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BILL ANALYSIS

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House Bill 5566 (Substitute H-3 as passed by the House) *(enacted version)*
Sponsor: Representative John Walsh
House Committee: Detroit's Recovery and Michigan's Future
Senate Committee: Government Operations

Date Completed: 6-2-14

CONTENT

The bill would enact the "Michigan Financial Review Commission Act" to do the following:

- **Create a Financial Review Commission for a "qualified city".**
- **Require the Commission to provide oversight of the city and ensure its compliance with the proposed Act and other laws.**
- **Require the Commission to review and approve a four-year financial plan for the city.**
- **Require the Commission to establish programs for the responsible fiscal management of the city.**
- **Provide that all city contracts for more than $750,000 (or a higher amount determined by the Commission) or a term longer than two years would be subject to the Commission's review and approval.**
- **Require the Commission to approve all collective bargaining agreements to which the city was a party, except as otherwise provided.**
- **Authorize the Commission to take additional actions, such as reviewing the city's consensus revenue estimate, reviewing the city's request to issue debt, and approving the city's chief financial officer.**
- **Require the Commission to waive the proposed requirements if the city met various conditions pertaining to its budget, municipal securities or debt obligations, employee retirement plans, and other matters.**
- **Require the Commission to dissolve if the requirements for a waiver had been met for 10 consecutive fiscal years and the plan for adjustment had expired.**
- **Provide that the Court of Claims would have exclusive jurisdiction over any actions challenging the validity of the proposed Act.**
- **Appropriate $900,000 from the General Fund to the Department of Treasury to provide resources for the Commission.**

The bill would define "qualified city" as a city with a population of more than 600,000 that is subject to a plan for adjustment of its debts approved and entered by a U.S. bankruptcy court under Chapter 9 of Title 11 of the United States Code. (Detroit will meet those criteria when its plan for adjustment has been entered and approved by the U.S. bankruptcy court.)

Creation of Commission

The Financial Review Commission would be created in the Department of Treasury for the city. Except as otherwise provided, the Commission would function independently of the State Treasurer. Its budgeting, procurement, personnel, and related management functions would have to be performed under the direction and supervision of the State Treasurer.

The Commission would consist of the following nine members:

-- The State Treasurer, who would serve as chairperson.
-- The Director of the Department of Technology, Management, and Budget, or his or her designee.
-- Three members appointed by the Governor, including at least one city resident and at least one Michigan resident who was not a resident of the city.
-- The city mayor or his or her designee.
-- One member appointed by the Governor from a list of at least three individuals nominated by the Senate Majority Leader, including one city resident.
-- One member appointed by the Governor from a list of at least three individuals nominated by the Speaker of the House of Representatives, including one city resident.
-- The president or chairperson of the city's governing body.

The members appointed by the Governor would have to have knowledge, skill, or experience in the field of business or finance and possess knowledge, training, skill, or experience in budgeting, revenue forecasting, debt management or borrowing, actuarial science, law, or business operations.

The appointed members would serve for four years, except as provided for the first five appointees. Commission members would have to serve without compensation but could receive reasonable compensation for necessary travel and expenses.

The Commission would have to meet at least monthly and would be subject to the Open Meetings Act, although members could attend and participate in meetings by telecommunication or other electronic equipment if authorized in the Commission bylaws. The Commission also would be subject to the Freedom of Information Act.

Commission members would be subject to Public Acts 317 and 318 of 1968 (which govern contracts between public employees and public entities, and prohibit conflicts of interest in State contracts, respectively).

<u>Oversight Responsibilities</u>

<u>Compliance with Statutes</u>. The Commission would have to provide oversight for the city beginning on the effective date of the proposed Act or of the plan for adjustment, whichever was later. The Commission would have to ensure that the city was complying with the terms and conditions of the Act and the plan, if applicable. Unless these requirements were waived, the Commission would have to certify, by October 1 each year, that the city was in substantial compliance with the Act.

The Commission also would have to ensure, as applicable, that the city complied with all of the following, and could request verification of compliance:

-- Section 8 of the Publicly Funded Health Insurance Contribution Act.
-- Sections 4i, 4p, 4s, and 4t of the Home Rule City Act.
-- The Revised Municipal Finance Act.
-- The Uniform Budgeting and Accounting Act.

(The Publicly Funded Health Insurance Contribution Act sets a ceiling on the amount that a public employer (such as a municipality or school district) may contribute to its medical benefit plan for employees or elected public officials. Section 8 allows a local unit of government to exempt itself from the Act's requirements by a two-thirds vote of its governing body. House Bill 5569 would amend that section to make an exemption for Detroit ineffective.

