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BUDGET, FINANCE, AND AUDIT STANDING COMMITTEE

CITY OF DETROIT
LAW DEPARTMENT

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Detroit City Council
1340 Coleman A. Young Municipal Center
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RE: Supplemental Opinion on Special Assessments

Your Honorable Body, through the Budget, Finance, and Audit Standing Committee, has forwarded a memorandum from the Legislative Policy Division (LPD) dated June 5, 2019, regarding the above-referenced topic with a proposed ordinance attached for Corporation Counsel's review and approval as to form. The Law Department filed an opinion dated June 14, 2019, setting forth the reasons for which the proposed ordinance is impermissible.[1] Subsequently, LPD filed a supplemental memo dated June 19, 2019, maintaining its arguments that: I) local and state law are silent on the issue of extending hardship exemptions to parcels in a special assessment district; II) an exemption from a special assessment based on economic hardship should be available as a matter of public policy; III) special assessments should be treated similar to the solid waste fee; and IV) an ordinance establishing that the treatment of one class of special assessments different from all other special assessments is a valid exercise of City Council's legislative authority. We are now responding to the supplemental memo.

SHORT ANSWER

There is no legal support for an ordinance that would extract individual parcels located within a special assessment district that receive the benefit of the service or improvement that is the premise of that special assessment district from that particular levy. The foundation of a special assessment district is that all of the parcels within that district receive a benefit from the special assessment levy that is distinguishable from general property taxes or a municipality-wide special assessment so that those parcels within the district are responsible for the levy while property outside of that district are not. The cost of the benefit is apportioned to every property in the district based on the value of the improvement (or service) to that property. In fact, most properties exempt from ad valorem or general property taxes are specifically not exempt from a special assessment levy, this includes certain government property.

Absent an express statutory exemption, all parcels within a designated special assessment district are responsible for their portion of the levy. The basis for a challenge to the establishment or implementation of a special assessment district are: 1) the property does not receive the benefit of the special service or 2) the assessment is unreasonable or out of proportion to the benefits conferred by the special service.

City Council, as the legislative body, has the authority to approve the boundaries of the special assessment district and the mode of apportionment within the district for the cost of the

[1] Law Department opinion titled *Economic Hardship in Special Assessment Districts*, dated June 14, 2019.

services provided to benefitted properties within that district. The apportionment of the cost of the benefit within a special assessment district cannot require a parcel to pay a greater share of the benefit received to that parcel, nor is there any authority that would permit a benefitted parcel to be exempt from the assessment based on the financial status of the property owner.

Therefore, the Law Department's opinion remains unchanged. The proposed ordinance amendment to exempt individuals from a special assessment if those individuals qualify for a hardship exemption from general property taxes is impermissible.

TABLE OF CONTENTS

LAW & ANALYSIS

This opinion will individually address the four arguments reframed in the LPD supplemental memo dated June 19, 2019, provide the law applicable to special assessments in general, then shift to an analysis of the proposed ordinance amendment regarding special assessments levied pursuant to MCL 117.5i. This will enable the reader to appreciate the full context of this body of law and how an attempt by the City to contravene it via the proposed ordinance amendment to extract individuals who qualify for a hardship exemption from payment of a special assessment would likely be viewed by a court.

I. Local and state law are not silent on the issue of extending hardship exemptions to parcels in a special assessment district and case law does not support this position.

The Distinction between Taxes and Special Assessments

While special assessments are collected and enforced in the same manner as property taxes they are distinct under the law. Although it resembles a tax, a special assessment is not a tax. *Knott v. City of Flint*, 363 Mich. 483, 497 (1961). A special assessment refers to "a levy upon property within a specified district," the purpose of which is "to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." *Kadzban v. City of Grandville*, 442 Mich. 495, 500 (1993).

In *Niles Twp. v. Berrien Co. Bd. of Comm'rs*, 261 Mich.App. 308 (2004), the appellate court elaborated on the distinction between a tax and a special assessment. It reiterated the common themes throughout these cases that: 1) the purpose of a tax is to raise revenue for a general governmental purpose while the purpose of a special assessment is to defray the costs of specific local improvements; and 2) the amount of a special assessment generally bears "a reasonably proportionate relationship to the benefit that accrues to the property assessed."[2] The court noted that "[t]he differences between a special assessment and a tax are that:

1) A special assessment can be levied only on land;
2) A special assessment cannot. . . be made a personal liability of the person assessed;
3) A special assessment is based wholly on benefits; and
4) A special assessment is exceptional both as to time and locality."[3]

In *Wikman v. City of Novi*, 413 Mich. 617 (1982), the Michigan Supreme Court distinguished between special assessment made under the state's general authority to tax (such as property taxes and under the jurisdiction of the Michigan Tax Tribunal) versus special assessments levied under the state's police powers (health and welfare and regulatory programs which are not under the jurisdiction of the Tax Tribunal). It held that "special assessment levied against property owners for public improvements to realty which especially benefit their property are special assessments under the property tax laws for the purposes of the Tax Tribunal Act." This is important as the structure of the proposed ordinance amendment would exempt individuals that met a poverty threshold from a special assessment prior to the special assessment being added to the assessment roll. Based on the court's analysis in *Wikman*, an attempt to do so would result in the application of property tax statutes and relevant case law which has consistently held that an exemption from property taxation does not relieve a property owner from a special assessment levy. As special assessments are directly tied to property based on location in a district and benefit to the property, not individuals, jurisdiction in the Tax Tribunal would be proper. (MCL 205.731(a)).

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[2] *Niles Twp.* at 324.
[3] *Id.* at 323-324.

In 1894,[4] it was considered a "well-established" rule that: 1) special assessments are made based on benefit conferred to a property[5] and 2) exemption from taxation does not relieve a property owner from a special assessment levy. It is unlikely a proposed departure from the body of case law spanning the mid-1800s to the present would successfully be abandoned by the courts in 2019.

The distinction between general property taxes and special assessments, as well as treatment of each, was discussed at length in the Law Department's prior opinions (2015 and 2019).[6] The Income Tax Act of 1967, Public Act 281 of 1967; MCL 206.512a, further supports the distinction between general property taxes assessed on an ad valorem basis and special assessments that are not calculated on an ad valorem basis. It states property taxes levied in 2003 onward do not include special assessments unless the special assessment is levied using a uniform millage rate on all real property not exempt by state law from the levy of the special assessment.

Exemption from General Taxation Does Not Extend to Special Assessments

Michigan courts and the Michigan Tax Tribunal have consistently held that exemption from ad valorem or general property taxation does not relieve a property owner from special assessment levies.

In addition to the Michigan Supreme Court's ruling in the case of *In re Petition of Auditor General*, 226 Mich. 170 (1924), which is discussed in the preceding section, the Michigan Court of Appeals in *Acacia Park Cemetery Ass'n v. Southfield Tp. of Oakland County*, 83 Mich.App. 274 (1978), held that the cemetery, exempt from taxation, was responsible for a special assessment. The court noted "[g]enerally, a constitutional or **statutory exemption is considered an exemption for ordinary taxes only and not from special assessment liability** for local improvements. 70 Am.Jur.2d, Special or Local Assessments, Sec. 45; 84 C.J.S. Taxation, Sec. 229." (Emphasis added). In support of this general policy, the court also relies and reiterates the holding on a case from 1894:

> Other property is also exempt from taxation, such as churches, hospitals, cemeteries, etc., but as to these is no implied exemption; * * * **It has therefore been repeatedly held that,** when these are mentioned as exempt in general tax law, **the exemption applies only to the taxes mentioned in the general law, and not to those which are of a private and local character, such as assessments for sewers, sidewalk and the like, which are made according to the benefit conferred. This is the well-established rule, to which it is unnecessary to cite authorities.** *Big Rapids v. The Board of Supervisors of Mecosta County*, 99 Mich. 351 (1894).
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> Emphasis added.

[4] *Big Rapids v. The Board of Supervisors of Mecosta County*, 99 Mich. 351 (1894).
[5] Ad valorem special assessments levied after December 31, 1998, must be based on taxable value. (MCL 211.44c).
[6] Unpaid special assessments returned to the County Treasurer are a valid tax (MCL 211.55) and may be collected under the procedures set forth under the General Property Tax Act.

See also, *Loomis v. Rogers*, 197 Mich. 265 (1917) which held:

> **As a proposition of general application the constitutional requirement of just and uniform taxation is met when the assessment is within the limit of benefits received, is just, and uniform throughout the created assessment district.**
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> **The element of special benefits is a distinguishing feature** between taxes and assessments for benefits. **It is well settled in this state that a general exemption from realty from taxation does not extend to such assessments based on special benefits resulting from proximity – sometimes call taxes for special improvements.**
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> Emphasis added.

In *Doane v. Pere Marquette Ry. Co.*, 247 Mich. 542 (1929), a railroad, which paid a specific tax rather than general taxes, was nevertheless subject to a special assessment levy. The court noted:

> "It is axiomatic that **all property, unless specially exempted, shall bear its fair share of taxation**. Under the general tax law a specific tax is collected from railroads. This takes the place of the general taxes spread upon other property to pay governmental expenses. **Special assessments for local improvements in cities and villages are not general taxes** within the meaning of the term as used in our tax laws, and **no special provision therefor in a statute is necessary to support the levy of such a tax.** Blake v. Metropolitan Chain Stores (Mich. handed down June 3, 1929) 225 N.W. 587, and cases cited."
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> Emphasis added.

The court found that the railroad property, which was exempt from general taxation, was benefited by the improvement in the amount charged and **"[t]o relieve the defendant therefrom is to exempt its property from payment of its fair share of the cost of this improvement and thereby to increase the cost to other property benefited.**" The court rejected this noting that:

> Exemptions from taxation are not favored. As was said by the trial court: **While, of course, it lies within the power of the legislature to create an exemption from such special assessment any such grant must be thoroughly and definitely expressed.** The general rule is that any exemption from any form of taxation will be strictly construed. In 37 Cyc. 892, it is said: "Such a privilege or immunity **cannot be made out by inference or implication, but must be conferred in terms too clear and plain to be mistaken**, and in fact admitting of no reasonable doubt, and where it exists it should be carefully scrutinized **and not permitted to extend either in scope or duration beyond what the terms of the concession clearly require**."
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> Emphasis added.

Cooley[7] also notes that although a property may be tax-exempt "this does not preclude the property being assessed for benefits."[8] The Michigan Supreme Court also cites to Cooley on the topic of cancelling or exempting a property from an otherwise valid special assessment. Applying the rules of statutory construction regarding tax exemptions in *Detroit v. Detroit Commercial College*, 322 Mich. 142 (1948), the Court quoted the following from *Cooley on Taxation*:

> **An intention on the part of the legislature to grant an exemption from the taxing power of the State will never be implied from language which will admit of any other reasonable construction....Exemptions are never presumed**, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, **since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it.**
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> Emphasis added.

The Michigan Court of Appeals has also held that the Michigan Legislature "intended, as a general rule, for property owners who benefit from an improvement paid for by a special assessment to incur the financial burden of that assessment." *Howard v. Clinton Charter Twp.*, 230 Mich.App. 692 (1998). There is no express language in MCL 117.5i allowing for the exemption contemplated in the proposed ordinance amendment and, according to relevant case law, it cannot be inferred.

While accommodation for poverty, disability or other factors may be taken into account for general property taxes,[9] no such accommodations can be found in regard to special assessments. Absent specific statutory exemptions, such as the use of the property for governmental purposes, property which receives the benefit associated with a special assessment district is properly assessed the cost of that benefit. *People v. Ingalls*, 238 Mich. 423 (1927). The following statutory exemptions from general property taxes explicitly state that the exemption does not include a special assessment levied by the local tax collecting unit in which the property is located: qualified start-up businesses[10] and renaissance zone property.[11] In addition to the statutory exemptions, foreclosure under the General Property Tax Act[12] extinguishes all liens against the property, including any lien for unpaid taxes or unpaid special assessments at the time

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[7] Cooley, Thomas M., *A Treatise on the Law of Taxation Including the Law of Local Assessments*. Originally published: Chicago: Callaghan and Company, 1876.
[8] *Id.* at 461.
[9] MCL §§ 211.7b, 211.7d and 211.7u.
[10] MCL 211.7hh.
[11] MCL 211.7ff.
[12] MCL 211.78k(5)(c).

of foreclosure but does not extinguish future installments of special assessments that will be levied on the property. *OAG, Opinion No. 7110*, June 2, 2002.

II. An exemption from a special assessment based on economic hardship is not available as a matter of public policy as is it not supported by law.

Property owners are not subject to special assessments unless the improvement specifically benefits their land.[13] The Michigan Court of Appeals cites two main policy considerations in justifying this rule: 1) property owners should pay a special amount for extra benefits brought to their land; and 2) the entire community should not pay the cost of an improvement that specifically benefits a particular property.[14]

Basic Principles of Taxation

The most appropriate place to begin our examination of the foundational issues of taxation is *A Treatise on the Law of Taxation* by Thomas M. Cooley.[15] Taxes are defined as "the enforced proportional contribution of persons and property, levied by the authority of the state for the support of government, and for all public needs."[16] The Michigan Supreme Court noted in 1860 regarding the exercise of the power to tax, "the purpose always is, that a common burden shall be sustained by common contribution, regulated by some fixed general rule, and apportioned by the law according to some uniform ration of equality." *Woodbridge v. Detroit*, 8 Mich. 274 (1860). This does not mean that all taxation must be equal, as general property taxation may take into account the status of the property owner, such as age, disability or poverty, in its formula.[17]

While these principles apply to taxation generally, Chapter XX, *Taxation by Special Assessment*, pp. 416-473, begins by noting that the system under which special assessments are levied have been adopted in the United States with the general features that have prevailed in England "for a long period of time." It states that they are a "peculiar species of taxation" that are "governed by principles that do not apply generally" to taxation as they cannot be listed exhaustively:[18]

> In addition to the general levy, they **demand that special contributions**, in consideration of the special benefit, **shall be made by the persons receiving it**.
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> No decision has ever undertaken to enumerate the cases in which special assessments are admissible. The reserve in this regard is wise, as it is

[13] *Brill v. Grand Rapids*, 383 Mich. 216 (1970).
[14] *Carmichael v. Village of Beverly Hills*, 30 Mich.App. 176 (1971).
[15] Cooley, Thomas M., *A Treatise on the Law of Taxation Including the Law of Local Assessments*. Originally published: Chicago: Callaghan and Company, 1876.
[16] *Id.* at p. 1.
[17] "There is no imperative requirement that taxation shall be equal. * * * Theoretically, tax laws should be framed with a view to apportioning the burdens of government so that each person enjoying government protection shall be required to contribute so much as is his reasonable proportion, and no more." *Id.* at 410, Chapter VI, *Equality and Uniformity in Taxation.*
[18] *Id.* at p. 416; pp. 418-419.

