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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: March 10, 2023

RE: **RESOLUTION TO REPEAL P.A. 436 OF 2012 [REVISED]**

Council Member Angela Whitfield Calloway requested that the Legislative Policy Division (LPD) draft a RESOLUTION TO REPEAL P.A. 436 OF 2012. LPD then revised the resolution upon the request of Council Member Durhal.

RESOLUTION TO REPEAL P.A. 436 OF 2012

- WHEREAS,** The Local Financial Stability and Choice Act, Public Act 436 of 2012 (“P.A. 436”), was enacted to provide for the appointment of Emergency Managers to local municipalities and school districts experiencing financial distress; and
- WHEREAS,** P.A. 436 authorizes an emergency manager to, among other things, amend a local government’s budget; sell, lease, or assign assets; apply for state loans on the municipalities’ behalf; suspend collecting bargaining agreements; modify or terminate existing contracts; exercise power over the local pension board; consolidate or eliminate departments of local government; and decide whether to fill or create staff positions; irrespective of the local government’s charters and law; and
- WHEREAS,** Michigan has implemented emergency managers more aggressively than any other state, placing eleven cities under emergency management between 1990 and 2017; and
- WHEREAS,** These broad powers conferred on an Emergency Manager, not subject to local review or control, have had devastating financial consequences for many municipalities, including the city of Detroit; and
- WHEREAS,** P.A. 436 is fundamentally anti-democratic, not only because it allows an emergency manager to circumvent the democratically elected representatives of local governments, but also because the Michigan Legislature passed it just weeks after Michigan voters voted to repeal emergency management legislation that was substantially identical to P.A. 436; and
- WHEREAS,** While the justification for P.A. 436 was couched in neutral language about management of municipal finances, it is apparent that an underlying assumption of the legislation is that people of color are not capable of self-governance; and
- WHEREAS,** Census data shows that at some point between 2008 and 2013, 51 percent of Michigan’s Black residents were under emergency management, while only 2.3 percent of White residents were under emergency management; and
- WHEREAS,** A study co-authored by a policy analyst and assistant professor at the University of Michigan School for Environment and Sustainability found that the composite financial health score of a city was not a reliable predictor for which cities were placed under emergency management.¹ When analyzing cities based solely on their composite financial health, the study only captured 45 percent of the eleven cities placed under emergency management while criteria such as a city’s reliance on state revenue sharing, percentage of Black residents, and median household income were more accurate predictors of a takeover; and

¹ Hughes Sara, Dick Andrew, Kopec Anna. 2021. “Municipal Takeovers: Examining State Discretion and Local Impacts in Michigan.” *State Law and Government Review* 53 (3): 223-247.

WHEREAS, The theory that emergency managers are more responsible actors than local governments has not been born out in terms of finance or in terms of human rights, rather Emergency Manager Kevyn Orr’s focus on cutting employee benefits and pensions and removing the Water and Sewerage Department from the Detroit’s control appear to be more ideological than rational as those factors were not significant contributors to the City’s immediate cash flow crisis prior to filing for bankruptcy; and

WHEREAS, An emergency manager made the decision to switch Flint’s drinking water source from Detroit’s system to the Flint River, which has had devastating and ongoing consequences for the people of Flint, and Emergency Manager Kevyn Orr’s decision to implement mass water shutoffs for thousands of Detroit residents was condemned by the United Nations as a violation of international human rights; and

WHEREAS, Nearly a third of Detroit’s revenue losses in FY 2011 to FY 2013, leading up to the City filing for bankruptcy, were due to the Michigan Legislature’s decision to drastically cut revenue sharing with Detroit during a period where the City was already reeling from the effects of the Great Recession²; and

WHEREAS, If the Michigan Legislature repeals PA 436 by statute, it appears that no preceding emergency management statute would take its place per MCL 8.4, which states “[w]henever a statute, or any part thereof shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute.” PA 4 of 2011 repealed PA 72 of 1990 by statute, after which PA 4 was repealed by a voter referendum in 2012. Therefore, if PA 436 is repealed by statute it should not revive any previous legislation; and

WHEREAS, On February 1, 2023, House Bill 4065 was introduced in the Michigan House of, which would if enacted, repeal the entirety of Public Act 436; **NOW THEREFORE BE IT**

RESOLVED, That the City of Detroit calls for the repeal of Public Act 436, the so-called Local Financial Stability and Choice Act 436 of 2012; **THEREFORE, BE IT FURTHER**

RESOLVED, The City Council fully supports House Bill 4065 of 2023 and urges the Michigan Legislature to enact House Bill 4065, which would repeal Public Act 436; **THEREFORE BE IT FINALLY**

RESOLVED, That the Detroit City Clerk is directed to send this resolution to the Detroit delegations of both the Michigan State House and Senate, in addition to Governor Gretchen Whitmer.

REVISED MARCH 10, 2023

² https://www.demos.org/sites/default/files/publications/Detroit_Bankruptcy-Demos.pdf