and vested in this state.

2 Sec. 13. The commission is a state commission, and the members
3 are state officers for the purposes of section 6419 of the revised
4 judicature act of 1961, 1961 PA 236, MCL 600.6419. The court of
5 claims shall have exclusive jurisdiction over any and all actions
6 challenging the validity of this act.