> obviously **impossible to anticipate all the cases in which it might be equitable and proper to levy them**; and it is consequently better and safer that special cases, **as they present themselves, be judged upon their special circumstances.**
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> Emphasis added.

Under Michigan law, "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. This supports the precept that every owner of land is chargeable with notice that a tax will be levied on the land each year. *Blunt v. Auditor General*, 324 Mich. 675 (1949). Requirements under tax assessment and collection statutes are for the protection of the taxpayer and therefore are mandatory. *Clark v. Crane*, 5 Mich. 151 (1858). Tax exemption statutes must generally be narrowly construed in favor of the taxing authority. *Wexford Med. Group v. Cadillac*, 474 Mich. 192 (2006). Exemptions to a special assessment must be explicit, not implied. *Kinder Morgan Michigan, LLC v. City of Jackson*, 227 Mich.App. 159 (2007).

Uniformity of Taxation and the Michigan Constitution

Both the 1908 and 1963 Michigan Constitutions have required uniformity of assessments. The 1963 Constitution states in pertinent part "Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates."[19] The 1908 Constitution contained the same requirement at Article X, §4 which stated "The legislature may by law impose specific taxes, which shall be uniform upon the classes upon which they operate."

This requirement ensures fairness among similarly situated classes within a special assessment district. The relevant analysis to determine "class or classes" is the property itself. The status of an individual property owner in the class is not relevant to the categorization as special assessments are tied to real property. Under the City's ordinance, the eligible services of snow removal, mosquito abatement and security services under the special assessment at-issue would likely create one class as the properties within the district either received the service(s)/benefit or did not and if they did not they should not be included in the special assessment district. The mode of apportionment of the levy within the district will determine how the cost is allocated to benefitted properties. The character of the uniformity[20] and the basis on which it is established is unique in comparison to general property taxation. *In re Willis Ave.*, 56 Mich. 244 (1885). Please note modes of apportionment are discussed in greater detail later in this opinion.

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[19] 1963 Michigan Constitution, Article IX, §3. The same section also requires uniformity in general ad valorem taxes of real and personal property.

[20] Assessors must make an assessment on all lands for the expense of an improvement in proportion to the benefit inured to the property.

In *Crampton v. City of Royal Oak*, 362 Mich. 503 (1961), the issue of uniformity was litigated. In upholding the uniformity of assessments based on benefit to the property, the Michigan Supreme Court cited to 63 CJS, Municipal Corporations, § 1424, pp. 1213-1214:

> Assessments to defray the cost of local improvements may be apportioned according to the benefits conferred on the property assessed; and they must be so apportioned where apportionment according to this method is required by statute or charter; but, **where a charter is adopted under a home-rule act, a section thereof relating to assessments is not unconstitutional and void because it does not provide that assessments must be made in proportion to benefits. Where this method of assessment is employed, assessments should be imposed equally on all property equally benefited by the improvement. On the other hand, a uniform assessment on lots may be set aside or its collection enjoined where the advantages to the lots or parcels of land vary; and the fact that lots are assessed in various percents does not show that they have not been assessed according to relative benefits. All of the factors and varying circumstances which relate to and may affect the proportionate benefits received should be taken into consideration; and the amount assessed on the various lots may properly differ according to their location.** Where the lots on any street sewered are uniform in size and value and are similarly improved or unimproved, the unit plan may be a compliance with a statute requiring apportionment according to benefits; but where the properties affected vary greatly in value and area the unit plan should not be used.
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> Emphasis added.

How assessments are apportioned within a special assessment district cannot be arbitrary. *Cote v. Village of Highland Park*, 173 Mich. 201 (1912); *Auditor General v. Konwinski*, 244 Mich. 384 (1928). *Carmichael v. Village of Beverly Hills*, 30 Mich.App. 176 (1971), is one case where the court stressed that the method or mode of apportionment must be "legally sanctioned" and not made in an arbitrary fashion.[21] The requirement that special assessments be levied according to "some definite plan" designed to bring about "a just distribution of the burden" adheres to the general principles of uniformity within a class so that the total cost "equally amount [to] those standing in the same relation." *St. Joseph Twp. v. Municipal Finance Commission*, 351 Mich. 524 (1958); *Panfil v. Detroit*, 246 Mich. 149 (1929); *I.H. Gingrich & Sons v. City of Grand Rapids*, 256 Mich. 661 (1932); *Petition of Fuller*, 258 Mich. 211 (1932).

Therefore, to be valid, the special assessment levy must not exceed the benefit inured to the property. To be just it must be equal and uniform throughout the assessment district or within the classes of property that are similarly situated within the district. An attempt to levy varying amounts within a class (i.e. charging less or more than the value of the benefit to that particular

[21] *City of Detroit v. Daly*, 68 Mich. 503 (1888).

property) is legally untenable. The law is clear that a special assessment levy must be in proportion to the benefit to that specific property.

The proposed ordinance amendment would apportion the total cost of the services within the district differently based on the financial status of the property owner - those who qualify for a hardship exemption would pay nothing and the remaining property owners would pay more than their share of the total cost. Stated differently, the group of property owners that received a levy (which could fluctuate) would be charged more than the value of the benefit to their specific property. This opinion will demonstrate numerous reasons this is impermissible. While LPD is correct that the statute granting the City the authority to enact the special assessment district ordinance does not contain explicit language regarding exemptions, the case law, secondary sources and other materials contained in this opinion will demonstrate that the manner in which special assessments are handled by governmental units implementing special assessment districts and the correlating judicial interpretations have not significantly shifted since the mid-1800s and, under that framework, the proposed ordinance amendment would likely be determined to be improper by a court.

III. Treatment of solid waste fees and special assessments are not interchangeable.

The City's solid waste fee is a fee[22] for service,[23] not a tax or special assessment so it is an improper comparison for the purpose of providing an example of an exemption to a levy. Rather than being an exercise of the municipal power to tax, the imposition of a fee constitutes an exercise of a municipalities' police power to regulate public health, safety, and welfare. *Bolt v. City of Lansing*, 459 Mich. 152 (1998); *Merrelli v. St Clair Shores*, 355 Mich. 575, 583 (1959). A more appropriate comparison would be the special assessments levied by the City for sidewalk replacement. The amount is calculated by the number of concrete flags needing replacement on a specific tax parcel. City Council cannot exempt a property from a sidewalk assessment. As noted in this opinion special assessments "levied against property owners for public improvements to realty which especially benefit their property are special assessments under the property tax laws for the purposes of the Tax Tribunal Act."[24] Therefore, the solid waste fee and SAD levies are not similar exercises of power by a municipality[25] and are handled differently.

IV. An ordinance establishing that the treatment of one class of special assessments differently is not a valid exercise of City Council's legislative authority.

The grant of power to local units under the Home Rule City Act, MCL 117.1, *et seq.*, does not operate in a vacuum. The special assessments are levied against real property under the statutory authority granted to the City to enact the SAD ordinance. The Law Department maintains its position that properties within any special assessment district that receive the benefit of the

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[22] *Wolf v. Detroit*, 287 Mich. App. 184 (2010) vacated by 489 Mich. 923 (2011).
[23] The solid waste collection charge is a user fee. A user fee is a fee paid by those receiving specific services from the government. The revenue from such fees are dedicated to the services provided and the amount of the fee is based on the value of the service provided. *Bolt v. City of Lansing*, 459 Mich 152 (1998).
[24] *Wikman v. City of Novi*, 413 Mich. 617 (1982).
[25] Some special assessments are an exercise of a local unit's police power, but not the services or the SAD at-issue.

service cannot be excluded from a special assessment district levy absent specific statutory authority to exempt such parcels.

Similarly, the assertion that City Council may dictate that the City Assessor not levy special assessments on eligible parcels is unsupported. There is no legal authority to support an exemption of a special assessment absent an express statutory authority or; this proposition ignores a well-established body of statutory precedent and case law as set forth in this opinion.

Creation of Special Assessment Districts

The 1827 Charter of Detroit first granted the power to defray the costs of public improvements through the levy of a special assessment. A special assessment can be initiated by a governmental unit[26] or by property owners signing a petition. In either circumstance, the creation of a special assessment district, its boundaries and apportionment of the costs of the improvement are ultimately approved by the local legislative body. This is not an unfettered power and the establishment of the special assessment district and its boundaries must be based on the area improved. It is improper to levy a special assessment on a property that does not receive the benefit or service of that designated district.[27] The following discussion and supporting cases demonstrate it would be equally improper to not levy a special assessment on a property located within a district that does receive the benefit or service.

City of Detroit v. Daly, 68 Mich. 503 (1888), supports the propositions in the preceding paragraph:

> There may be a necessity of leaving consideration **discretion to the authorities who fix a taxing district**, if it can be made to differ from the ordinary municipal subdivisions; **but it cannot be such an uncontrolled discretion as to leave no public character whatever to the district, and make a purely private charge under pretense of setting off an assessment district.** While it is quite possible that a municipal subdivision would not be an appropriate territory to charge with the special improvement, yet, on the other hand, **if the matter could be left to the pure caprice of the city authorities, it is evident that there would be no equality in public burdens.**
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> **It is elementary that no one can be lawfully made to bear more than his share of any public burden, and that share must be assessed by some tangible process of distribution.**
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> **If one person is charged for more benefit than another it must be because by the rule of apportionment his share is greater in the**

[26] This opinion will not address this process or the related apportionment mechanisms as the special assessment district at issue is initiated by the community, not the City.

[27] *Bolema v. City of Norton Shores*, MTT Docket No. 220781, April 2, 1998. Petitioners challenged a special assessment levy arguing they were already connected to the sewer and therefore received no benefit from a remote sewer expansion. The Tribunal agreed finding that the special assessment was invalid and canceled the special assessment levy on that property.

> **assessment; but he can only be obliged to pay his share,** and must have the means furnished him by the proceedings of knowing exactly what his share is. Otherwise the charge may be arbitrary.
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> Emphasis added.

A special assessment district is a geographic area within a service district.[28] Properties within a special assessment district are eligible for the special assessment levy because they receive a direct, unique and measureable enhancement in their market value as a result of a public improvement. Special assessment districts must be determined using competent, material and substantial evidence based upon fact. "It is the duty" of an entity "when a special improvement is made, the benefits accruing from which are regarded as local, to determine the boundaries of the district within which the property is supposed to be specially benefitted by the improvement … The carving out of a special assessment district in a city is a practical matter, depending wholly on facts." *Lawrence v. City of Grand Rapids*, 166 Mich. 134 (1911).

Judge Campbell noted that the court in 1860 was "affirming only what had many years before been fully decided" that "there is no restriction upon the legislature in defining the size of districts. Our road districts are instances of this. And if a charge is made on a uniform rule within any prescribed district, there can be no very good reason for objecting to it because the district is large or small, if the rest of the city is made to bear its own local burdens on a substantially similar basis."[29]

Valid Modes of Apportionment of a Special Assessment

Apportionment is the process of allocating costs that are eligible to be specially assessed, to the individual properties to be assessed based on benefit or other statutory requirement. For example, municipality-wide ad valorem special assessments must be based on the value of the property.[30] For an apportionment to be made, there must be an improvement or project creating a benefit which is geographically disbursed.[31] "To be valid, a tax or special assessment shall be levied in accordance with some definite plan designed to bring about a just distribution of the burden." *Thomas v. Gain*, 35 Mich. 155 (1876); *Panfil v. City of Detroit*, 246 Mich. 149 (1929); *Wood v. Village of Rockwood*, 328 Mich. 507 (1950). Only properties receiving a measurable (more than de minimus) direct benefit can be specially assessed. "An assessment cannot be sustained where the benefit from the improvement is merely speculative or conjectural; it must be

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[28] A service district includes all potential properties benefitted and is where the economic analysis begins to demonstrate a change in market value to support the levy of a special assessment. The service district analysis will identify which properties receive direct, unique and measureable increases making them eligible for inclusion in the special assessment district. The boundary between properties in the service district that receive some form of benefit to the improvement and those with none delineates between the service district and the special assessment district. This analysis would not be performed for a SAD under MCL 117.5i as it is petition driven to establish the boundaries.

[29] *Woodbridge v. City of Detroit*, 8 Mich. 274 (1860).

[30] Citizens Research Council, *A Distinction Without a Difference: Ad Valorem Special Assessments and Property Taxes*, Report 407, June 2019.

[31] Levy to be placed within the special assessment district on benefitted property: Home Rule City Act for public improvements & boulevard lighting systems at MCL 117.4d and Board of Public Works for a project special assessment district at MCL 123.743.

actual, physical and material." 70 Am. Jur. 2d §21, p. 862. Cooley[32] noted the following modes of apportionment that may be selected under different circumstances:

> 1. major part of the cost of a local work is sometimes collected by a general tax, while a smaller portion is levied upon the estates especially benefitted.
> 2. major part is sometimes assesses on estates benefitted, while the general public is taxed a smaller portion in consideration of a smaller participation in the benefits.
> 3. the whole cost in other cases is levied on lands in the immediate vicinity of the work.

It is important to note, much like case law from the mid-1800s and early 1900s on this topic, the modes of apportionment in Cooley's Treatise are still in use. Modern modes have been added and formulas on valuation clarified, but the foundational premise of a levy being based on benefit remain intact. Case law is consistent that an assessment must be levied in proportion to benefits. *Hoyt v. City of East Saginaw*, 19 Mich. 39 (1869); *Grand Rapids School Furniture Co. v. City of Grand Rapids*, 92 Mich. 564 (1892).

Section 3 – Theory and Method of the Michigan Assessor's Training Manual, page 13-7,[33] provides that the method to calculate the benefit in a special assessment district must be "uniformly and consistently applied to every property in the special assessment district." Some common methods to measure the benefit/enhancement are:

1. Front foot method (noted as the most common method). Used where there are varying lot widths but same or similar depths. Takes into account the potential for future lot splits or divisions.
2. Area basis. Based on the physical area of a given parcel (square footage, acreage, or other common measurement).
3. Unit benefit. Based on the criteria that every lot in the special assessment district is a single home site and equally assessed.
4. Frontage area combination. Districts with major variances in frontage or lot depths. Size range from 1 acre to 40 acre. Objective is to reflect benefit based on current property use and benefit to the undeveloped acreage while maintaining uniform application.
5. Scientific approaches. Method of apportionment based on some scientific fact or engineering data.

