

**SUBSTITUTE FOR
HOUSE BILL NO. 5566**

A bill to create the Michigan financial review 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 "Michigan financial review 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 qualified cities,
20 there exists a threat of increased costs in borrowing, reductions
21 in credit or bond ratings, reduced faith from existing creditors of
22 municipalities and of this state, and dire financial circumstances
23 from which this state and its political subdivisions may never
24 fully recover.

25 (d) Qualified cities have complex budgetary and fiscal needs,
26 significant and complicated debt management issues, and financial
27 assets and liabilities that impact, both positively and negatively,

1 every unit of local government in this state and this state itself
2 such that reasonable and balanced state oversight over qualified
3 cities is required as a reasonable exercise of this state's power
4 for the benefit of residents throughout this state.

5 (e) There are numerous residents of this state who have
6 accrued pension benefits from a qualified city's pension systems,
7 and those pensioners may reside throughout this state. The
8 settlement of bankruptcy cases involving qualified cities is likely
9 to have a substantial positive impact statewide.

10 (f) Establishing a commission and execution by the commission
11 of its powers granted under this act fulfill in all respects a
12 public and governmental purpose for the benefit of the people of
13 this state.

14 (g) Ongoing fiscal oversight over qualified cities is a
15 reasonable and sufficiently narrow regulation and serves a
16 significant and legitimate public purpose because it inures to the
17 benefit of all of this state's residents and aids in the remedy of
18 a broad and general social problem.

19 (h) Fiscal oversight over qualified cities will ensure that
20 those cities do not engage in the financial practices that led to
21 financial emergencies and insolvency, and ultimately, entry into
22 receivership and bankruptcy, which will ensure that those cities
23 can provide basic and essential municipal services to their
24 residents.

25 Sec. 3. As used in this act:

26 (a) "Applicable contract" means a contract for goods or
27 services proposed or entered into by a qualified city that either

1 exceeds \$750,000.00, or a higher amount as determined by the
2 commission, or is for a term exceeding 2 years. Applicable contract
3 also includes multiple contracts for less than \$750,000.00, or the
4 higher amount determined by the commission, with 1 entity that, in
5 the aggregate, exceed \$750,000.00, or a higher amount as determined
6 by the commission, within a 12-month period.

7 (b) "Federal bankruptcy code" means the federal bankruptcy
8 code, 11 USC 101 to 1532.

9 (c) "Financial review commission" or "commission" means a
10 financial review commission created in section 4.

11 (d) "Operating expenses" means the reasonable operating
12 expenses of the commission, including without limitation the cost
13 of preparing accounting and other reports, costs of commission
14 meetings or other required activities of the commission, counsel
15 fees, including fees of the attorney general, and fees and expenses
16 incurred for consultants and fiduciaries required to carry out the
17 purposes of this act.

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

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

25 (g) "Professional services" means services that require a high
26 degree of intellectual skill, an advanced degree, or professional
27 licensing or certification. Those providing the professional

1 services are distinguished based on their specialized knowledge,
2 experience, and expertise. Professional services include, but are
3 not limited to, accounting, actuarial, appraisal, auditing,
4 investment advisor, and legal services.

5 (h) "Qualified city" means a city with a population of more
6 than 600,000 that is subject to a plan for adjustment.

7 (i) "State treasurer" means the treasurer of this state or his
8 or her designee who shall be designated by a written instrument
9 signed by the state treasurer and maintained in a permanent file
10 and whose signature shall have the same force and effect as the
11 signature of the state treasurer for all purposes under this act.

12 Sec. 4. A financial review commission is created within the
13 department of treasury for each qualified city. Except as otherwise
14 provided in this act, a commission shall exercise its powers,
15 duties, functions, and responsibilities under this act
16 independently of the state treasurer. The budgeting, procurement,
17 personnel, and related management functions of a commission shall
18 be performed under the direction and supervision of the state
19 treasurer.

20 Sec. 5. (1) Each commission shall consist of the following 9
21 members:

22 (a) The state treasurer, who shall serve for the duration of
23 his or her term of office.