Section 4i of the Home Rule City Act allows a city to provide in its charter for a system of compensation for city employees and for their dependents in the case of employees' disability, injury, or death. Under House Bill 5568 (H-2), this provision would be subject to Section 4p, which the bill would add to govern the calculation of Detroit's pension benefits and contributions to employee retirement accounts.

House Bill 5567 (H-2) would add Section 4s to the Home Rule City Act to require the appointment of a chief financial officer for the city, and would add Section 4t to require the city to comply with the proposed Michigan Financial Review Commission Act, adopt a financial plan, and hold revenue estimating conferences.)

<u>Financial Plan</u>. During the period of oversight, the Commission would have to review and approve the city's four-year financial plan required by Section 4t of the Home Rule City Act. The plan would have to be submitted at least 100 days before the city's fiscal year began. The Commission would have to approve or disapprove the plan within 30 days of receiving it. If disapproved, a revised plan would have to be submitted and approved or disapproved within a specified time frame. If the city failed to submit an acceptable financial plan, the Commission could adopt and impose on the city a financial plan until the city adopted an acceptable plan.

<u>Fiscal Management</u>. Subject to the plan for adjustment and any collective bargaining agreements still in effect, the Commission would have to establish and maintain programs and requirements for the responsible fiscal management of the city, including all of the following:

-- Increased managerial accountability.
-- The streamlining of the provision of city services.
-- Improved collection of outstanding tax revenue.
-- Review of the compensation and benefits of city employees.

<u>Contract Review & Approval</u>. All applicable contracts would be subject to review and approval by the Commission. ("Applicable contract" would mean a contract for goods or services proposed or entered into by the city that either exceeds $750,000 or a higher amount determined by the Commission, or is for a term over two years. The term also would include multiple contracts for less than $750,000 or the higher amount, with one entity, that in the aggregate exceed $750,000 or the higher amount, within a 12-month period.)

Only applicable contracts that were first approved by the city's governing body and mayor as required by law, charter, ordinance, or policy would be subject to review. If the Commission did not reject a contract within 30 days after it was submitted, the contract would be considered approved.

<u>Written Reports & Inspection of Data</u>. When required by the Commission, the city would have to present written reports regarding its financial stability, and would have to permit the Commission to audit or inspect financial statements, actuarial reports, revenue estimates, and any other documents, data, reports, or findings that the Commission considered necessary.

<u>Collective Bargaining Agreements</u>. The Commission would have to approve all collective bargaining agreements (CBAs) to which the city was a party, after approval by the city mayor and governing body as required by charter or law. The Commission would have to approve or reject CBAs within 45 days after they were submitted. Collective bargaining agreements could not be executed without the Commission's approval, except that CBAs approved by an emergency manager appointed under the Local Financial Stability and Choice Act would not be subject to Commission approval.

Certification of Debt Service. At least 45 days before the beginning of each fiscal quarter, the city mayor, governing body, and chief financial officer would have to certify in writing to the Commission the amount of debt service due on bonds, leases, or other municipal debt. The city would have to specifically report debt service requirements, calculated through final maturity, and certify its ability to meet those requirements through the end of the current fiscal year.

Commission Report to the Governor. On June 1 and December 1 of each year in which the Commission had oversight of the city, it would have to file a written report with the Governor. A copy of the report would have to be given to the Senate Majority Leader and the Speaker of the House and posted on the Department of Treasury website. A copy also would have to be sent to the city's major and governing body.

Additional Commission Activities

The Commission could do any of the following:

-- Review and approve the city's consensus revenue estimate under Section 4t of the Home Rule City Act.
-- Require the city to submit the four-year financial plan required under that section in a form and manner the Commission considered appropriate.
-- Review, modify, and approve the city's proposed and amended operational budgets.
-- Require the city's chief financial officer to give the Commission information it requested related to the city's finances.
-- Review and approve requests by the city to issue debt under the Revised Municipal Finance Act or any other law.
-- Review the city's compliance with a deficit elimination plan submitted under the Glenn Steil State Revenue Sharing Act.
-- Approve the appointment of the city's chief financial officer, and require that any effort to terminate the officer be subject to Commission approval.
-- Require the development and implementation of financial best practices for the city.
-- Recommend the adoption or amendment of charter provisions, bylaws, ordinances, policies, or operating procedures of the city.
-- Require the pursuit of financial or managerial training.
-- Require the city and its employees to timely produce all information and documents, and provide access to all information on assets, services, records, and any other material the Commission determined necessary.
-- Perform any duty provided by law that may be performed by a receivership transition advisory board under the Local Financial Stability and Choice Act.

A proposed or amended budget could not take effect, and debt could not be issued, without the Commission's approval.