The value of the improvement or benefit to a property must bear a reasonable relationship to the assessment. McQuillin's, the definitive treatise for municipal law matters which has been published since 1904, states in regard to special taxation and local assessments:[34]

> **The rule that a method of assessment cannot be arbitrary, and must have some relation to the benefits appears reasonable. It would**

[32] *A Treatise on the Law of Taxation*, Thomas M. Cooley, 1876, p. 447.
[33] *The Michigan Assessor*, Volume 54, No. 8, August 2013, p. 25-33.
[34] McQuillin, Municipal Corporations (3d ed.), Volume 14, § 38.02.

> **seem that the legislature is competent to judge of benefits.** This is assumed by the current of authority. A public improvement having been made, the question of determining the area benefited by such improvement is generally held to be a legislative function, and such legislative determination, unless palpably unjust, is usually conclusive, and not subject to judicial interference unless arbitrariness, abuse or unreasonableness be shown. **The prohibition is that special taxes or local assessments shall not be levied in excess of the benefits conferred, whether by the valuation, front foot, area, or any other method.**
>
> Emphasis added.

In *Cummings v. Garner*, 213 Mich. 408 (1921), the Michigan Supreme Court was concerned with the interpretation and validity of provisions regarding the improvement of highways under an assessment district plan. In discussing the authority granted by the statute to establish the boundaries of the district to be affected, and the levy being proportional to the benefits received by each parcel of land assessed, it was said that **"[i]t is a fundamental rule that an assessment for a local improvement should be apportioned among and imposed upon all equally standing in like relation."** This requirement is in line with the Michigan Constitution as previously discussed in this opinion.

Invalid Apportionment of a Special Assessment

Case law also supports the converse, or the general proposition that a special assessment levy not made in line with benefits cannot be sustained. *Wood v. Village of Rockwood*, 328 Mich. 507 (1950), citing *Panfil v. City of Detroit*, 246 Mich. 149 (1929), and *I. H. Gingrich & Sons v. City of Grand Rapids*, 256 Mich. 661 (1932). Generally, courts will not interfere in the amount of assessments levied because it is a legislative act. The Michigan Supreme Court noted in *Marks v. Detroit*, 246 Mich. 517 (1929) that "[i]n the absence of fraud or bad faith or the following of a plan incapable of producing reasonable equality, their judgment must be held to be conclusive."

In the *I.H. Gingrich* case, the Michigan Supreme Court struck down the levy for street grading and paving, mandating that the cost of the assessment be recalculated for the entire district. In support of its position, the Court noted the disparity of amounts assessed between similarly situated properties was untenable:

> A piece of land with 100 feet frontage on the opening, owned by one D. Moses, pays for the opening, $30.80, while the 100 feet opposite, owned by the plaintiffs, pays $1,919, over 62 times as much.
>
> * * *
>
> Almost every special improvement tax results in some injustice, but **the scheme of assessment used in this case is so lacking in uniformity and equality, so far removed from any plan of a levy according to benefits, that it cannot be sustained.** That **does not mean that plaintiffs should be relieved from paying their just share of this assessment; it does mean that the present assessment requires them**

> **to pay more than their just share and has not been levied according to benefits.** The cost of the entire improvement should be reassessed.
>
> Emphasis added.

In an eloquent holding from 1876 regarding the propriety of apportionment of special assessments the court stated:[35]

> If it is a tax in the ordinary sense, it must be assessed by value; if it is not a tax in that sense, it must be apportioned on some other basis. But it does not follow that it may be apportioned on any basis whatsoever which the legislature may see fit to prescribe.
>
> * * *
>
> But it is generally agreed **that an assessment levied without regard to actual or probable benefits is unlawful,** as constituting an attempt to appropriate private property to public uses.
>
> * * *
>
> **It is admitted that the legislature may prescribe the rule for the apportionment of benefits, but it is not conceded that its power in this regard is unlimited. The rule must at least be one which it is legally possible may be just and equal as between the parties assessed; if it is not conceivable that the rule prescribed is one which will apportion the burden justly, or with such proximate justice as is usually attainable in tax cases, it must fall to the ground, like any other merely arbitrary action which is supported by no principle. The only discretion which the act in question allows to the common council as an assessing board is in determining what lots and lands are benefited by the improvement. When that determination is made, the rule of apportionment is fixed, and it must be made according to the area.**
>
> * * *
>
> Nor does it confine the assessment to lands upon the street in which the sewer is laid; and in the assessment before us lots on a parallel street are assessed…This might not be unjust if each assessment was laid upon an estimate of actual benefits; but **when it is levied by an arbitrary standard which requires the burden to be laid upon lands far from the sewer and only slightly benefited, equally with those fronting upon it and greatly benefited, it is manifest that it must not only work injustice, but that in some cases it may amount to actual confiscation.** It is not, therefore, legally possible that such an apportionment of the cost of sewers can be just or equal, or in proportion to benefits, and when injustice must result from its adoption, we have no alternative but to reject the assessment as an unlawful exaction. **It is an assessment made in entire disregard of the principle upon which**

[35] *Thomas v. Gain*, 35 Mich. 155 (1876).

> **special assessments can alone be sustained; the principle, namely, that "those who enjoy the benefits shall equally bear the burden."**--SHAW, C. J., in *Wright v. Boston,* 9 Cush., 233, 241. See *Matter of Washington Avenue,* 69 Penn. St., 360; *Patterson v. Society, etc.,* 24 N. J., 385.
>
> Emphasis added.

This 1876 holding was distinguished by a Michigan Tax Tribunal decision in 1998 due to more advanced modes of apportionment, but it did not invalidate the mode or reasoning used in *Thomas*.[36] In *Bolema*, the Tribunal canceled the special assessment levy finding that the property did not accrue any special benefit, which is a factual determination.[37]

In re: Willis Ave., 56 Mich. 244 (1885), the Michigan Supreme Court outlined again how unjustly apportioned special assessments (or taxes in general) are improper:[38]

> **But such local burdens cannot be imposed in a manner which disregards the fundamental principles of taxation. The assessment must be for a public purpose and affect some well-defined community, and some proper and reasonable rule of apportionment must be observed in all local as well as general taxation; that is to say, the apportionment should be such that the amount paid by one person or piece of property shall bear some reasonable relation to the amount paid by another in the assessment district or community where the burden is to be borne. These principles are so elementary as to need no citation of authorities.** In this state the law allows an assessment district to be created for the purpose of making therein local improvements, and the property therein to be assessed in proportion to the extent of the benefit received by each party required to discharge the burden.
>
> Emphasis added.

In *Carmichael v. Village of Beverly Hills*, 30 Mich.App. 176 (1971), the Appellate Court opined that property subject to a special assessment levied based on its 'distance from the end of the road' places an unequal burden on some property owners and misjudges 'benefits conferred' on the properties, as it would have owners paying for paving in front of not only their own but other properties as well. The Court struck down this method of apportionment on uniformity grounds citing *Auditor General v. Konwinski*, 244 Mich. 384 (1928) that every valid assessment must be based on some legally ordained basis of apportionment (such as frontage-footage basis),

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[36] *Bolema v. City of Norton Shores*, MTT Docket No. 220781, April 2, 1998. Petitioners were already connected to the sewer and therefore received no benefit from a remote sewer expansion.

[37] The standard of review is whether the taxpayer proved by a preponderance of the evidence that there is a substantial or unreasonable disproportionality between the amount specially assessed and the value accrued to the land as a result of the improvement.

[38] This case dealt with not only an assessment for street paving, but also condemnation of land for such purposes. Those legal arguments are outside of the scope of this opinion.

and not arbitrarily set. *Carmichael* included the following 2-part test: 1) Was the method used to determine the perimeters of the special assessment district arbitrary, capricious and unreasonable? 2) Was the formula used to determine the amount of the special assessment arbitrary, capricious and unreasonable?[39]

Another attempt to impose a creative formula to apportion a special assessment levy also failed at the appellate level. In *Axtell v. Portage*, 32 Mich.App. 491 (1971), the Court rejected an apportionment formula advanced by the plaintiffs that assessors should "employ a 'balancing test', I.e., weighing special benefits against special detriments, to compute the amount of the assessment." The Court upheld Defendant Portage's use of "one formula for all special assessment situations based upon the theory that any street is of about equal benefit to the frontage owner" which amounts to a legally sanctioned frontage-footage basis of apportionment.

Given the requirements regarding appropriation of a special assessment within a district based on benefit to the property coupled with the judicial rejection of alternative methods of apportionment it is likely that the proffered apportionment mechanism based on the financial status of the property owner will likely be viewed by the Michigan Tax Tribunal as arbitrary and lacking in uniformity between similarly situated properties.

Legal Challenge of a Special Assessment

A petitioner seeking to challenge a special assessment bears the burden of presenting credible evidence to rebut the presumption that the assessments are valid. *Kane v. Williamstown Twp.*, 301 Mich.App. 582 (2013). A special assessment will be deemed valid if it meets two requirements: (1) the improvement subject to the special assessment must confer a benefit on the assessed property and not just the community as a whole and (2) the amount of the special assessment must be reasonably proportionate to the benefit derived from the improvement.[40] When a special assessment is made, it "stands upon the presumption of good faith, lawful action, and considerate creation of the assessment district, although such presumption cannot withstand established facts to the contrary." *Dix-Ferndale Taxpayers' Ass'n v. City of Detroit*, 258 Mich. 390 (1932). Specifically, the petitioner must demonstrate "a substantial and unreasonable disproportionality between the amount assessed and the value that accrues to the land as a result of the improvements." *Dixon Rd. Group v. City of Novi,* 426 Mich. 390 (1986); *Storm v. City of Wyoming*, 208 Mich.App. 45 (1994).

In *Davis v. City of Westland*, 45 Mich.App. 497 (1973), the Michigan Court of Appeals clarified that voiding the entire assessment was not the remedy in a situation where the assessment of one party was "clearly out of proportion and unjust" and the errors in the varying amounts of the assessment should be corrected before the tax roll is confirmed. Voiding the entire assessment roll is appropriate when "an assessment is so arbitrary or discriminatory as to be substantially unfair."

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[39] The burden is on the property owner to prove that the amount of the assessment is not proportionate to the benefit received. *Johnson v. Inkster*, 401 Mich. 263 (1977).

[40] *Kadzban*, 442 Mich. at 500-502; *Ahearn v. Bloomfield Charter Twp.*, 235 Mich.App. 486 (1999).

Additionally, to protect private property rights, Michigan law also requires that the total amount of the assessment must be no greater than what was reasonably necessary to cover the cost of the work. *Oneida Twp. v. Eaton Co. Drain Comm'r*, 198 Mich.App. 523 (1993). Therefore, it is likely that a challenge to the proposed ordinance amendment to charge parcels that receive the benefit of the same service(s) differing amounts based on the financial status of the property owner, not on the value of the benefit to the property, would fail. Particularly if the court were to determine that the class or classes within the district were similarly situated as to benefit of the improvement(s) but different amounts were levied.

Therefore, a legal challenge to the Michigan Tax Tribunal or pursuit of a discontinuance petition under Sec. 18-12-141[41] of the SAD Ordinance are the proper vehicles to impact a SAD levy once established. The City cannot forgive or exempt a special assessment. The Treasurer may withhold a delinquent special assessment from Wayne County but it remains a lien against the property and subject to collection action by the City.[42]

Analysis of MCL 117.5i

The statutory authority[43] for the City's enactment of the local ordinance creating the particularized Special Assessment District (SAD) at issue provides:

> (1) Whether or not authorized by its charter, a city with a population of more than 600,000 **may provide by ordinance a procedure to finance by special assessments** the provision by private contractors of snow removal from streets, mosquito abatement, and security services. **The ordinance shall authorize the use of petitions to initiate the establishment of a special assessment district.** The record owners of not less than 51% of the land comprising the actual special assessment district must have signed the petitions.
> (2) A service instituted under this section may be discontinued upon petition by the record owners of 51% of the land comprising the special assessment district.
>
> Emphasis added.

Section 5i was first enacted by Public Act 431 of 1994 with a population threshold of one million. In 2001 and 2011 it was amended to lower the population threshold.[44] The City of Detroit remains the only local unit that meets the population threshold to trigger the discretionary authority to enact such an ordinance. The statute requires a community–based petition drive to initiate the designation of a special assessment district. Given the previous discussion of relevant case law, the "procedure by which to finance" refers to the apportionment of costs (such as unit benefit, front foot method, or area basis) within a designated district. This does not grant the legislative body unfettered power relative to financing. It must conform to a "legally sanctioned" method of

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[41] This section codifies MCL 117.51(2).
[42] If an individual were delinquent on their property taxes or water bill then it would still be referred to Wayne County for collection.
[43] MCL 117.5i.
[44] Public Act 173 of 2001 lowered the population threshold to 750,000 and Public Act 287 of 2011 further reduced it to the current level of 600,000.

apportionment as well as due diligence based on the cost of services, number of properties benefitted by the service and related information from the assessor.

City Council, as the legislative body of the City, holds the responsibility to approve the boundaries of a special assessment district to include those properties that will benefit from the special assessment. There is no legal authority that supports the exemption of select parcels within a special assessment district or that receive the value of the benefit of the service based on the financial status of the owner. This proposition would run afoul of the basic principles of taxation and encourage a re-interpretation of law so well-settled cases from the mid-1800s to date remain good law with precedential value. The current exemptions from a SAD levy mirror other exemptions in state law and are based on the use of property for public purposes.[45] Entities, such as a municipal lighting authority, which are exempt from taxes and special assessments lose this status if they are leased to private persons.[46]

The language regarding exemptions in the current ordinance comports with state law and the body of case law discussed in this opinion. Because the Michigan Tax Tribunal would hold jurisdiction over a challenge of a SAD it is prudent to anticipate the court would continue to hold that property exempt from general taxation is nevertheless subject to a special assessment.[47] This opinion outlines the apportionment guidelines to establish a valid "procedure to finance" with the applicable principles of uniformity among classes incorporated.

The Glenn Steil State Revenue Sharing Act of 1971, Public Act 140 of 1971; MCL 141.904(5), which deals with the distribution of collection of state income tax to local units on a per capita basis, defines in subpart (a) that a special assessment[48] is imposed by a city against property in the city for any public improvement, facility, or service authorized by charter, ordinance, or statute to be imposed on the basis of benefit to the property.

In its brevity, MCL 117.5i does not explicitly address the availability of exemptions from a SAD levy.[49] In drafting the exceptions contained within the ordinance, the Law Department mirrored similar statutes as well as case law to establish a legally defensible list. The Law Department has been unable to find, and LPD has not cited to any legal support that would allow an exemption from a special assessment levy based on a characteristic of the property owner as opposed to a calculation based on benefit to the property itself. In the case of a SAD levy under

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[45] The Drain Code of 1956 at MCL 280.280 and Principal Shopping Districts and Business Improvement Districts at MCL 125.990h.