24 (b) The director of the department of technology, management,
25 and budget or successor agency, or his or her designee, who shall
26 serve for the duration of his or her term of office.

27 (c) Three members appointed by the governor who have

1 knowledge, skill, or experience in the field of business or finance
2 and who shall possess knowledge, training, skill, or experience in
3 budgeting, revenue forecasting, debt management or borrowing,
4 actuarial science, law, or business operations, at least 1 of whom
5 is a resident of that qualified city, and at least 1 of whom is a
6 resident of this state who is not a resident of a qualified city.

7 (d) The mayor or chief executive officer of that qualified
8 city, or his or her designee, who shall serve for the duration of
9 the mayor's or chief executive officer's term of office.

10 (e) One member appointed by the governor from a list of 3 or
11 more individuals nominated by the senate majority leader who have
12 knowledge, skill, or experience in the field of business or
13 finance, and who shall possess knowledge, training, skill, or
14 experience in budgeting, revenue forecasting, debt management or
15 borrowing, actuarial science, law, or business operations, and 1 of
16 whom is a resident of that qualified city.

17 (f) One member appointed by the governor from a list of 3 or
18 more individuals nominated by the speaker of the house of
19 representatives who have knowledge, skill, or experience in the
20 field of business or finance, and who shall possess knowledge,
21 training, skill, or experience in budgeting, revenue forecasting,
22 debt management or borrowing, actuarial science, law, or business
23 operations, and 1 of whom is a resident of that qualified city.

24 (g) The president or chairperson of the qualified city's
25 governing body or his or her designee, who shall serve for the
26 duration of the president's or chairperson's term of office.

27 (2) The appointed members shall serve for a term of 4 years,

1 except that of the 5 members first appointed, the appointees of the
2 governor shall serve a term of 1, 2, and 4 years respectively, the
3 appointee of the governor who was nominated by the speaker of the
4 house of representatives shall serve a term of 2 years, and the
5 appointee of the governor who was nominated by the senate majority
6 leader shall serve a term of 3 years. Appointed members serve at
7 the pleasure of, and may be removed by, their respective appointing
8 official.

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

12 (4) The state treasurer or his or her designee shall serve as
13 chairperson of a commission.

14 (5) A majority of the members of the commission shall
15 constitute a quorum of the commission for the transaction of
16 business. The commission shall meet no less than monthly and at
17 times and places designated by the chairperson. Actions of the
18 commission shall be approved by a majority of the members.

19 (6) The commission shall conduct its business at public
20 meetings in compliance with the open meetings act, 1976 PA 267, MCL
21 15.261 to 15.275. However, members of the commission may attend and
22 participate in a meeting of the commission by the use of
23 telecommunication or other electronic equipment if their attendance
24 and participation by the use of telecommunication or other
25 electronic equipment is authorized by the bylaws of the commission
26 and that meeting is otherwise conducted in compliance with the open
27 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

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

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

11 (9) The commission may contract for professional services, as
12 it requires, and shall determine the qualifications it considers
13 necessary.

14 (10) The members of the commission and contractors or agents
15 of the commission are subject to 1968 PA 317, MCL 15.321 to 15.330,
16 and 1968 PA 318, MCL 15.301 to 15.310.

17 (11) A member of the commission, and any person the commission
18 contracts with, shall discharge the duties of his or her position
19 in a nonpartisan manner, with good faith, and with that degree of
20 diligence, care, and skill that an ordinarily prudent person would
21 exercise under similar circumstances in a like position. The
22 commission shall adopt an ethics policy governing the conduct of
23 commission members and officers and employees of the commission.

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

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

4 (2) The commission shall ensure that the qualified city is
5 complying with the terms and conditions of this act and of the plan
6 for adjustment, if applicable. Except as otherwise provided in
7 section 8, the commission shall by October 1 each year certify that
8 the qualified city is in substantial compliance with the provisions
9 of this act.

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

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

15 (b) Sections 4i, 4p, 4s, and 4t of the home rule city act,
16 1909 PA 279, MCL 117.4i, 117.4p, 117.4s, and 117.4t.

