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BILL ANALYSIS

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House Bills 5572, 5573, and 5574 (as passed by the House)
House Bill 5575 (Substitute H-3 as passed by the House
Sponsor: Representative John Olumba (H.B. 5572)
Representative Alberta Tinsley Talabi (H.B. 5573)
Representative Thomas F. Stallworth III (H.B. 5574)
Representative Fred Durhal, Jr. (H.B. 5575)
House Committee: Detroit's Recovery and Michigan's Future
Senate Committee: Government Operations

Date Completed: 6-2-14

## CONTENT

**House Bill 5572 would amend the Management and Budget Act to allow amounts from the Budget Stabilization Fund (BSF) to be appropriated for "any other purpose the legislature may provide by law".**

**House Bill 5573 would amend the Michigan Trust Fund Act to require an annual deposit into the BSF from fiscal year (FY) 2014-15 through FY 2034-35 of $17.5 million of tobacco settlement revenue received by the State that is not considered a "TSR" (the portion of the State's receipts from the Master Settlement Agreement with the tobacco industry sold to the Michigan Tobacco Settlement Finance Authority).**

**House Bill 5574 would amend the Management and Budget Act to require that $194.8 million be transferred from the BSF to the Settlement Administration Fund created in the Michigan Settlement Authority Administration Act for FY 2013-14 for purposes described in that Act.**

**House Bill 5575 (H-3) would enact the "Michigan Settlement Administration Authority Act" to do the following:**

- **Create the Settlement Administration Authority and the "Settlement Administration Fund".**
- **Appropriate $194.8 million from the Fund for FY 2013-14, for use as provided in the Act.**
- **Require the Authority to cause $194.8 million to be paid to the City of Detroit's retirement systems if it determined that 1) a bankruptcy court approved a plan for adjustment of the City's debts, and 2) the terms and conditions of a contribution agreement included in the plan for adjustment had been met.**
- **Require the money to be returned to the Budget Stabilization Fund if the Authority determined that either of those conditions had not been met, or if the Authority did not make either determination by May 1, 2015.**

(Please see Figure 1 at the end of this document for a flowchart of the funding mechanism proposed by these bills.)

House Bill 5575 (H-3) is described in detail below.

Creation of Authority & Board

The Michigan Settlement Administration Authority would be created within the Department of Treasury. The Authority would have to exercise its duties independently of the State Treasurer. Administrative functions of the Authority would have to be performed under the direction and supervision of the State Treasurer.

The Authority would have to exercise its duties through its board of directors, which would consist of the State Treasurer, the State Budget Director, and one member appointed by the Governor with the advice and consent of the Senate. The appointed member would have to have knowledge, skill, or experience in the legal field of bankruptcy. The State Treasurer would serve as chairperson of the board.

The Authority would be dissolved on May 2, 2015.

("State treasurer" would mean either the State Treasurer of Michigan or his or her designee who was designated by a written instrument signed by the Treasurer and maintained in a permanent file, whose signature would have the same force and effect as the signature of the Treasurer for all purposes under the proposed Act.)

Settlement Administration Fund

The Settlement Administration Fund would be created within the State Treasury. The Authority would have to disburse money in the Fund to the retirement systems or return the money to the Budget Stabilization Fund, as described below. ("Retirement systems" would mean the police and fire department retirement system of the City of Detroit and the City's general retirement system.)

The State Treasurer could receive money or assets from any source for deposit into the Fund. (As stated above, House Bill 5574 would require $194.8 million to be transferred from the Budget Stabilization Fund to the Settlement Administration Fund.) Money in the Fund at the close of the year would remain in the Fund and not lapse to the General Fund.

The Authority would have to cause $194.8 million to be paid to the retirement systems if it determined in writing that both of the following conditions had been satisfied:

- The bankruptcy court had entered an order approving the plan for adjustment.
- The terms and conditions of the contribution agreement had been satisfied.

("Contribution agreement" would mean the contribution agreement in substantially the form included with the City of Detroit's plan for adjustment. "Plan for adjustment" would mean the plan for the adjustment of debts of the City of Detroit approved and entered by the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, In Re City of Detroit, Michigan, case no. 13-53846.)