[46] MCL 123.1287.

[47] Please refer to cases previously discussed in this opinion in particular *Big Rapids v. The Board of Supervisors of Mecosta County*, 99 Mich. 351 (1894); *Loomis v. Rogers*, 197 Mich. 265 (1917); *In re Petition of Auditor General*, 226 Mich. 170 (1924); *Doane v. Pere Marquette Ry. Co.*, 247 Mich. 542 (1929); *Acacia Park Cemetery Ass'n v. Southfield Tp. of Oakland County*, 83 Mich.App. 274 (1978); *Wikman v. City of Novi*, 413 Mich. 617 (1982); *Howard v. Clinton Charter Twp.*, 230 Mich.App. 692 (1998).

[48] This definition exempts special assessments where an entire local unit is the special assessment district and included as part of local taxes on each parcel on an ad valorem basis. MCL 141.904(3) and (6). This type of special assessment is outside of the scope of this opinion as the proposed special assessment district under MCL 117.5*i* is not City-wide but a discrete area of the City to be benefitted by the services.

[49] The notice requirements for special assessments is addressed in MCL 211.741, *et seq.*

the current ordinance it would be the cost to each parcel of the total cost of the services, using an apportionment method (such as area basis or unit benefit).

CONCLUSION

There is no legal authority to exclude a property within a special assessment district that received the benefit of the service provided from a special assessment levy or exclude it from the assessment roll prior to confirmation absent a specific statutory exemption. General principles of taxation and uniformity established in case law and the 1963 Michigan Constitution require that the levy be imposed on a parcel that receives the benefit. Constraints regarding the creation of a special assessment district and the requirement that "legally sanctioned" modes of apportionment be used to distribute the cost of the improvement throughout the district also do not support the proposed ordinance. It is well-established that exemptions from general taxation do not extend to special assessment levies as those costs are attached to the property, not the property owner.

As Detroit is the only municipality that meets the population threshold to enact an ordinance under MCL 117.5i, there is a lack of materials surrounding that particular special assessment. However, the full body of materials regarding special assessments (secondary sources, case law and related statutory comparisons) provide a complete and clear framework that remains virtually unchanged since the mid-1800s and does not support the enactment of the proposed ordinance amendment. Therefore, Corporation Counsel remains unable to approve the proposed ordinance amendment as to form as its enactment or enforcement is not supported by the Michigan Constitution, state or local law, or relevant case law.

Should you have any additional questions, please feel free to contact us.

Respectfully submitted,

Julianne V. Pastula
Senior Assistant Corporation Counsel

Concur:

Tonja R. Long
Supervising Assistant Corporation Counsel

Approved:

Lawrence T. García
Corporation Counsel

CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1100
DETROIT, MI 48226
PHONE 313-628-2535
FAX: 313-224-2135
E-Mail: OCFO@detroitmi.gov

54

August 28, 2019

The Honorable Detroit City Council
Coleman A Young Municipal Center
2 Woodward
Detroit MI 48266

RE: Investment Agreement

Dear Honorable Detroit City Council Members:

The Office of The Chief Financial Officer submits the attached proposed Investment Management Agreement in order to obtain services to manage the assets and render investment advice with respect to the assets of the City of Detroit Retiree Protection Trust Fund held with the custodian selected by the city.

Should you have any questions, please do not hesitate to contact me or my office.

Best regards

John Naglick, Jr.
Chief Deputy CFO/ Finance Director

CC: David Massaron
Katie Hammer
Christa McLellan
Stephanie Washington

Enc.

BY COUNCIL MEMBER: _____

RESOLVED, that Agreement attached (Agincourt) referred to in the foregoing communication dated from the week of September 3, 2019 be hereby and are approved.

CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER

2 WOODWARD AVE., SUITE 1100
DETROIT, MI 48226
PHONE 313-628-2535
FAX: 313-224-2135
E-Mail: OCFO@detroitmi.gov

August 28, 2019

The Honorable Detroit City Council
Coleman A. Young Municpial Center
2 Woodward Avenue
Detroit, MI 48226

Re: Investment Agreement

Dear Honorable Detroit City Council Members:

The CFO Office submits the proposed Investment Management Agreement in order to render investment advice and manage the assets of the Client in its Detroit Retirement Protection Trust Fund held with the custodian selected by the Client and designated in writing by the Client to the manager (the "Custodian").

Should you have any questions, please do not hesitate to contact me or my office.

Best regards,

John Naglick, III

INVESTMENT MANAGEMENT AGREEMENT

Investment Management Agreement between City of Detroit, Michigan, a Michigan municipal corporation by and through its Finance Department (the "Client") and Agincourt Capital Management, a Virginia limited liability company (the "Investment Manager") is made as of this 27th day of August, 2019.

WHEREAS, the Client wishes to appoint the Investment Manager to manage and control the investment of certain assets (the "Assets") held for the account of the Client by Bank of New York Mellon (the "Custodian") in a custody account (the "Custody Account").

WHEREAS, the Investment Manager is willing to perform the duties and accept the responsibilities as an investment manager with respect to the Assets to provide investment advice and to invest the Assets as directed by the Client and consistent with the Investment Guidelines as hereinafter defined.

NOW, THEREFORE, in consideration of the premises and mutual considerations provided in this Agreement, and intending to be legally bound, the Client and the Investment Manager agree as follows:

1. Appointment. The Client hereby appoints the Investment Manager to act as an investment manager with respect to the Assets to provide investment advice and to invest the Assets as directed by the Client and consistent with the Investment Guidelines as hereinafter defined.

2. Fees. The Client will pay the Investment Manager, as compensation for its services under this Agreement, a fee determined in accordance with Schedule A, which is attached to this Agreement. The fee schedule (Schedule A) may be changed by the Investment Manager upon 30-days written notice to the Client. The Investment Manager will send fee invoices on a

quarterly basis directly to the Client unless otherwise directed in writing by the client (below). If the Client directs the Investment Manager to invoice a third party, the Client also attests that it has given written authorization to the third party, including successors or assigns, to pay the Investment Manager directly. In this case, the Client shall receive a duplicate copy of invoice:

Send Invoice to:

Christa J. McLellan
Deputy CFO/Treasurer
City of Detroit
2 Woodward Avenue, Suite 1200
Detroit, MI 48226
Office: 313-224-1717
mclellanc@detroitmi.gov

3. Assets Held in Trust for the Client. All Assets for which the Investment Manager acts as an investment manager shall be held in trust by the Custodian (or by any additional or successor custodian).

4. Authority of Investment Manager. Consistent with the Investment Guidelines, the Investment Manager shall have the discretionary authority to manage and control the Assets in the Custody Account, including the power to acquire and dispose.

The Client shall direct the Custodian to inform the Investment Manager promptly of all Assets segregated into the Custody Account. The Client, either alone or in conjunction with the Custodian, shall also establish reporting and accounting arrangements so the Investment Manager will be fully informed at all times as to the Assets segregated into the Custody Account.

5. Investment Guidelines and Limitations. Until contrary general Investment Guidelines are communicated from the Client to the Investment Manager, the Custody Account shall be managed in accordance with the guidelines contained in Schedule B, which is attached to

this Agreement (the "Investment Guidelines"). Investment Manager hereby agrees that each person working on behalf of the Investment Manager has received a copy of the Investment Guidelines, has read and fully understand, and will comply with Michigan Public Act 314 of 1965, as amended, ("Act 314") and the Investment Guidelines. Investment Manager hereby acknowledges its responsibility as an investment fiduciary under Act 314. Any investment advice or recommendation on investments for the Client given pursuant to this Agreement shall comply with Act 314 and the Investment Guidelines.

6. Other Activities of the Investment Manager. In addition to the investment management services performed under this Agreement, the Investment Manager or any of its affiliates may engage in any other business and may render investment advisory services to any other person. The Investment Manager or any of its affiliates may render investment advisory services to any other person, even if the Investment Manager, its affiliates, or the other person may have investment policies similar to those followed by the Investment Manager for managing the Custody Account. The Investment Manager may at any time buy or sell, or may direct or recommend that another person buy or sell, securities of the same kind or class that are purchased or sold for other investment management accounts upon the directions of the Investment Manager.

7. Investment Adviser. The Investment Manager is an "investment adviser" as defined in the Investment Advisers Act of 1940. The Investment Manager shall maintain its status for the duration of this Agreement. In dealing with the Assets, the Investment Manager shall not be deemed to be acting as or to make the warranties of a broker.

8. Termination. The Investment Manager may terminate this Agreement on 30 days' written notice to the Client. The Client may terminate the Investment Manager's appointment as

an investment manager on 5 business days' written notice. In addition, if the Client did not receive the Investment Manager's disclosure statement at least 48 hours prior to entering into this Agreement, the Client shall have the right to terminate this Agreement without penalty on written notice to the Investment Manager within 5 business days after signing this Agreement. Nothing in this section shall preclude the Client from directing the Custodian to segregate additional assets into, or remove assets from, the Custody Account for which the Investment Manager acts as an investment manager.

9. No Assignment. The Investment Manager may not assign this Agreement without the written consent of the Client.

10. Change in Control of Investment Manager. The Investment Manager shall immediately notify the Client in writing of any material change in the control or ownership of the Investment Manager.

11. **Communications.** The Treasurer and Deputy Treasurer of the Client shall, upon execution of this Agreement and from time to time thereafter, notify the Investment Manager, in writing, of the people who are authorized to act on behalf of the Client under this Agreement (the "Authorized Officers"), and the Investment Manager shall, upon execution of this Agreement and from time to time thereafter, notify the Custodian and the Authorized Officers of the Client in writing, of the people who are authorized to act on behalf of the Investment Manager under this Agreement. The Investment Manager may accept and act upon instructions which the Investment Manager reasonably and in good faith believes to be genuine from any Authorized Officer, given instructions orally or by telephone, email, telegraph, facsimile or other written means of communication. The Investment Manager shall have no liability in connection with any act reasonably taken or omitted in good faith or at the request or instruction of the Authorized

Officer. However, the Federal securities law imposes liabilities under certain circumstances on persons who act in good faith, and therefore nothing herein shall in any way constitute a waiver or limitation of any rights which the undersigned may have under any Federal securities or State laws.

12. Modification of Agreement. This Agreement may be amended only by a written instrument signed by the Client and the Investment Manager.

13. Governing Laws. This Agreement shall be construed in accordance with federal law and the law of the State of Michigan (without regard to the legislative or judicial conflict of laws or rules of any state).

14. Receipt of Disclosure Statement. Prior to or simultaneously with the execution of this Agreement, the Client has received from the Investment Manager a copy of the Investment Manager's written disclosure statement.

15. No Additional Duties. The Investment Manager shall not be under any duty to institute or defend any legal proceeding on behalf of the Client. The Investment Manager is under no duty to take any action other than herein specified unless the Investment Manager agrees in writing to do so.

IN WITNESS WHEREOF, the Client and the Investment Manager have executed this Agreement as of the day and year written above.

By: _____
Name:
Title:

Agincourt Capital Management, LLC

By: _____
Name: Patrick O'Hara
Title: Managing Director

THIS CONTRACT WAS APPROVED BY THE CITY COUNCIL ON:

APPROVED BY LAW DEPARTMENT
Pursuant to § 7.5-206 of the Charter of the City of Detroit

_____
Date

_____
Chief Procurement Officer Date

_____
Corporation Counsel Date

THIS CONTRACT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY RESOLUTION OF THE CITY COUNCIL AND SIGNED BY THE CHIEF PROCUREMENT OFFICER

AGINCOURT CAPITAL MANAGEMENT, LLC

SCHEDULE A

ANNUAL FEE SCHEDULE

.20% on First $25 Million

.15% on Next $75 Million

.10% on Next $100 Million

.05% on the Balance

Fees will be calculated and invoiced quarterly in arrears based on the ending market value of the assets under management.

AGINCOURT CAPITAL MANAGEMENT, LLC

SCHEDULE B
INVETSMENT GUIDELINES
CITY OF DETROIT
CFO ADMINISTRATIVE ORDER No. 2018-101-009A

CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1100
DETROIT, MICHIGAN 48226
PHONE: 313-224-3203
FAX: 313-224-2135
WWW.DETROITMI.GOV

CFO ADMINISTRATIVE ORDER
No. 2018-101-009A

SUBJECT: Retiree Protection Fund Investment Advisory Committee
ISSUANCE DATE: March 29, 2018
EFFECTIVE DATE: March 29, 2018
AMENDED DATE: August 22, 2019

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1. AUTHORITY

   1.1. State of Michigan Public Act 279 of 1909, Section 117.4s(2), as amended by Public Act 182 of 2014, states the chief financial officer shall supervise all financial and budget activities of the city and coordinate the city's activities relating to budgets, financial plans, financial management, financial reporting, financial analysis, and compliance with the budget and financial plan of the city.

   1.2. Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Sections 47-3-1 through 47-3-10, among other items, authorizes the creation of an investment advisory committee to be chaired by the Chief Financial Officer (the "CFO").

   1.3. Trust assets be invested as provided by Public Employees Retirement System Investment Act - Michigan Public Act 314 of 1965, MCL § 38.1132 et seq., as amended (Act 314).

2. OBJECTIVE

   2.1. To ensure the Retiree Protection Fund Investment Advisory Committee (the "Advisory Committee") executes its responsibilities as established by Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Sections 47-3-6 and 47-3-8.

   2.2. To ensure the CFO receives investment recommendations regarding the Trust assets in a manner that safeguards principle and maximizes the Trust's investment returns.

3. PURPOSE

   3.1. To establish the responsibilities of the Advisory Committee.

   3.2. To designate the chair of the Advisory Committee.

4. SCOPE

   4.1. This Administrative Order only applies to the Investment Advisory Committee established pursuant to Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-8 and does not apply to other City investments.

5. RESPONSIBILITIES

   5.1. The CFO's Office shall be responsible for the periodic review and maintenance of this Administrative Order, as well as other related policies and / or procedures that may be deemed necessary.

   5.2. The Advisory Committee shall review, and act in accordance with, this Administrative Order, City Ordinance No. 21-17 and Act 314.

5.3. The Chief Deputy CFO / Finance Director (the "CDCFO") shall coordinate the business of the Advisory Committee with assistance from the Office of the Treasury.

6. POLICY

6.1. The CFO hereby designates the CDCFO as the chair of the Advisory Committee.

6.2. The Advisory Committee shall develop and recommend a Policy Statement to the CFO, see Exhibit A for current Policy Statement.