17 (c) The revised municipal finance act, 2001 PA 34, MCL
18 141.2101 to 141.2821.

19 (d) The uniform budgeting and accounting act, 1968 PA 2, MCL
20 141.421 to 141.440a.

21 (4) During the period of oversight, the commission shall
22 review and approve that qualified city's 4-year financial plan
23 required by section 4t of the home rule city act, 1909 PA 279, MCL
24 117.4t. A 4-year financial plan described in this subsection shall
25 be submitted at least 100 days prior to the commencement of a
26 qualified city's fiscal year. The commission shall approve or
27 disapprove the 4-year financial plan within 30 days of receipt. If

1 disapproved, the commission shall provide rationale in writing for
2 disapproval and a qualified city shall submit a revised plan within
3 15 days that comports with the commission's rationale for
4 rejection. The commission shall approve or disapprove that revised
5 plan within 15 days. The commission may also require adjustments to
6 the financial plan to modify expenditures to satisfy debt service,
7 adjust projected revenues to comply with financial controls or
8 accounting practices, and reduce expenditures to conform to
9 consensus revenue estimates if required in section 7 to comply with
10 the provisions of section 4t of the home rule city act, 1909 PA
11 279, MCL 117.4t. If the qualified city fails to submit an
12 acceptable financial plan, the commission may adopt and impose upon
13 the qualified city a financial plan satisfying the requirements of
14 this act and section 4t of the home rule city act, 1909 PA 279, MCL
15 117.4t, until that time as the qualified city submits an acceptable
16 financial plan.

17 (5) Subject to a plan for adjustment and any collective
18 bargaining agreements still in effect, the commission shall
19 establish and maintain programs and requirements for the
20 responsible fiscal management of that qualified city. The
21 commission's programs and requirements shall include all of the
22 following:

- 23 (a) Increased managerial accountability.
- 24 (b) The streamlining of the provision of city services.
- 25 (c) Improved collection of outstanding tax revenues.
- 26 (d) Review of the compensation and benefits of city employees
27 and recommendation of adjustments where necessary.

1 (6) Notwithstanding any charter provision or local ordinance
2 to the contrary, all applicable contracts are subject to review and
3 approval by the commission. The commission may consider a number of
4 factors when reviewing an applicable contract, including whether
5 the applicable contract was subject to a competitive bid process.
6 Only applicable contracts that are first approved by the governing
7 body and mayor of a qualified city as required by law, charter,
8 ordinance, or policy are subject to review by the commission. If an
9 applicable contract is not rejected by the commission within 30
10 days of its submission, that applicable contract shall be
11 considered approved by the commission.

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. The commission
18 may require that qualified city's chief financial officer to
19 certify in writing the accuracy of any documents the commission
20 requests.

21 (8) The commission shall, on June 1 and December 1 of each
22 year in which the commission has oversight over a qualified city,
23 file a written report with the governor. A copy of the report shall
24 be submitted to the senate majority leader and the speaker of the
25 house of representatives and posted on the department of treasury
26 website. A copy of the report shall be sent to the mayor and
27 governing body of the qualified city.

1 (9) Except as otherwise provided in this subsection, the
2 commission shall approve all collective bargaining agreements,
3 including any addendums to those agreements, to which that
4 qualified city is a party after approval by the governing body and
5 mayor of the qualified city as required by charter or law. The
6 commission shall approve or reject collective bargaining agreements
7 submitted to it within 45 days of submission. Collective bargaining
8 agreements submitted to the commission shall not be executed unless
9 and until the commission approves those agreements. Collective
10 bargaining agreements approved by an emergency manager appointed
11 under section 12 of the local financial stability and choice act,
12 2012 PA 436, MCL 141.1552, shall not be subject to commission
13 approval under this subsection.

14 (10) The commission may file supplementary information
15 relating to the financial condition of the qualified city with an
16 arbitration panel in arbitration proceedings in which the qualified
17 city is a party pursuant to 1969 PA 312, MCL 423.231 to 423.247.