If the Authority determined in writing that at least one of the conditions had not been satisfied, the money in the Settlement Administration Fund would have to be returned to the BSF.

If the Authority failed to make a written finding that both of the conditions had been satisfied or that at least one had not been satisfied, by May 1, 2015, the money in the Fund would have to be returned to the BSF.

Public & Governmental Purpose

The proposed Act states, "It is determined that the creation of the authority, the appropriation made to the authority, and the carrying out of the authority's authorized purposes are in all respects a public and governmental purpose for the benefit of the people of the state and for the improvement of their health, safety, welfare, comfort, and security, and that these purposes are public purposes, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this act."

State's Contribution; Absence of Liability

The proposed Act specifies that the obligation to make the State's contribution described in the contribution agreement would not be a general obligation or indebtedness of the State or the Authority, and would be subject to the fulfillment of the requirements of the agreement, the plan for adjustment, and the order of a bankruptcy court.

The Act also specifies that the State, a State official or State-related entity, as defined in the plan for adjustment, the State Treasurer, the Authority, a board member, an agent of the Authority, and any other legal, financial, or other expert providing advice to the Authority, would not have any liability for the representations, warranties, covenants, determinations, agreements, or other obligations of the State or the Authority, or under any of the certificates, notices, or agreements delivered pursuant to the contribution agreement, the plan for adjustment, or the order of a bankruptcy court confirming the plan for adjustment.

MCL 18.1353 (H.B. 5572)
12.257 (H.B. 5573)
18.1358 (H.B. 5574)

Legislative Analyst: Suzanne Lowe

## FISCAL IMPACT

The bills would transfer $194.8 million in FY 2013-14 from the Countercyclical Budget and Economic Stabilization Fund, known as the Rainy Day Fund or Budget Stabilization Fund, to the proposed Settlement Administration Fund; appropriate $194.8 million in FY 2013-14 from the Settlement Administration Fund to the Detroit retirement systems if certain conditions were met; and require the deposit of $17.5 million from tobacco settlement revenue to the BSF annually from FY 2014-15 through FY 2034-35. These impacts are discussed further below.

House Bill 5574 would reduce the balance in the BSF by $194.8 million in FY 2013-14 by the transfer of that amount to the Settlement Administration Fund. House Bill 5575 (H-3) would create the Settlement Administration Fund and appropriate $194.8 million from that Fund for disbursal by the Michigan Settlement Administration Authority. The Authority board would determine if the criteria in House Bill 5575 (H-3) were satisfied to allow the $194.8 million to be disbursed to the police and fire retirement system of the City of Detroit and the general retirement system of the City. If the conditions were not satisfied by May 1, 2015, the funds would be returned to the BSF. These appropriations and fund transfers are summarized in Figure 1.

(The figure of $194.8 million is the equivalent of the net present value of $350.0 million over 20 years. According to the Governor's Office, the $350.0 million number came about through negotiations as a "fair share" from the State that represented 10% of the estimated $3.5 billion unfunded accrued actuarial liability (UAAL) of the City's pension systems. Combined with the other components of what some call the "Grand Bargain" ($100.0 million from the Detroit Institute of Arts (DIA), $365.0 million from private donations), the total funding raised would exceed $800.0 million and could begin to approach $1.0 billion. When that is combined with the other restructuring components of the plan for adjustment, the Governor's Office asserts that there would be a level of funding sufficient to reduce cuts to pensioners (post-Chapter 9), eliminate a potential $3.5 billion UAAL (and subsequent litigation costs) to the State, avoid a $264.0 million State assistance price tag over 20 years by keeping pensions above the Federal poverty level, protect city assets (DIA), and ensure other benefits.)