6.3. The Advisory Committee shall, at a minimum, meet annually during the month of September to conduct its business and review the Annual Statement submitted to the CFO by the Trustee.

6.4. The Advisory Committee, through the chair, shall submit an annual written report (the "Annual Advisory Committee Report") to the CFO stating its recommendations regarding the investment of Trust assets and any additional information deemed relevant by the Advisory Committee or the CFO no later than the end of October each year. The format of the Annual Advisory Committee Report will be prescribed in the Policy Statement.

7. DEFINITIONS

7.1. *Annual Advisory Committee Report*: the annual written report to the CFO stating the Advisory Committee's recommendations regarding the investment of Trust assets and any additional information the Advisory Committee or CFO deems relevant.

7.2. *Annual Statement*: the Annual Statement submitted to the CFO by the Trustee in accordance with Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-6, Article VIII Accounts and Recordkeeping, Section 8.02 Reporting.

7.3. *Advisory Committee*: the RPF Investment Advisory Committee established pursuant to Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-8.

7.4. *Policy Statement:* the Policy Statement outlines 1) specific guidelines for the management of the Trust and 2) the requirement of the Annual Advisory Committee Report.

7.5. *Trust:* the Retiree Protection Trust Fund established pursuant to Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-2.

7.6. *Trustee*: the Trustee as defined in Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-6.

APPROVED

David P. Massaron
Chief Financial Officer, City of Detroit

EXHIBIT A: POLICY STATEMENT

CITY OF DETROIT RETIREE PROTECTION FUND

Investment Policy Statement

I. PURPOSE OF INVESTMENT POLICY STATEMENT

Ordinance No. 21-17 amended Chapter 47 of the Detroit City Code to establish a Trust as a mechanism to save and invest funds and contributions of the City for later distribution to the General Retirement System and the Police and Fire System, and to authorize the creation of an Investment Advisory Committee (IAC). Furthermore, pursuant to CFO Administrative Order No. 2018-101-009, the IAC shall submit an Annual Advisory Committee Report to the CFO stating its recommendations regarding the investment of the Trust assets. The purpose of this Investment Policy Statement (Statement) is to provide 1) specific guidelines for the management of assets of the Trust and 2) the requirements of the Annual Advisory Committee Report.

This Statement is authorized by CFO Administrative Order No. 2018-101-008, CFO Administrative Order No. 2018-101-009, City Ordinance No. 21-17 and the Public Employees Retirement System Investment Act - Michigan Public Act 314 of 1965, MCL § 38.1132 *et seq.*, as amended (Act 314).

Investment objectives are formulated in response to the financial needs of the Trust. Financial needs are influenced by the City's benefit policies, funding objectives, liabilities, and the successful management of Trust assets. Therefore, investment objectives consider the Trust's financial and liquidity needs and the City's risk tolerances and inflation expectations.

II. Roles and Responsibilities

A. Investment Advisory Committee

The Investment Advisory Committee (IAC) acknowledges its responsibility as an advisor to the CFO, who is a fiduciary to the Trust. In this regard, the IAC must provide advice prudently and for the exclusive interest of the Trust's participants and beneficiaries.

More specifically, the IAC's responsibilities include:

1. Comply with the provisions of pertinent federal, state, and local laws and regulations, including Act 314.
2. With the advice of the Investment Consultant, recommend qualified investment managers and consultants to manage and advise on the Trust's assets.
3. With the advice of the Investment Consultant, monitor and review the investment performance of the Trust to determine achievement of goals and compliance with policy guidelines.
4. With the advice of the Investment Consultant, monitor and evaluate manager performance.
5. Conduct manager searches when needed for policy implementation.
6. When the IAC is considering the engagement of a new investment manager, the IAC may perform due diligence site visits to the offices of the interview candidates.
7. Make recommendation of return assumptions.

B. Investment Consultant

The Investment Consultant's (Consultant) role is that of an advisor to the Trust, enabling the Investment Advisory Committee to make well-informed and timely recommendations to the CFO regarding the investment of the Trust's assets. The Consultant acknowledges its responsibilities as an advisor to the CFO, who is a fiduciary under Act 314 and must act in the exclusive interest of the Trust.

More specifically, the Consultant's responsibilities include:

1. Assist the IAC in strategic planning for the Trust. Provide objective advice and counsel that will enable the IAC to make well-informed and well-educated recommendations regarding the investment of the Trust's assets.
2. Assist the IAC in the development and periodic review of a policy statement that properly reflects the IAC's tolerance for risk, and that best assists the IAC in meeting its rate-of-return, and overall investment policies associated with administering and investing this Trust.
3. Assist the IAC in the development and periodic review of the asset allocation policy and investment manager structure that provides adequate diversification with respect to the number and types of asset classes and investment managers to be retained.
4. Determine the Trust's capacity to add new investments, participate in cash flow/liquidity forecasting for the Trust's needs, and advise on general compliance requirements.
5. Review, monitor, and advise the IAC on the current asset allocation to determine whether the Trust complies with asset limitations under Act 314 (as amended) and the IAC's investment objectives and guidelines.
6. Assist the IAC in its due diligence and search for new investment manager(s) utilizing the appropriate data bases, both externally and proprietary.
7. Assist the IAC in the development and review of performance standards and guidelines with which the IAC can measure each investment manager's progress.
8. To provide to the IAC quarterly performance measurement reports on each of the investment managers and on the Trust as a whole, and to assist the IAC in interpreting the results.
9. Monitor and review monthly statements, review and advise the IAC on information sent by the investment managers, review investment managers as necessary (based on the guidelines set forth in this IPS and the consultant's internal research policies; including but not limited to legal and financial information provided by the managers).
10. The Consultant's report will be the main report the IAC utilizes when evaluating the overall investment results of the Trust and individual managers. The Consultant will reconcile performance, holdings, and security pricing data with the Trust's custodian bank and when necessary staff reports/data. In the event of a discrepancy, the custodian's values will be used.
11. Make recommendation of return assumptions to the IAC.
12. Provide general consulting services as requested by the IAC and as deemed appropriate by the Investment Consultant. Attend necessary meetings as requested by the IAC. Act as a liaison between investment managers and the Trust, and thereby facilitate the communication of important information in the management of the Trust.
13. Shall acknowledge in writing that they are a prudent expert for the Trust with all attendant duties and responsibilities, including without limitation, fiduciary responsibility.

14. Shall conduct themselves in accordance with this Investment Policy Statement.

15. Such other duties as may be mutually agreed upon in writing.

C. Investment Managers

The investment managers (Managers) will acknowledge their responsibility as an investment fiduciary under Act 314. Each investment manager will have full discretion to make all investment decisions for the assets placed under their control, while observing and operating within all policies, guidelines, constraints, and philosophies as outlined in this statement.

More specifically, the Managers' responsibilities include:

1. Manage the Trust's assets under its supervision in accordance with the guidelines and objectives contained in this Investment Policy Statement.
2. Exercise investment discretion in regard to buying, managing, and selling assets held in the portfolio, subject to any limitations contained in this Investment Policy Statement.
3. Perform its investment management duties with respect to the assets with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use in the conduct of a similar enterprise with similar aims.
4. Seek to obtain "best execution" with respect to portfolio transactions.
5. Vote all proxies consistent with the guidelines contained in the Manager's Investment Management Agreement or similar document. Investment managers shall provide documentation regarding the disposition of proxy solicitations to the IAC upon request.
6. Comply with the reporting requirements outlined in this Investment Policy Statement.
7. Acknowledge and agree in writing as to their fiduciary responsibility to comply fully with the entire Investment Policy Statement set forth herein.
8. Report to the IAC and Consultant quarterly regarding the status of the portfolio and its performance for various time periods and meet with the IAC as requested to report on their performance and compliance with goals and objectives.
9. Promptly inform the IAC and Investment Consultant regarding all significant matters pertaining to the investment of the Trust's assets. The IAC shall be notified in writing of any material change in ownership, organizational structure, financial condition, senior staffing and management, or the management of the investment manager's portfolio.
10. Michigan law shall apply to all investment manager contracts where individual investment manager agreements are negotiated.

D. Custodian

The custodian (Custodian) will provide safekeeping and accounting services for the Trust. More specifically, the Custodian's responsibilities include:

1. Provide adequate safekeeping services.
2. Upon receipt of proper, executable trade instructions, custodian shall seek to settle trades in a timely manner.
3. Collect interest and dividend income when due.

4. Notify investment managers of corporate actions, including mergers, tender offers, stock splits and capital changes that require a decision.
5. Sweep daily cash balances into appropriate investment funds.
6. Accept instructions from the designated individuals.
7. Disburse funds as directed.
8. Provide monthly statements by investment managers' accounts and a consolidated statement of all assets.
9. To perform other services for the IAC as are customary and appropriate for custodians.

III. INVESTMENT OBJECTIVES

The objectives of the Trust have been established in conjunction with a comprehensive review of the current and projected financial requirements as presented in an asset allocation review performed in 2019 by the Consultant. The objectives include:

- To have the ability to supplement the City's General Fund in making its annual required contributions to the Pension Systems when due.
- The Trust's overall investment objective is the preservation of principal.
- To maintain the purchasing power of the current assets and all future contributions by producing positive real rates of return on Trust assets.
- To control costs of administering the Trust and managing the investments.
- To meet all statutory requirements of the State of Michigan.

The following investment objectives, in order of priority, shall be applied in the management of the Trust:

The primary objectives, in priority order, of investment activities shall be safety, yield and liquidity.

- Safety. Safety of principal is the foremost objective of the Trust. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to manage credit risk and interest rate risk.
- Return on Investment. The Trust shall be designed with the objective of attaining the maximum market rate of return throughout budgetary and economic cycles, taking into account the IAC's investment risk constraints and cash flow needs and characteristics of the portfolio
- Liquidity. The investment portfolio shall remain sufficiently liquid to meet all budgetary requirements that may be reasonably anticipated.

IV. ASSET ALLOCATIONS

The asset allocation policy is developed 1) to attempt to achieve the investment objectives, 2) to achieve the expected investment returns with a prudent amount of investment risk, and 3) in recognition that the capital markets may behave differently over any time period, throughout the life of the Trust.

This strategic asset allocation policy is consistent with the achievement of the Trust's financial needs and overall investment objectives. Asset classes are selected based on their expected long-term returns, individual reward/risk characteristics, correlation with other asset classes, manager roles, and fulfillment of the Trust's long-term financial needs. Conformance with statutory investment guidelines is also considered.

The Investment Advisory Committee will recommend an allocation range for each asset class and provide the recommendation in the IAC's Annual Advisory Committee Report. The IAC recognizes the need to vary exposure within and among different asset classes, based on investment opportunities and changing capital market conditions. The IAC will take into consideration the Trust's current investments and present market conditions. The IAC intends to review these allocation targets at least annually, focusing on changes in the Trust's financial needs, investment objectives and asset class performance.

The IAC's attitude regarding the Trust's assets combines both the preservation of capital and minimal risk-taking. The IAC recognizes that risk (i.e., the uncertainty of future events), volatility (i.e., the potential for variability of asset values), and the potential of loss in purchasing power (due to inflation) are present to some degree with all types of investment vehicles. While high levels of risk are to be avoided, the assumption of a limited level of risk is warranted in order to allow the opportunity to achieve satisfactory results consistent with the objectives and character of the Trust. The policies and restrictions contained in this statement should not impede the investment manager to attain the overall Trust objectives, nor should they exclude the investment manager from appropriate investment opportunities.

V. INVESTMENT PERFORMANCE OBJECTIVES

A. Total Portfolio Performance

1. The Trust will be managed in accordance with the parameters specified in this Investment Policy. The portfolio should obtain a market average rate of return. A series of appropriate benchmarks shall be established against which the portfolio performance shall be compared on a regular basis. The benchmarks shall be reflective of the actual allocation of assets, securities held, and the risks undertaken.

B. Fixed Income Performance

The overall objective of the fixed income portion of the portfolio is to add stability and liquidity to the total portfolio.

VI. INVESTMENT GUIDELINES

A. Overall

All investment guidelines and restrictions of the State of Michigan are incorporated by reference, including, but not limited to Act 314.

B. Pooled Funds

Investments made by the Trust may include pooled funds. For purposes of this policy pooled funds may include, but are not limited to, mutual funds, commingled funds, exchange-traded funds, limited

partnerships and limited liability corporations. Pooled funds may be governed by separate documents which may include investments not expressly permitted in this IPS. In the event of investment by the Trust into a pooled fund, the Trust will adopt the prospectus or governing policy of that fund as that manager's addendum to this Investment Policy Statement.

C. Alternative Investments

The Trust may invest in investments that would otherwise not be qualified under these Investment policies, to the extent permitted under Section 38.1140d of Act 314 (informally referred to as the "basket clause").

D. Collective Investment Restrictions and Correcting Excess/Deficient Investments

All Managers are restricted individually, and collectively, by this IPS. The Managers shall coordinate periodically with the Consultant, who shall (among other things) assure collective compliance with this IPS. In the event any investment based on changes in the market value of the Trust assets, causes the Trust to exceed or fall short of any range prescribed in this IPS, the assets may be reallocated in a prudent manner to comply with Act 314 and the strategic allocation and ranges outlined in this IPS.

E. Guideline for Fixed Income Investments

1. Per Act 314, as amended guidelines, not more than 15% of the Trust's assets may be invested in below investment grade bonds. Investment grade is defined as securities graded in the top 4 major grades as determined by 2 national rating services. Asset allocation guidelines may be more restrictive and provide for a lower amount of exposure to below investment grade bonds.
2. For mutual funds and collective trusts guidelines will be outlined in their prospectus or offering document.

VII. REPORTING

A. Monthly

On a monthly basis, the Custodian shall supply an accounting statement that will include a summary of all receipts and disbursements and the cost and the market value of all assets.

B. Quarterly

On a quarterly basis the Investment Managers shall deliver a report detailing the Trust's performance, forecast of the market and economy, portfolio analysis and current assets of their portfolio. Written reports shall be delivered to the IAC and the CFO within 30 days of the end of the quarter. A copy of the written report shall be submitted to the person designated by the City of Detroit Retiree Protection Fund and shall be available for public inspection. The Investment Managers will provide immediate written and telephone notice to the IAC of any significant market related or non-market related event impacting the portfolio and its performance.

The Investment Consultant shall evaluate and report on a quarterly basis the rate of return and relative performance of the Trust on a gross and net of fee basis.

C. Annually – Annual Advisory Committee Report

Pursuant to CFO Administrative Order 2018-101-009: Retiree Protection Fund Investment Advisory Committee, the Advisory Committee, through the chair, shall submit an annual written report to the CFO stating its recommendations regarding the investment of Trust assets and any additional information deemed relevant by the Advisory Committee of the CFO no later than the end of October each year.