The Commission also could file supplemental information relating to the city's financial condition with an arbitration panel in proceedings to which the city was a party under Public Act 312 of 1969. (That Act provides for compulsory arbitration of labor disputes in municipal police and fire departments. House Bill 5576 (H-2) would amend the Act to require an arbitration panel to consider information submitted by the Commission.)

Waiver of Requirements

Required Waiver. The Commission would be required to waive the requirements described above (under the headings "Oversight Responsibilities" and "Additional Commission Activities") if all of the following requirements were met.

The Commission certified that the city, for three consecutive years, had adopted and adhered to deficit-free budgets that complied with generally accepted accounting principles and were in accordance with the Uniform Budgeting and Accounting Act.

The State Treasurer and the city's chief financial officer certified that both of the following were met:

-- All municipal securities or debt obligations sold by or for the benefit of the city in the general public market during the prior and current fiscal years satisfied the capital and other financial requirements of the city during that period.
-- There was a substantial likelihood that municipal securities or debt obligations could be sold in the general public market during the remainder of the current fiscal year and the following fiscal year in amounts sufficient to substantially satisfy all of the capital and other financial requirements of the city during those periods in accordance with its financial plan.

The city's financial plan projected a balanced budget for the current and next three fiscal years using generally accepted accounting principles and in accordance with the Uniform Budgeting and Accounting Act and Section 4t of the Home Rule City Act.

The city demonstrated to the Commission's satisfaction that it had sufficient ability to borrow in the municipal securities market.

The city did not violate the plan for adjustment in the prior fiscal year and was not in violation in the current fiscal year.

The State Treasurer certified that the city was in compliance with the Uniform Budgeting and Accounting Act, and the Commission certified that the city was in substantial compliance with the proposed Act.

The city had established, as part of an employee compensation system, retirement plans in which the city contributed not more than 7% of an individual's base pay, excluding overtime pay, one-time lump-sum payments, and the cost of fringe benefits, to an employee's retirement account.

The city had implemented a program in which all contracts it awarded were posted on the city's public website within 30 days of the contract award.

<u>Rescission of Waiver</u>. The Commission would have to rescind its waiver if it certified that any of the following had occurred or that there was a substantial likelihood that any would occur imminently:

-- The city failed to pay principal of or interest on any municipal securities when due or payable.
-- The city incurred a budget deficit in a fiscal year equal to or more than 5% of the total expenditures in that year.
-- The city issued municipal securities without the Commission's authorization or in violation of the Revised Municipal Finance Act.
-- The city violated the proposed Act or any mandatory financial controls in a manner that substantially impaired its ability to pay principal of and interest on municipal securities when due and payable or its ability to adhere to a balanced budget.
-- The city violated any provision of the plan for adjustment.
-- The State Treasurer and the city's chief financial officer failed to certify that the criteria regarding municipal securities and debt obligations were met.

-- The city's chief financial officer had resigned, been terminated, or been removed, or the office otherwise became vacant and a successor had not been appointed within 180 days.
-- The city had not satisfied the proposed requirements for employee retirement plans.

If the Commission found that the circumstances under which it rescinded its waiver no longer existed, the Commission would have to reverse the rescission.

Appropriation

For the 2013-14 fiscal year, $900,000 would be appropriated from the General Fund/General Purpose budget to the Department of Treasury to provide the Commission with the resources to exercise its powers, duties, and responsibilities; to secure professional services to assist in the implementation of the proposed Act; and for any other purposes that the Commission determined were necessary or implied to implement the Act.

Commission Dissolution

If the Commission waived the proposed requirements, as described above, each year for the preceding 10 consecutive fiscal years, and the plan for adjustment had expired, the Commission would have to dissolve itself. All property, funds, and assets of the Commission, if any, would be transferred to and vested in the State.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would increase the operating costs of the Department of Treasury, which would house the proposed Michigan Financial Review Commission. The Commission would have significant responsibilities with regard to oversight of finances for the City of Detroit. The bill would make a supplemental appropriation of $900,000 from General Fund/General Purpose revenue in FY 2013-14 to cover these costs. The appropriation would be used for professional services, necessary expenses of Commission members, and any other purposes necessary to implement the bill. Funding for subsequent years would need to be considered in the annual budget process. The Commission's work would continue for at least 13 years before dissolution of the Commission could be considered.

The bill would have an unknown impact of the operating costs of the City of Detroit. The city would incur additional costs to provide required certifications, information, and reports to the Michigan Financial Review Commission, which would meet monthly. The financial oversight and program recommendations from the Commission could reduce local costs and improve the city's financial stability.

Fiscal Analyst: Elizabeth Pratt