The transfer from the BSF to the Settlement Administration Fund would reduce the balance in the BSF from an estimated $585.7 million to $390.9 million at the end of FY 2013-14. This would be repaid over time by the deposit of tobacco settlement revenue into the BSF. Under House Bill 5573, $17.5 million of tobacco settlement revenue would be deposited into the BSF annually for 21 years, from FY 2014-15 to FY 2034-35. These deposits to the BSF would total $367.5 million. Based on estimates from the State Budget Office, there is sufficient tobacco settlement revenue to make these deposits to the BSF in the years for which projections are available. These payments, however, would reduce the amount of tobacco settlement revenue that could be spent in other areas of the State budget.

The 1998 Master Settlement Agreement with the tobacco industry provides for annual payments from tobacco manufacturers to most states. Michigan is estimated to receive $253.2 million in FY 2013-14. which is deposited into the Merit Award Trust Fund. A portion of this revenue, approximately $136.1 million in FY 2013-14, is reserved for statutory commitments, including debt service on bonds and deposits to the 21st Century Jobs Trust Fund. The debt service payments are for two bond issues that securitized a portion of the tobacco settlement revenue to raise money in 2006 and 2007. Statute also requires the deposit of $75.0 million in FY 2014-15 and $72.0 million in FY 2015-16 to the 21st Century Jobs Trust Fund, the final two years of the $1.0 billion commitment made in statute in 2005. The remaining tobacco settlement revenue is available for appropriation in the State budget.

The State Budget Office estimated that the Merit Award Trust Fund had an opening balance of $76.7 million and received net revenue of $253.2 million for total of $194.9 million of available revenue in FY 2013-14. Of this amount, $61.1 million was required for debt service and $75.0 million was transferred to the 21st Century Jobs Trust Fund and appropriated in FY 2013-14 to the Michigan Strategic Fund for the Pure Michigan advertising campaign, Innovation and Entrepreneurship, and a portion of the Business Attraction and Community Revitalization program. A total of $118.3 million was appropriated elsewhere in the State budget in FY 2013-14, with the largest amounts going to the Department of Community Health for Medicaid base funding and the Department of Human Services for the Family Independence Program. After these expenditures, the Merit Award Trust Fund is expected to have a balance of $75.6 million at the close of FY 2013-14. The State Budget Office projects closing balances of $94.1 million in FY 2014-15 and $107.5 million in FY 2015-16. These amount would change based on actual tobacco settlement revenue received and State appropriations from the Merit Award Trust Fund. The FY 2013-14 status of the Merit Award Trust Fund is shown in Table 1.

House Bill 5572 would broaden the purposes for which the BSF can be used to include any purpose the Legislature provides for by law. Currently, the BSF can be used for countercyclical economic stabilization purposes described in the Management and Budget Act, although that Act has been amended several times to allow for specific appropriations, such as deposits to the State Trunkline Fund. House Bill 5572 appears to allow the appropriation of funds from the BSF for any purpose in appropriation bills, essentially making the BSF a General Fund equivalent.

If the conditions of the contribution agreement were not satisfied and the $194.8 million were returned from the Settlement Administration Fund to the BSF, the payments of $17.5 million per year to the BSF would continue under House Bill 5573, unless subsequent legislation changed the law.

House Bill 5575 (H-3) would increase the cost of the Department of Treasury by an unknown amount to establish and provide staff support to the Michigan Settlement Administration Authority, which would be dissolved on May 2, 2015.