At minimum, the following items shall be included in the Annual Advisory Committee Report:

1. Summary of activity of the IAC since submittal of the previous Annual Advisory Committee Report
2. Asset Allocation Recommendations and Justification (including analysis of Risk)
3. Earnings assumptions for total portfolio, as well as any portion as appropriate (e.g., Fixed Income)
4. Forecast which models Trust performance through life of the trust fund.

D. As Necessary

If an Investment Manager holds securities, that complied with section VI at the time of purchase, which subsequently exceed the applicable limit or do not satisfy the applicable investment standard, such excess or noncompliant investments may be continued until it is economically feasible to dispose of such investment in accordance with the prudent person standard of care, but no additional investment may be made unless authorized by law or ordinance. In addition, an action plan outlining the investment 'hold or sell' strategy shall be provided to the IAC immediately.

The IAC will meet periodically to review the Investment Consultant's performance report. The IAC will meet with the Investment Managers and appropriate outside consultants to discuss performance results, economic outlook, investment strategy and tactics and other pertinent matters affecting the Trust on a periodic basis.

VIII. COMPLIANCE

It is the direction of the IAC that the Trust assets are held by a third-party Custodian, and that all securities purchased by, and all collateral obtained by the Trust shall be properly designated as Trust assets. No withdrawal of assets, in whole or in part, shall be made from safekeeping except by an authorized member of the IAC or their designee.

At the direction of the IAC, operations of the Trust shall be reviewed by independent certified public accountants as part of any financial audit periodically required. Compliance with the IAC's internal controls shall be verified. These controls have been designed to prevent losses of assets that might arise from fraud, error, or misrepresentation by third parties or imprudent actions by the IAC or employees of the Trust sponsor, to the extent possible.

IX. CRITERIA FOR INVESTMENT MANAGER REVIEW

The Investment Consultant will monitor the performance for each component of the Trust on a monthly basis utilizing a time-weighted rate of return calculation. Certain managers, based on their individual investment mandates, may report results using an internal rate of return calculation. The Investment Consultant will review investment manager information monthly and will provide updates to the IAC as necessary. No investment manager will make a presentation to the IAC unless requested by the Investment Consultant due to probationary status as outlined below or any other extenuating circumstance where the Investment Consultant deems it appropriate that the IAC receives such presentation from the investment manager.

The Investment Consultant will evaluate each investment manager as outlined in this IPS and will then report to the IAC.

The IAC may initiate a change in investment manager at any time based upon performance results, a change in investment needs, a lack of confidence based upon the evaluation of the investment manager's results, or for any other or no reason at all.

The IAC wishes to adopt standards by which judgments of the ongoing performance of a Manager may be made. The IAC will rely on the Investment Consultant to carefully monitor the Trust's investment managers on several key indicators outlined below:

- Style consistency or purity drift from the mandate.
- Management turnover in portfolio team or senior management.
- Investment process change, including varying the index or benchmark.
- Failure to adhere to the Investment Policy Statement or other compliance issues.
- Investigation of the firm by the Securities and Exchange Commission (SEC) or other regulatory agency.
- Significant asset flows into or out of the company or strategy.
- Merger or sale of firm.
- Fee increases outside of the competitive range.
- Servicing issues – key personnel stop servicing the account without proper notification.
- Failure to attain a majority vote of confidence by the IAC.

Nothing in this section shall limit or diminish the IAC's right to terminate the Manager at any time.

X. REVIEW AND AMENDMENTS

The investment policy is intended to be flexible and should be reviewed and modified on an ongoing basis. The goals, objectives and guidelines may be amended to reflect material or sustained changes in the financial condition of the Trust, the economic environment, regulatory change or the opportunities available within the capital markets. All changes to this document will be subject to IAC and CFO approval and will be made on an as needed basis.

Adoption recommended by Investment Committee on July 24, 2019.

Adopted **CITY OF DETROIT RETIREE PROTECTION FUND**

CFO Approval
David P. Massaron, CFO

August 22, 2019
Date

MANAGEMENT REPORT:

A. Asset Allocations – as of July 2019

Asset Class*	Target	Range	Benchmark Index
Global Equity	0%	0-0%	MSCI World Index
Intermediate Gov/Cred	50%	35-60%	BB Intermediate Gov/Credit
US AGG Fixed Income	50%	35%-60%	BB US Aggregate Bond
High Yield	0	0-10%	BB US High Yield Bond
Leveraged Loans	0%	0-10%	S&P LSTA Leveraged Loan Index
Cash*	0%	0%-30%	90-Day T-Bills

The IAC recognizes that from time to time the asset mix will deviate from the targeted percentages due to market conditions. A range has been established for each asset class to control the risk and maximize the effectiveness of the Trust's asset allocation strategy, while avoiding unnecessary turnover at the security level. The Investment Consultant will monitor the aggregate asset allocation of the portfolio and notify the Investment Advisory Committee to rebalance to the target asset allocations based on market conditions. To minimize turnover, an asset class that is outside of its allowable range, will be rebalanced towards its target allocation in a prudent manner. When possible, contributions and distributions will be utilized to maintain allocations within policy ranges and reduce transaction costs.
The IAC does not intend to exercise short-term changes to the target allocations.

B. Portfolio Performance – as of July 2019

The IAC recommends, on an absolute basis, a return of the total portfolio that will equal or exceed the budgeted earnings assumption of 3.0%. This absolute return objective will be evaluated in the context of the prevailing market conditions. The core fixed income portion of the portfolio is expected to perform at a rate at least equal to 1) the Bloomberg Barclays Capital U.S. Aggregate Bond Index, and 2) rank in the top 50th percentile of the total core fixed income universe over three (3) and five (5) year time periods.

CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1100
DETROIT, MI 48226
PHONE 313-628-2535
FAX: 313-224-2135
E-Mail: OCFO@detroitmi.gov

55

August 28, 2019

The Honorable Detroit City Council
Coleman A Young Municipal Center
2 Woodward
Detroit MI 48266

RE: Investment Agreement

Dear Honorable Detroit City Council Members:

The Office of The Chief Financial Officer submits the attached proposed Investment Management Agreement in order to obtain services to manage the assets and render investment advice with respect to the assets of the City of Detroit Retiree Protection Trust Fund held with the custodian selected by the city.

Should you have any questions, please do not hesitate to contact me or my office.

Best regards

John Naglick, Jr.
Chief Deputy CFO/ Finance Director

CC: David Massaron
Katie Hammer
Christa McLellan
Stephanie Washington

Enc.

CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER

2 WOODWARD AVE., SUITE 1100
DETROIT, MI 48226
PHONE 313-628-2535
FAX: 313-224-2135
E-Mail: OCFO@detroitmi.gov

August 28, 2019

The Honorable Detroit City Council
Coleman A. Young Municpial Center
2 Woodward Avenue
Detroit, MI 48226

Re: Investment Agreement

Dear Honorable Detroit City Council Members:

The CFO Office submits the proposed Investment Management Agreement in order to render investment advice and manage the assets of the Client in its Detroit Retirement Protection Trust Fund held with the custodian selected by the Client and designated in writing by the Client to the manager (the "Custodian").

Should you have any questions, please do not hesitate to contact me or my office.

Best regards,

John Naglick, Jr.

BY COUNCIL MEMBER: _____

RESOLVED, that Agreement attached (Garcia Hamilton & Associates) referred to in the foregoing communication dated from the week of September 3, 2019 be hereby and are approved.

INVESTMENT MANAGEMENT AGREEMENT

This INVESTMENT MANAGEMENT AGREEMENT (this "Agreement"), dated as of August 23, 2019, is made by and between Garcia Hamilton & Associates, L.P., a Delaware limited liability company (the "Manager"), and City of Detroit, a Michigan municipal corporation (the "Client").

WITNESSETH:

WHEREAS, the Manager is engaged in business as an investment adviser and is registered as such with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940; and

WHEREAS, the Client desires to engage the Manager to render investment advice and manage the assets of the Client in its Detroit Retirement Protection Trust Fund (the "Account") held with the custodian selected by the Client (which custodian will be a "qualified custodian" as defined under the Investment Advisers Act of 1940) and designated in writing by the Client to the Manager (the "Custodian").

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein, the parties do hereby agree as follows:

1. ***Engagement; Effectiveness***. The Client hereby appoints the Manager as the investment manager with respect to the Account and the Manager hereby accepts such appointment and agrees to render the services herein set forth for the compensation herein provided, with the engagement and this Agreement becoming effective upon the Client's initial transfer to the Account and the receipt by the Manager of notification that it may begin effecting trades in the Account. The Manager and the Client agree that Client may make additions to or withdrawals from the Account in such amounts as Client shall determine. The Client also agrees to use best effort to promptly notify the Manager in writing of any additions to the Account, including the amount thereof, and provided further, that Client agrees to provide Manager, when feasible, with at least three (3) business days written notice prior to such withdrawal which notice shall specify the proposed amount and date of withdrawal.

2. ***Authority***. The Manager shall have full power to supervise and direct the investment of the Account and to make and implement investment decisions for Account, with prior consultation with the Client, in accordance with such investment guidelines set forth and attached as Exhibit A (the "Invetsment Guidelines"), and subject only to such reasonable restrictions as communicated in writing by the Client to the Manager in the future. Manager hereby acknowledges its responsibility as an investment fiduciary under Michigan Public Act 314 of 1965, as amended, ("Act 314") and will comply with the requirements of the Investment Guidelines. Any investment advice or recommendation on investments for the Client given pursuant to this Agreement shall comply with Act 314 and the Investment Guidelines. In implementing investment decisions for the Account, the Manager

shall have full authority (a) to place orders for the Account for the purchase or other acquisition of such securities, property or other assets for the Account as the Manager may select or for the sale or other disposition of such securities, property or other assets held in the Account as the Manager may select, and (b) to select brokers, dealers and other service providers to execute trades and/or to perform other related services on behalf of the Account, at the Client's expense. In the event that Client requires Manager to execute transactions through a specified broker-dealer, such request must be specifically made by Client in writing. Manager does not vote client proxies except in instances where Client specifically assigns voting authority to Manager for securities held in the account and Manager receives proxy in a timely manner from Custodian. Manager does not use client transactions to obtain research or other products or services. The Client agrees to instruct the Custodian or any other broker, dealer or other service provider to execute the orders received from the Manager and to consummate transactions executed in accordance with the Manager's instructions. In no event will the Manager take or retain custody over the assets in the Account.

3. ***Services to Other Clients***. It is understood that the Manager may from time to time give advice and take action with respect to other clients which may differ from the advice given or the timing or the nature of action taken with respect to the Account. It is further understood that the Manager may be engaged in purchasing or selling for other clients positions in securities held in the Account and that the Manager may have banking or other commercial relationships with companies whose securities are held in the Account. Nothing in this Agreement shall be deemed to impose upon the Manager any obligation to purchase or sell or to recommend for purchase or sale for the Client, any security or other property which the Manager, its principals, affiliates, agents or employees may purchase or sell for its or their own account or for the account of any other client.

4. ***Portfolio Management Duties of Manager***. The Manager shall use all reasonable efforts available to the Manager to increase the value of the Account, however, it is understood and agreed that the Manager does not guarantee or insure any increase or even that there will not be a decrease. The Manager shall not be liable for any decrease in the value of the Account, except as specifically provided in Section 11.

5. ***Fees***. For its services pursuant to this Agreement the Client shall pay the Manager compensation in accordance with the attached Schedule of Fees. Such compensation shall be paid to Manager at the address provided in paragraph 6 of this Agreement.

6. ***Notices***. All mail and notices pursuant to this Agreement shall be in writing and addressed as follows:

If to Manager, to:

Garcia Hamilton & Associates, L.P.
5 Houston Center
1401 McKinney, Suite 1600

Houston, Texas 77010
Attention: Managing Partner

If to Client, to:

Christa J. McLellan

Deputy CFO/Treasurer
City of Detroit
2 Woodward Avenue,
Suite 1200
Detroit, MI 48226
Office: 313-224-1717
mclellanc@detroitmi.gov
Federal Tax ID No. 38-6004606

or to such other address as may be fixed by notice so given.

Manager generally expects to deliver regulatory and other client documents to Client electronically, provided you consent to such delivery. The initials of an authorized officer of the Client indicate Client's consent to receive such documents electronically and the ability to view and save/print these documents. If Client consents, manager will deliver regulatory and other client documents to the email above. If Cleint does not provide consent, Manager will send Client documents to Client's address of record by postal or overnight mail. Cleint may withdraw its consent to receive documents electronically at any time by e-mail to bmcwilliams@garciahamiltonassociates.com or by sending a written request by postal mail to Garcia Hamilton & Associates, L.P., ATTN: Chief Compliance Officer, 1401 McKinney, Suite 1600, Houston, Texas 77010.

7. Invetsment Advisor. The Manager is an "investment adviser" as defined in the Investment Advisers Act of 1940. The Manager will maintain its status for the duration of this Agreement.

8. ***Termination***. This Agreement may be terminated by either party at any time upon 30 days' advance written notice to the other party.

9. ***Assignment; Change in Partnership***. It is expressly agreed that this Agreement may not be assigned (within the meaning of the Investment Advisers Act of 1940, as amended) without the written consent of the other party. In addition, the Manager will notify the Client in the event of a material change in the partnership of the Manager within a reasonable time after such change.

10. ***Disclosure Statement***. The Client acknowledges receipt of Part 2A and 2B of the Manager's Form ADV or a disclosure statement containing the equivalent information before or at the time Client enters into this Agreement. The Client also acknowledges receipt of Privacy Policy of Manager, which notice is attached and incorporated by reference herein.

11. ***Entire Agreement; Governing Law; Venue; Severability***. This Agreement constitutes the entire agreement of the parties with respect to management of the Account and supersedes all prior agreements and oral discussions. This Agreement can only be amended by a written document signed by the parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflicts of law rules, and the parties hereby agree to the exclusive jurisdiction of the state and federal courts located in Wayne County, Michigan for any disputes relating to or in connection with this Agreement or the services performed under this Agreement. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby. This Section 11 shall survive the termination of this Agreement.

12. ***Liability***. Neither the Manager nor any of its officers, directors or employees shall be liable hereunder for any action performed or omitted to be performed or for any errors of judgment in managing the account, or for any decrease in the value of the account, or for any failure for the account to appreciate in value, except in the event of Manager's (i) gross negligence or willful misconduct or (ii) violation of applicable law or a breach of a fiduciary duty under applicable law. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith, and therefore nothing herein shall in any way constitute a waiver or limitation of any rights which the undersigned may have under any federal securities laws. This Section 12 shall survive the termination of this Agreement.

