VOTE "YES" ON HOUSE BILL 4618

I. Background

Public Act 181 of 2014 was the centerpiece of the so-called Grand Bargain that hastened Detroit's exit from the largest municipal bankruptcy in U.S. history. It created a financial review commission to oversee city fiscal operations, including, as prescribed in Section 6(5)(c), *"Improved collection of outstanding tax revenues."*

In deference to this law and recognition that the state is better equipped than it to collect municipal income taxes, the City of Detroit in January 2015 contracted with the Michigan Treasury to collect said levy. The agreement requires the Michigan Treasury to collect Detroit individual income taxes, beginning Calendar Year 2015 and thereafter; and corporate taxes, beginning Calendar Year 2016 and thereafter.

Sponsored by the Honorable State Rep. Wendell Byrd (D-Detroit), **House Bill 4618 aims to help the state fulfill its contractual obligation to Detroit** by equipping the Michigan Treasury to collect outstanding municipal debts using *the same tools* that it now uses to collect delinquent state obligations. Here's how:

II. Detailed Summary

- The Michigan Treasury administers most state taxes, such as the state income, sales, use and MBT (Michigan Business Tax) levies, pursuant the Revenue Act (***Public Act 122 of 1941***).

- The Revenue Act currently empowers the Michigan Treasury to file administrative liens; enter into offers of compromise and voluntary disclosure agreements; and issue warrants and levies.

- House Bill 4618 would insert into the City Income Tax Act (***Public Act 284 of 1964***) the aforementioned Revenue Act powers that *only the Michigan Treasury could employ* to collect unpaid city income taxes.

- House Bill 4618 also would (1) limit corporate officer liability only to withholding taxes; (2) clarify the procedures for issuing assessments, granting or denying refunds, and communicating between Treasury and taxpayers; (3) replace Board of Review Hearings with protocols consistent with the informal conferences prescribed in the Revenue Act for taxpayers to contest an assessment; and (4) compel Treasury and the city to provide a preliminary audit determination within one year of the start of such a review – ***ALL*** *of which are provisions that promote consistency and uniformity for Treasury in its administration of a bevy of state tax programs* ***and*** *Detroit income tax collections*.

- Detroit Mayor Mike Duggan testified before a legislative committee in November 2016 that uncollected city income taxes deny the municipality, minimally, $10 million a year – money that could be used to augment essential government services. Case in point: Detroit could employ roughly 150 new police officers with an additional $10 million.

- The City of Detroit, Michigan Treasury and Michigan Chamber of Commerce continue to work harmoniously on a substitute for House Bill 4618 that would respect both job providers and employees in the collection of City of Detroit income taxes.

- Supporters of House Bill 4618 include the City of Detroit, Michigan Treasury, and the Michigan Municipal League.

Act No. 181
Public Acts of 2014
Approved by the Governor
June 20, 2014
Filed with the Secretary of State
June 20, 2014
EFFECTIVE DATE: June 20, 2014

STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014

Introduced by Rep. Walsh

ENROLLED HOUSE BILL No. 5566

AN ACT 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:

Sec. 1. This act shall be known and may be cited as the "Michigan financial review commission act".

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

(a) It is the public policy of this state to exercise its sovereign powers with regard to debt issuance and matters of statewide concern in a manner calculated to foster the fiscal integrity of all municipal governments to assure that those municipalities provide for the health, safety, and welfare of their citizens; pay principal and interest owed on debt obligations when due; meet financial obligations to their existing and former employees, vendors, and suppliers; and provide for proper financial planning procedures and budgeting practices. The inability of a municipal government to provide essential services to its citizens as a result of fiscal emergencies is determined to affect adversely the health, safety, and welfare of not only that municipality's citizens, but also other citizens of this state.

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

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

(d) Qualified cities have complex budgetary and fiscal needs, significant and complicated debt management issues, and financial assets and liabilities that impact, both positively and negatively, every unit of local government in this state and this state itself such that reasonable and balanced state oversight over qualified cities is required as a reasonable exercise of this state's power for the benefit of residents throughout this state.

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

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

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

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

Sec. 3. As used in this act:

(a) "Applicable contract" means a contract for goods or services proposed or entered into by a qualified city that either exceeds $750,000.00, or a higher amount as determined by the commission, or is for a term exceeding 2 years. Applicable contract also includes multiple contracts for less than $750,000.00, or the higher amount determined by the commission, with 1 entity that, in the aggregate, exceed $750,000.00, or a higher amount as determined by the commission, within a 12-month period.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Three members appointed by the governor who have knowledge, skill, or experience in the field of business or finance and who shall possess knowledge, training, skill, or experience in budgeting, revenue forecasting, debt management or borrowing, actuarial science, law, or business operations, at least 1 of whom is a resident of that qualified city, and at least 1 of whom is a resident of this state who is not a resident of a qualified city.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) During the period of oversight, the commission shall review and approve that qualified city's 4-year financial plan required by section 4t of the home rule city act, 1909 PA 279, MCL 117.4t. A 4-year financial plan described in this subsection shall be submitted at least 100 days prior to the commencement of a qualified city's fiscal year. The commission shall approve or disapprove the 4-year financial plan within 30 days of receipt. If disapproved, the commission shall provide rationale in writing for disapproval and a qualified city shall submit a revised plan within 15 days that comports with the commission's rationale for rejection. The commission shall approve or disapprove that revised plan within 15 days. The commission may also require adjustments to the financial plan to modify expenditures to satisfy debt service, adjust projected revenues to comply with financial controls or accounting practices, and reduce expenditures to conform to consensus revenue estimates if required in section 7 to comply with the provisions of section 4t of the home rule city act, 1909 PA 279, MCL 117.4t. If the qualified city fails to submit an acceptable financial plan, the commission may adopt and impose upon the qualified city a financial plan satisfying the requirements of this act and section 4t of the home rule city act, 1909 PA 279, MCL 117.4t, until that time as the qualified city submits an acceptable financial plan.

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

(a) Increased managerial accountability.

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

(c) Improved collection of outstanding tax revenues.

(d) Review of the compensation and benefits of city employees and recommendation of adjustments where necessary.

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

(7) A qualified city, when required by the commission, shall present written reports regarding its financial stability and shall permit the commission to audit or inspect financial statements, actuarial reports, revenue estimates, and any and all other documents, data, reports, or findings that the commission considers necessary to carry out its purpose under this act. The commission may require that qualified city's chief financial officer to certify in writing the accuracy of any documents the commission requests.

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

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

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

(11) The mayor, governing body, and chief financial officer of a qualified city shall, at least 45 days prior to the beginning of each fiscal quarter, certify in writing to the commission the amount of debt service due on bonds, leases, or other municipal debt. A qualified city shall 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.

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

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

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

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

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

(e) Review and approve requests by a qualified city to issue debt under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes. The commission may develop rules for the issuance of debt, including limitations that are greater than those provided in sections 401 to 405 of the revised municipal finance act, 2001 PA 34, MCL 141.2401 to 141.2405. The debt described in this subdivision may

not be issued unless and until approved by the commission and the commission's approval shall be in addition to any approval of the department of treasury as required by law.

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

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

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

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

(j) Require the pursuit of financial or managerial training to ensure the proper discharge of duties for the qualified city.

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

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

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

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

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

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

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

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

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

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

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

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

(d) The qualified city has demonstrated to the commission's satisfaction that the qualified city has sufficient ability to borrow in the municipal securities market.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This act is ordered to take immediate effect.

Gary E Randall

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved .....

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Governor