Figure 1

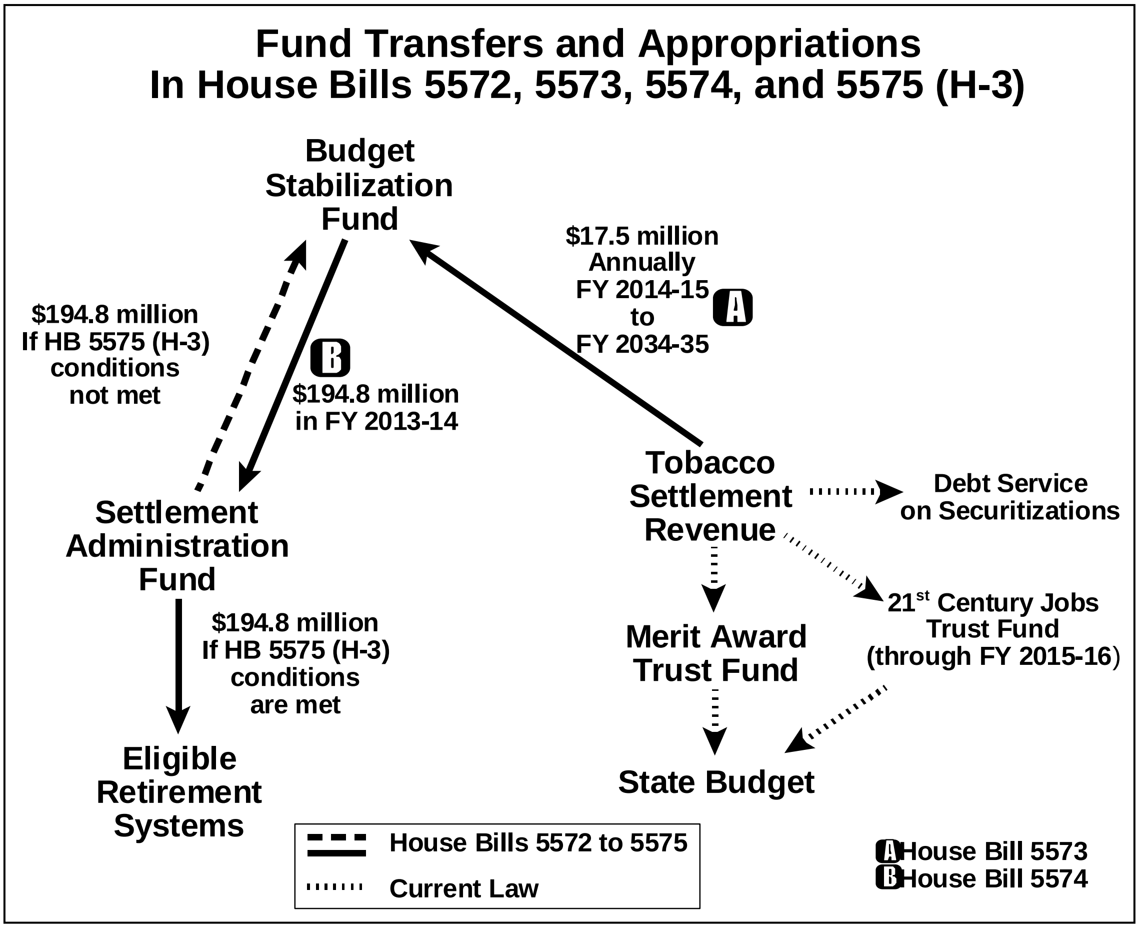

Table 1

| Tobacco Settlement Revenue and Appropriations<br>Estimate FY 2013-14<br>(Actual Dollars) | |
|---|---|
| **Revenue** | |
| Unreserved Balance From Prior Fiscal Year | $76,663,500 |
| Total Annual Payments | 283,455,500 |
| Settlement Credit to Manufacturers | (22,778,500) |
| Other Settlement Adjustments | (7,461,300) |
| Interest Earnings | 60,000 |
| Total Tobacco Settlement Revenue | $329,939,200 |
| | |
| Less Transfers Out For: | |
| 21st Century Jobs Trust Fund | ($75,000,000) |
| Payment on 2006 Bond Securitization | (33,779,000) |
| Payment on 2007 Bond Securitization | (27,271,300) |
| Total Transfers Out | ($136,050,300) |
| | |
| **Net Revenue To Merit Award Trust Fund** | **$193,888,900** |
| | |
| **Appropriations** | |
| Attorney General | |
| Administration | $487,300 |
| Community Health | |
| Medicaid Base | 81,766,000 |
| Aging: Respite Care | 4,068,700 |
| Human Services | |
| Family Independence Program | 30,100,000 |
| State Police | |
| Tobacco Tax Enforcement | 750,000 |
| Department of Treasury | |
| Student Financial Services Administration | 1,123,700 |
| | |
| **Total Merit Award Trust Fund Appropriations** | **$118,295,700** |
| | |
| **Merit Award Trust Fund Year-End Balance** | **$75,593,200** |

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