12. ***Independent Contractors***. The Manager shall for all purposes of this Agreement be deemed to be independent contractors, and neither party shall have authority to act for or represent the other party or otherwise be deemed an agent of the other party, except as contemplated in this Agreement.

13. ***Confidentiality***. Except as described below, each party shall maintain and protect in confidence any and all confidential data, information or documents, in whatever medium, concerning the other party. By way of example, the Manager's confidential information shall include, but is not limited to, its investment strategies, portfolio holdings, buy/sell recommendations, business, operations, financial information, and other affairs. No confidential information belonging to a party shall be given by the other party to any third party (other than as required by applicable law or as specifically permitted in this Agreement), or used for any purpose not specifically contemplated by this Agreement, without the express written consent of the party to which the information belongs. However, the Client consents to the disclosure of the Client's identity as a client of the Manager. This Section 13 shall survive the termination of this Agreement.

Notwithstanding anything else in this Agreement to the contrary, if Client is requested or required (by applicable law, rule, or regulation; oral questions; interrogatories; requests for information; documents in legal proceedings; subpoena; civil investigative demand; or Michigan Freedom of Information Act

(FOIA) request or other similar process) to disclose any of the data, information or documents, in whatever medium, concerning the Manager, the Client will provide the Manager with prompt written notice of any such request or requirement so that the Manager may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Manager, the Client or its representatives are, nonetheless, legally compelled to disclose data, information or documents, in whatever medium, concerning the Manager, the Client or its representatives may without liability hereunder disclose only that portion of such information that such legal counsel advises the Client or its representatives are legally required to be disclosed, provided that the Client or its representatives, as the case may be, will use all reasonable efforts to preserve the confidentiality of the Manager's information, including, without limitation, by cooperating with the efforts of the Manager (at the Manger's expense) to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Manager's information by such tribunal

14. ***Client Representation.*** The Client represents and confirms that the Manager's retention as investment manager hereunder is authorized by the governing documents relating to the Client, true and accurate copies of which have been furnished to the Manager, and that the terms hereof do not violate any obligation by which the Client is bound, whether arising by contract, operation of law or otherwise, and that (a) this Agreement has been duly authorized by appropriate action and when executed and delivered will be binding upon the Client in accordance with its terms, and (b) the Client will deliver to the Manager such evidence of such authority as the Manager may reasonably require, whether by way of a certified resolution or otherwise.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

Client Name: **CITY OF DETROIT**

Signed By: _____

Printed Name/Title: _____

Manager: **GARCIA HAMILTON & ASSOCIATES, L.P.**

Signed By: K Lunday

Printed Name/Title: Kevin Lunday, Partner / COO

THIS CONTRACT WAS APPROVED
BY THE CITY COUNCIL ON:

APPROVED BY LAW DEPARTMENT
Pursuant to § 7.5-206 of the Charter of the City of Detroit

_____
Date

_____
Chief Procurement Officer Date

_____
Corporation Counsel Date

THIS CONTRACT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY RESOLUTION OF THE CITY COUNCIL AND SIGNED BY THE CHIEF PROCUREMENT OFFICER

EXHBIT A
INVESTMENT GUIDELINES
CITY OF DETROIT
CFO ADMINISTRATIVEORDER No. 2018-101-009A

SCHEDULE OF FEES

Client Name: **DETROIT RETIREMENT PROTECTION TRUST FUND**

Fixed Income Management – Core Strategy

0.20% of first $50 million

0.16% on next $100 million

0.12% thereafter

Fees are payable quarterly in arrears, and will be based on the total market value of the Account on the last business day of the quarter, as determined by the Manager. Fees will be prorated for any partial quarters.

Collection of Client Information
GH&A collects only relevant information about our clients in order to conduct our business and properly service our accounts or that may be required by law. The types of personal information we may collect can include non-public information such as social security number, address, telephone number, email address, assets, income, and investment objective.

We collect financial and other personal information about our clients from the following sources:

- Investment management contracts and other forms submitted to us by our clients; and
- Forms or other correspondence from parties authorized to act on behalf of our clients such as accountants, attorneys and investment consultants.

Keeping Information Secure
We maintain physical, electronic and procedural safeguards and procedures to protect your financial and other personal information, and we continuously strive to improve these safeguards and procedures.

Limiting Access to Information
All of our employees are aware of the importance of maintaining and respecting customer privacy and to recognize the importance of confidentiality. In addition, all employees are required to sign a Confidentiality & Non-disclosure Agreement as a condition of employment. Those who violate our privacy policies are subject to disciplinary action.

Accuracy of Information
We strive to keep accurate client information records, and we take immediate steps to correct errors as they are found. If there are any inaccuracies in your account statements or in any other communications from us, please contact us immediately and we will make the necessary corrections.

Use of Personal and Financial Information by Us and Third Parties
We share information about our clients with non-affiliated third parties only to the extent necessary for us to provide the services for which our clients have hired us, and then only to the extent permitted by law:

- We share information with brokers and custodian banks in order to process securities transactions accurately;
- We may share information with non-affiliated third parties in order for the third party to carry out its services for us; and
- We may share information as allowed by law in connection with a subpoena or similar legal process, an audit, or a government or self-regulatory organization request or investigation.

We do not engage in joint marketing arrangements with non-affiliated third parties that involve the sharing of non-public information regarding GH&A clients and we do not sell client information to non-affiliated third parties for their own marketing purposes. Any exceptions to these practices are made only with the permission of the particular client for the sharing of information with identified third parties or as otherwise required by law. If a client terminates our services, we will continue to adhere to the privacy policies and procedures as described in this notice.

Maintaining Customer Privacy in Business Relationships
We do not share client information with anyone who does not agree to keep such information confidential. If you believe we have shared your information inappropriately, please contact the Chief Compliance Officer, Garcia Hamilton & Associates, 5 Houston Center, 1401 McKinney St., Suite 1600, Houston, TX 77010 or 713-853-2322 immediately and corrective steps will be taken.

May, 2019

CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1100
DETROIT, MICHIGAN 48226
PHONE: 313-224-3203
FAX: 313-224-2135
WWW.DETROITMI.GOV

CFO ADMINISTRATIVE ORDER
No. 2018-101-009A

SUBJECT: Retiree Protection Fund Investment Advisory Committee
ISSUANCE DATE: March 29, 2018
EFFECTIVE DATE: March 29, 2018
AMENDED DATE: August 22, 2019

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1. AUTHORITY

   1.1. State of Michigan Public Act 279 of 1909, Section 117.4s(2), as amended by Public Act 182 of 2014, states the chief financial officer shall supervise all financial and budget activities of the city and coordinate the city's activities relating to budgets, financial plans, financial management, financial reporting, financial analysis, and compliance with the budget and financial plan of the city.

   1.2. Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Sections 47-3-1 through 47-3-10, among other items, authorizes the creation of an investment advisory committee to be chaired by the Chief Financial Officer (the "CFO").

   1.3. Trust assets be invested as provided by Public Employees Retirement System Investment Act - Michigan Public Act 314 of 1965, MCL § 38.1132 et seq., as amended (Act 314).

2. OBJECTIVE

   2.1. To ensure the Retiree Protection Fund Investment Advisory Committee (the "Advisory Committee") executes its responsibilities as established by Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Sections 47-3-6 and 47-3-8.

   2.2. To ensure the CFO receives investment recommendations regarding the Trust assets in a manner that safeguards principle and maximizes the Trust's investment returns.

3. PURPOSE

   3.1. To establish the responsibilities of the Advisory Committee.

   3.2. To designate the chair of the Advisory Committee.

4. SCOPE

   4.1. This Administrative Order only applies to the Investment Advisory Committee established pursuant to Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-8 and does not apply to other City investments.

5. RESPONSIBILITIES

   5.1. The CFO's Office shall be responsible for the periodic review and maintenance of this Administrative Order, as well as other related policies and / or procedures that may be deemed necessary.

   5.2. The Advisory Committee shall review, and act in accordance with, this Administrative Order, City Ordinance No. 21-17 and Act 314.

5.3. The Chief Deputy CFO / Finance Director (the "CDCFO") shall coordinate the business of the Advisory Committee with assistance from the Office of the Treasury.

6. POLICY

6.1. The CFO hereby designates the CDCFO as the chair of the Advisory Committee.

6.2. The Advisory Committee shall develop and recommend a Policy Statement to the CFO, see Exhibit A for current Policy Statement.

6.3. The Advisory Committee shall, at a minimum, meet annually during the month of September to conduct its business and review the Annual Statement submitted to the CFO by the Trustee.

6.4. The Advisory Committee, through the chair, shall submit an annual written report (the "Annual Advisory Committee Report") to the CFO stating its recommendations regarding the investment of Trust assets and any additional information deemed relevant by the Advisory Committee or the CFO no later than the end of October each year. The format of the Annual Advisory Committee Report will be prescribed in the Policy Statement.

7. DEFINITIONS

7.1. *Annual Advisory Committee Report*: the annual written report to the CFO stating the Advisory Committee's recommendations regarding the investment of Trust assets and any additional information the Advisory Committee or CFO deems relevant.

7.2. *Annual Statement*: the Annual Statement submitted to the CFO by the Trustee in accordance with Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-6, Article VIII Accounts and Recordkeeping, Section 8.02 Reporting.

7.3. *Advisory Committee*: the RPF Investment Advisory Committee established pursuant to Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-8.

7.4. *Policy Statement:* the Policy Statement outlines 1) specific guidelines for the management of the Trust and 2) the requirement of the Annual Advisory Committee Report.

7.5. *Trust:* the Retiree Protection Trust Fund established pursuant to Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-2.

7.6. *Trustee*: the Trustee as defined in Chapter 47 of the 1984 Detroit City Code, Retirement Systems, as amended by Article III Retiree Protection Trust Fund, Section 47-3-6.

APPROVED

David P. Massaron
Chief Financial Officer, City of Detroit

EXHIBIT A: POLICY STATEMENT

CITY OF DETROIT RETIREE PROTECTION FUND

Investment Policy Statement

I. PURPOSE OF INVESTMENT POLICY STATEMENT

Ordinance No. 21-17 amended Chapter 47 of the Detroit City Code to establish a Trust as a mechanism to save and invest funds and contributions of the City for later distribution to the General Retirement System and the Police and Fire System, and to authorize the creation of an Investment Advisory Committee (IAC). Furthermore, pursuant to CFO Administrative Order No. 2018-101-009, the IAC shall submit an Annual Advisory Committee Report to the CFO stating its recommendations regarding the investment of the Trust assets. The purpose of this Investment Policy Statement (Statement) is to provide 1) specific guidelines for the management of assets of the Trust and 2) the requirements of the Annual Advisory Committee Report.

This Statement is authorized by CFO Administrative Order No. 2018-101-008, CFO Administrative Order No. 2018-101-009, City Ordinance No. 21-17 and the Public Employees Retirement System Investment Act - Michigan Public Act 314 of 1965, MCL § 38.1132 *et seq.*, as amended (Act 314).

Investment objectives are formulated in response to the financial needs of the Trust. Financial needs are influenced by the City's benefit policies, funding objectives, liabilities, and the successful management of Trust assets. Therefore, investment objectives consider the Trust's financial and liquidity needs and the City's risk tolerances and inflation expectations.

II. Roles and Responsibilities

A. Investment Advisory Committee

The Investment Advisory Committee (IAC) acknowledges its responsibility as an advisor to the CFO, who is a fiduciary to the Trust. In this regard, the IAC must provide advice prudently and for the exclusive interest of the Trust's participants and beneficiaries.

More specifically, the IAC's responsibilities include:

1. Comply with the provisions of pertinent federal, state, and local laws and regulations, including Act 314.
2. With the advice of the Investment Consultant, recommend qualified investment managers and consultants to manage and advise on the Trust's assets.
3. With the advice of the Investment Consultant, monitor and review the investment performance of the Trust to determine achievement of goals and compliance with policy guidelines.
4. With the advice of the Investment Consultant, monitor and evaluate manager performance.
5. Conduct manager searches when needed for policy implementation.
6. When the IAC is considering the engagement of a new investment manager, the IAC may perform due diligence site visits to the offices of the interview candidates.
7. Make recommendation of return assumptions.

B. Investment Consultant

The Investment Consultant's (Consultant) role is that of an advisor to the Trust, enabling the Investment Advisory Committee to make well-informed and timely recommendations to the CFO regarding the investment of the Trust's assets. The Consultant acknowledges its responsibilities as an advisor to the CFO, who is a fiduciary under Act 314 and must act in the exclusive interest of the Trust.

More specifically, the Consultant's responsibilities include:

1. Assist the IAC in strategic planning for the Trust. Provide objective advice and counsel that will enable the IAC to make well-informed and well-educated recommendations regarding the investment of the Trust's assets.
2. Assist the IAC in the development and periodic review of a policy statement that properly reflects the IAC's tolerance for risk, and that best assists the IAC in meeting its rate-of-return, and overall investment policies associated with administering and investing this Trust.
3. Assist the IAC in the development and periodic review of the asset allocation policy and investment manager structure that provides adequate diversification with respect to the number and types of asset classes and investment managers to be retained.
4. Determine the Trust's capacity to add new investments, participate in cash flow/liquidity forecasting for the Trust's needs, and advise on general compliance requirements.
5. Review, monitor, and advise the IAC on the current asset allocation to determine whether the Trust complies with asset limitations under Act 314 (as amended) and the IAC's investment objectives and guidelines.
6. Assist the IAC in its due diligence and search for new investment manager(s) utilizing the appropriate data bases, both externally and proprietary.
7. Assist the IAC in the development and review of performance standards and guidelines with which the IAC can measure each investment manager's progress.
8. To provide to the IAC quarterly performance measurement reports on each of the investment managers and on the Trust as a whole, and to assist the IAC in interpreting the results.
9. Monitor and review monthly statements, review and advise the IAC on information sent by the investment managers, review investment managers as necessary (based on the guidelines set forth in this IPS and the consultant's internal research policies; including but not limited to legal and financial information provided by the managers).
10. The Consultant's report will be the main report the IAC utilizes when evaluating the overall investment results of the Trust and individual managers. The Consultant will reconcile performance, holdings, and security pricing data with the Trust's custodian bank and when necessary staff reports/data. In the event of a discrepancy, the custodian's values will be used.
11. Make recommendation of return assumptions to the IAC.
12. Provide general consulting services as requested by the IAC and as deemed appropriate by the Investment Consultant. Attend necessary meetings as requested by the IAC. Act as a liaison between investment managers and the Trust, and thereby facilitate the communication of important information in the management of the Trust.
13. Shall acknowledge in writing that they are a prudent expert for the Trust with all attendant duties and responsibilities, including without limitation, fiduciary responsibility.