18 (11) The mayor, governing body, and chief financial officer of
19 a qualified city shall, at least 45 days prior to the beginning of
20 each fiscal quarter, certify in writing to the commission the
21 amount of debt service due on bonds, leases, or other municipal
22 debt. A qualified city shall specifically report debt service
23 requirements, calculated through final maturity, and certify its
24 ability to meet those requirements through the end of the current
25 fiscal year.

26 Sec. 7. A commission may do 1 or more of the following for its
27 qualified city:

1 (a) Review and approve that qualified city's consensus revenue
2 estimate under section 4t of the home rule city act, 1909 PA 279,
3 MCL 117.4t. The commission may also, after consultation with the
4 qualified city, revise a revenue estimate prepared in connection
5 with a budget, budget modification, financial plan, or financial
6 plan modification, if the commission determines that the revenue
7 estimate was not based on assumptions and methods of estimation
8 reasonable and appropriate under the circumstances and in view of
9 the objectives and purposes of this act. After consultation with
10 the qualified city, the commission may determine the estimated
11 revenues for the qualified city, but any revenue estimate adopted
12 by the commission shall be based on the same requirements as the
13 qualified city's initial revenue estimate.

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

19 (c) Review, modify, and approve proposed and amended
20 operational budgets of a qualified city. A proposed budget or
21 budget amendment does not take effect unless approved by the
22 commission.

23 (d) Require the chief financial officer of the qualified city
24 to provide the commission with information it requests related to
25 the qualified city's finances. The commission may also require the
26 chief financial officer to attend commission meetings. If the chief
27 financial officer fails to comply with the provisions of this

1 subdivision, the commission may require the qualified city to
2 remove the chief financial officer and appoint a successor.

3 (e) Review and approve requests by a qualified city to issue
4 debt under the revised municipal finance act, 2001 PA 34, MCL
5 141.2101 to 141.2821, or any other law governing the issuance of
6 bonds or notes. The commission may develop rules for the issuance
7 of debt, including limitations that are greater than those provided
8 in sections 401 to 405 of the revised municipal finance act, 2001
9 PA 34, MCL 141.2401 to 141.2405. The debt described in this
10 subdivision may not be issued unless and until approved by the
11 commission and the commission's approval shall be in addition to
12 any approval of the department of treasury as required by law.

13 (f) Review compliance by a qualified city with a deficit
14 elimination plan submitted under section 21 of the Glenn Steil
15 state revenue sharing act of 1971, 1971 PA 140, MCL 141.921.

16 (g) Approve the appointment of a qualified city's chief
17 financial officer. If that appointment is not approved by the
18 commission within 45 days of written submission of the appointment
19 by the qualified city, the appointment is denied. The commission
20 may require that any effort to terminate the chief financial
21 officer be subject to commission review and approval.

22 (h) Require the development and implementation of financial
23 best practices for a qualified city.

24 (i) Recommend the adoption or amendment of certain charter
25 provisions, bylaws, ordinances, policies, or operating procedures
26 for the qualified city.

27 (j) Require the pursuit of financial or managerial training to

1 ensure the proper discharge of duties for the qualified city.

2 (k) Make and execute contracts necessary to carry out the
3 purposes of this act.

4 (l) Sue or be sued. The commission may retain legal counsel to
5 enforce any provisions of this act.

6 (m) Require the qualified city and the employees or agents of
7 the qualified city to timely produce and share all information and
8 documents, and provide access to all information on assets,
9 services, records, and any other materials or documents the
10 commission determines are necessary to carry out its
11 responsibilities under this act. The commission may require the
12 officers or employees of the qualified city to attend commission
13 meetings for any purpose necessary to carry out its
14 responsibilities under this act.

15 (n) Perform any duty provided by law that a receivership
16 transition advisory board as described in section 23 of the local
17 financial stability and choice act, 2012 PA 436, MCL 141.1563, may
18 perform.

19 (o) Perform any other duties assigned by the governor that are
20 not inconsistent with the purposes of this act.

21 Sec. 8. (1) Notwithstanding section 6, for its qualified city,
22 a commission shall, by resolution, waive the requirements
23 designated in sections 6 and 7 as provided in subsection (2).

24 (2) The commission shall grant a waiver under this section for
25 its qualified city if it certifies that all of the following
26 conditions are met:

27 (a) The commission certifies that a qualified city has adopted

1 and adhered to deficit-free budgets for 3 consecutive years that
2 comply with generally accepted accounting principles and are in
3 accordance with the uniform budgeting and accounting act, 1968 PA
4 2, MCL 141.421 to 141.440a.

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

8 (i) All municipal securities or debt obligations sold by or for
9 the benefit of that qualified city in the general public market
10 during the immediately preceding fiscal year and current fiscal
11 year satisfied the capital and other financial requirements of the
12 qualified city during that period.

13 (ii) There is a substantial likelihood that municipal
14 securities or debt obligations can be sold in the general public
15 market during the remainder of the current fiscal year and the
16 immediately succeeding fiscal year in amounts sufficient to
17 substantially satisfy all of the capital and other financial
18 requirements of the qualified city during those periods in
19 accordance with the qualified city's financial plan.

20 (c) The qualified city's financial plan projects a balanced
21 budget for the current and succeeding 3 fiscal years using
22 generally accepted accounting principles and in accordance with the
23 uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to
24 141.440a, and section 4t of the home rule city act, 1909 PA 279,
25 MCL 117.4t.

26 (d) The qualified city has demonstrated to the commission's
27 satisfaction that the qualified city has sufficient ability to

1 borrow in the municipal securities market.

2 (e) The qualified city did not violate the plan for adjustment
3 in the immediately preceding fiscal year and is not in violation in
4 the current fiscal year.

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

8 (g) The commission certifies that the qualified city is in
9 substantial compliance with this act.

10 (h) The qualified city has established as part of a system of
11 compensation for employees retirement plans in which the qualified
12 city contributes no more than 7% of an individual's base pay,
13 excluding payment for overtime services, 1-time lump-sum payments,
14 and the cost of fringe benefits, to an employee's retirement
15 account.

16 (i) The qualified city has implemented a program in which all
17 contracts awarded by the qualified city are posted on the qualified
18 city's public website within 30 days of the contract award,
19 including the identity of the parties to the contract, the dollar
20 amount of the contract, and a brief description of the goods or
21 services provided by the contract.

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

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

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

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

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

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

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

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

21 (h) The qualified city has not satisfied the requirements in
22 subsection (2)(h).

23 (4) If the commission finds that the circumstances under which
24 it rescinded its waiver of the requirements of sections 6 and 7 as
25 provided in subsection (3) no longer exist, the commission shall
26 reverse the rescission as provided in subsection (2).

27 Sec. 10. Each commission, and the carrying out of its

1 authorized purposes under this act, is in all respects a public and
2 governmental purpose for the benefit of the people of this state
3 and for the improvement of their health, safety, welfare, comfort,
4 and security. These purposes are public purposes, and the
5 commission will be performing an essential governmental function in
6 the exercise of the powers provided by this act.

7 Sec. 11. For the fiscal year ending September 30, 2014,
8 \$900,000.00 is appropriated from the general fund/general purpose
9 to the department of treasury to be expended to provide commissions
10 with the resources to exercise its powers, duties, and
11 responsibilities under this act and as required by this state to
12 enforce this act and the plan for adjustment; to secure
13 professional services to assist in the implementation of this act;
14 and for any other purposes that a commission determines in its
15 discretion are necessary or implied to implement this act.

16 Sec. 12. If a commission has waived the requirements of
17 sections 6 and 7 under section 8 each year for the immediately
18 preceding 10 consecutive fiscal years, and the plan for adjustment
19 has expired, the commission shall, by resolution, dissolve itself.
20 All property, funds, and assets of the commission, if any, shall be
21 transferred to and vested in this state.

22 Sec. 13. Each commission is a state commission, and the
23 members are state officers for the purposes of section 6419 of the
24 revised judicature act of 1961, 1961 PA 236, MCL 600.6419. The
25 court of claims shall have exclusive jurisdiction over any and all
26 actions challenging the validity of this act.