14. Shall conduct themselves in accordance with this Investment Policy Statement.

15. Such other duties as may be mutually agreed upon in writing.

C. Investment Managers

The investment managers (Managers) will acknowledge their responsibility as an investment fiduciary under Act 314. Each investment manager will have full discretion to make all investment decisions for the assets placed under their control, while observing and operating within all policies, guidelines, constraints, and philosophies as outlined in this statement.

More specifically, the Managers' responsibilities include:

1. Manage the Trust's assets under its supervision in accordance with the guidelines and objectives contained in this Investment Policy Statement.
2. Exercise investment discretion in regard to buying, managing, and selling assets held in the portfolio, subject to any limitations contained in this Investment Policy Statement.
3. Perform its investment management duties with respect to the assets with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use in the conduct of a similar enterprise with similar aims.
4. Seek to obtain "best execution" with respect to portfolio transactions.
5. Vote all proxies consistent with the guidelines contained in the Manager's Investment Management Agreement or similar document. Investment managers shall provide documentation regarding the disposition of proxy solicitations to the IAC upon request.
6. Comply with the reporting requirements outlined in this Investment Policy Statement.
7. Acknowledge and agree in writing as to their fiduciary responsibility to comply fully with the entire Investment Policy Statement set forth herein.
8. Report to the IAC and Consultant quarterly regarding the status of the portfolio and its performance for various time periods and meet with the IAC as requested to report on their performance and compliance with goals and objectives.
9. Promptly inform the IAC and Investment Consultant regarding all significant matters pertaining to the investment of the Trust's assets. The IAC shall be notified in writing of any material change in ownership, organizational structure, financial condition, senior staffing and management, or the management of the investment manager's portfolio.
10. Michigan law shall apply to all investment manager contracts where individual investment manager agreements are negotiated.

D. Custodian

The custodian (Custodian) will provide safekeeping and accounting services for the Trust. More specifically, the Custodian's responsibilities include:

1. Provide adequate safekeeping services.
2. Upon receipt of proper, executable trade instructions, custodian shall seek to settle trades in a timely manner.
3. Collect interest and dividend income when due.

4. Notify investment managers of corporate actions, including mergers, tender offers, stock splits and capital changes that require a decision.
5. Sweep daily cash balances into appropriate investment funds.
6. Accept instructions from the designated individuals.
7. Disburse funds as directed.
8. Provide monthly statements by investment managers' accounts and a consolidated statement of all assets.
9. To perform other services for the IAC as are customary and appropriate for custodians.

III. INVESTMENT OBJECTIVES

The objectives of the Trust have been established in conjunction with a comprehensive review of the current and projected financial requirements as presented in an asset allocation review performed in 2019 by the Consultant. The objectives include:

- To have the ability to supplement the City's General Fund in making its annual required contributions to the Pension Systems when due.
- The Trust's overall investment objective is the preservation of principal.
- To maintain the purchasing power of the current assets and all future contributions by producing positive real rates of return on Trust assets.
- To control costs of administering the Trust and managing the investments.
- To meet all statutory requirements of the State of Michigan.

The following investment objectives, in order of priority, shall be applied in the management of the Trust:
The primary objectives, in priority order, of investment activities shall be safety, yield and liquidity.

- Safety. Safety of principal is the foremost objective of the Trust. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to manage credit risk and interest rate risk.

- Return on Investment. The Trust shall be designed with the objective of attaining the maximum market rate of return throughout budgetary and economic cycles, taking into account the IAC's investment risk constraints and cash flow needs and characteristics of the portfolio

- Liquidity. The investment portfolio shall remain sufficiently liquid to meet all budgetary requirements that may be reasonably anticipated.

IV. ASSET ALLOCATIONS

The asset allocation policy is developed 1) to attempt to achieve the investment objectives, 2) to achieve the expected investment returns with a prudent amount of investment risk, and 3) in recognition that the capital markets may behave differently over any time period, throughout the life of the Trust.

This strategic asset allocation policy is consistent with the achievement of the Trust's financial needs and overall investment objectives. Asset classes are selected based on their expected long-term returns, individual reward/risk characteristics, correlation with other asset classes, manager roles, and fulfillment of the Trust's long-term financial needs. Conformance with statutory investment guidelines is also considered.

The Investment Advisory Committee will recommend an allocation range for each asset class and provide the recommendation in the IAC's Annual Advisory Committee Report. The IAC recognizes the need to vary exposure within and among different asset classes, based on investment opportunities and changing capital market conditions. The IAC will take into consideration the Trust's current investments and present market conditions. The IAC intends to review these allocation targets at least annually, focusing on changes in the Trust's financial needs, investment objectives and asset class performance.

The IAC's attitude regarding the Trust's assets combines both the preservation of capital and minimal risk-taking. The IAC recognizes that risk (i.e., the uncertainty of future events), volatility (i.e., the potential for variability of asset values), and the potential of loss in purchasing power (due to inflation) are present to some degree with all types of investment vehicles. While high levels of risk are to be avoided, the assumption of a limited level of risk is warranted in order to allow the opportunity to achieve satisfactory results consistent with the objectives and character of the Trust. The policies and restrictions contained in this statement should not impede the investment manager to attain the overall Trust objectives, nor should they exclude the investment manager from appropriate investment opportunities.

V. INVESTMENT PERFORMANCE OBJECTIVES

A. Total Portfolio Performance

1. The Trust will be managed in accordance with the parameters specified in this Investment Policy. The portfolio should obtain a market average rate of return. A series of appropriate benchmarks shall be established against which the portfolio performance shall be compared on a regular basis. The benchmarks shall be reflective of the actual allocation of assets, securities held, and the risks undertaken.

B. Fixed Income Performance

The overall objective of the fixed income portion of the portfolio is to add stability and liquidity to the total portfolio.

VI. INVESTMENT GUIDELINES

A. Overall

All investment guidelines and restrictions of the State of Michigan are incorporated by reference, including, but not limited to Act 314.

B. Pooled Funds

Investments made by the Trust may include pooled funds. For purposes of this policy pooled funds may include, but are not limited to, mutual funds, commingled funds, exchange-traded funds, limited

partnerships and limited liability corporations. Pooled funds may be governed by separate documents which may include investments not expressly permitted in this IPS. In the event of investment by the Trust into a pooled fund, the Trust will adopt the prospectus or governing policy of that fund as that manager's addendum to this Investment Policy Statement.

C. Alternative Investments

The Trust may invest in investments that would otherwise not be qualified under these Investment policies, to the extent permitted under Section 38.1140d of Act 314 (informally referred to as the "basket clause").

D. Collective Investment Restrictions and Correcting Excess/Deficient Investments

All Managers are restricted individually, and collectively, by this IPS. The Managers shall coordinate periodically with the Consultant, who shall (among other things) assure collective compliance with this IPS. In the event any investment based on changes in the market value of the Trust assets, causes the Trust to exceed or fall short of any range prescribed in this IPS, the assets may be reallocated in a prudent manner to comply with Act 314 and the strategic allocation and ranges outlined in this IPS.

E. Guideline for Fixed Income Investments

1. Per Act 314, as amended guidelines, not more than 15% of the Trust's assets may be invested in below investment grade bonds. Investment grade is defined as securities graded in the top 4 major grades as determined by 2 national rating services. Asset allocation guidelines may be more restrictive and provide for a lower amount of exposure to below investment grade bonds.
2. For mutual funds and collective trusts guidelines will be outlined in their prospectus or offering document.

VII. REPORTING

A. Monthly

On a monthly basis, the Custodian shall supply an accounting statement that will include a summary of all receipts and disbursements and the cost and the market value of all assets.

B. Quarterly

On a quarterly basis the Investment Managers shall deliver a report detailing the Trust's performance, forecast of the market and economy, portfolio analysis and current assets of their portfolio. Written reports shall be delivered to the IAC and the CFO within 30 days of the end of the quarter. A copy of the written report shall be submitted to the person designated by the City of Detroit Retiree Protection Fund and shall be available for public inspection. The Investment Managers will provide immediate written and telephone notice to the IAC of any significant market related or non-market related event impacting the portfolio and its performance.

The Investment Consultant shall evaluate and report on a quarterly basis the rate of return and relative performance of the Trust on a gross and net of fee basis.

C. Annually – Annual Advisory Committee Report

Pursuant to CFO Administrative Order 2018-101-009: Retiree Protection Fund Investment Advisory Committee, the Advisory Committee, through the chair, shall submit an annual written report to the CFO stating its recommendations regarding the investment of Trust assets and any additional information deemed relevant by the Advisory Committee of the CFO no later than the end of October each year.

At minimum, the following items shall be included in the Annual Advisory Committee Report:

1. Summary of activity of the IAC since submittal of the previous Annual Advisory Committee Report
2. Asset Allocation Recommendations and Justification (including analysis of Risk)
3. Earnings assumptions for total portfolio, as well as any portion as appropriate (e.g., Fixed Income)
4. Forecast which models Trust performance through life of the trust fund.

D. As Necessary

If an Investment Manager holds securities, that complied with section VI at the time of purchase, which subsequently exceed the applicable limit or do not satisfy the applicable investment standard, such excess or noncompliant investments may be continued until it is economically feasible to dispose of such investment in accordance with the prudent person standard of care, but no additional investment may be made unless authorized by law or ordinance. In addition, an action plan outlining the investment 'hold or sell' strategy shall be provided to the IAC immediately.

The IAC will meet periodically to review the Investment Consultant's performance report. The IAC will meet with the Investment Managers and appropriate outside consultants to discuss performance results, economic outlook, investment strategy and tactics and other pertinent matters affecting the Trust on a periodic basis.

VIII. COMPLIANCE

It is the direction of the IAC that the Trust assets are held by a third-party Custodian, and that all securities purchased by, and all collateral obtained by the Trust shall be properly designated as Trust assets. No withdrawal of assets, in whole or in part, shall be made from safekeeping except by an authorized member of the IAC or their designee.

At the direction of the IAC, operations of the Trust shall be reviewed by independent certified public accountants as part of any financial audit periodically required. Compliance with the IAC's internal controls shall be verified. These controls have been designed to prevent losses of assets that might arise from fraud, error, or misrepresentation by third parties or imprudent actions by the IAC or employees of the Trust sponsor, to the extent possible.

IX. CRITERIA FOR INVESTMENT MANAGER REVIEW

The Investment Consultant will monitor the performance for each component of the Trust on a monthly basis utilizing a time-weighted rate of return calculation. Certain managers, based on their individual investment mandates, may report results using an internal rate of return calculation. The Investment Consultant will review investment manager information monthly and will provide updates to the IAC as necessary. No investment manager will make a presentation to the IAC unless requested by the Investment Consultant due to probationary status as outlined below or any other extenuating circumstance where the Investment Consultant deems it appropriate that the IAC receives such presentation from the investment manager.

The Investment Consultant will evaluate each investment manager as outlined in this IPS and will then report to the IAC.

The IAC may initiate a change in investment manager at any time based upon performance results, a change in investment needs, a lack of confidence based upon the evaluation of the investment manager's results, or for any other or no reason at all.

The IAC wishes to adopt standards by which judgments of the ongoing performance of a Manager may be made. The IAC will rely on the Investment Consultant to carefully monitor the Trust's investment managers on several key indicators outlined below:

- Style consistency or purity drift from the mandate.
- Management turnover in portfolio team or senior management.
- Investment process change, including varying the index or benchmark.
- Failure to adhere to the Investment Policy Statement or other compliance issues.
- Investigation of the firm by the Securities and Exchange Commission (SEC) or other regulatory agency.
- Significant asset flows into or out of the company or strategy.
- Merger or sale of firm.
- Fee increases outside of the competitive range.
- Servicing issues – key personnel stop servicing the account without proper notification.
- Failure to attain a majority vote of confidence by the IAC.

Nothing in this section shall limit or diminish the IAC's right to terminate the Manager at any time.

X. REVIEW AND AMENDMENTS

The investment policy is intended to be flexible and should be reviewed and modified on an ongoing basis. The goals, objectives and guidelines may be amended to reflect material or sustained changes in the financial condition of the Trust, the economic environment, regulatory change or the opportunities available within the capital markets. All changes to this document will be subject to IAC and CFO approval and will be made on an as needed basis.

Adoption recommended by Investment Committee on July 24, 2019.

Adopted **CITY OF DETROIT RETIREE PROTECTION FUND**

CFO Approval
David P. Massaron, CFO

August 22, 2019
Date

MANAGEMENT REPORT:

A. Asset Allocations – as of July 2019

Asset Class*	**Target**	**Range**	**Benchmark Index**
Global Equity	0%	0-0%	MSCI World Index
Intermediate Gov/Cred	50%	35-60%	BB Intermediate Gov/Credit
US AGG Fixed Income	50%	35%-60%	BB US Aggregate Bond
High Yield	0	0-10%	BB US High Yield Bond
Leveraged Loans	0%	0-10%	S&P LSTA Leveraged Loan Index
Cash*	0%	0%-30%	90-Day T-Bills

The IAC recognizes that from time to time the asset mix will deviate from the targeted percentages due to market conditions. A range has been established for each asset class to control the risk and maximize the effectiveness of the Trust's asset allocation strategy, while avoiding unnecessary turnover at the security level. The Investment Consultant will monitor the aggregate asset allocation of the portfolio and notify the Investment Advisory Committee to rebalance to the target asset allocations based on market conditions. To minimize turnover, an asset class that is outside of its allowable range, will be rebalanced towards its target allocation in a prudent manner. When possible, contributions and distributions will be utilized to maintain allocations within policy ranges and reduce transaction costs.
The IAC does not intend to exercise short-term changes to the target allocations.

B. Portfolio Performance – as of July 2019

The IAC recommends, on an absolute basis, a return of the total portfolio that will equal or exceed the budgeted earnings assumption of 3.0%. This absolute return objective will be evaluated in the context of the prevailing market conditions. The core fixed income portion of the portfolio is expected to perform at a rate at least equal to 1) the Bloomberg Barclays Capital U.S. Aggregate Bond Index, and 2) rank in the top 50th percentile of the total core fixed income universe over three (3) and five (5) year time periods.

56

David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Senior City Planner
Janese Chapman
Deputy Director

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TO: COUNCIL MEMBERS

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: July 29, 2019

RE: Benchmark Comparison of the City of Detroit's 2018 Comprehensive Annual Financial Report (CAFR) With Other Cities

Executive Summary

The Legislative Policy Division (LPD) compared the City's fiscal year 2018 Government Wide Statement of Net Position (i.e., balance sheet) and Statement of Activities for Governmental Activities (i.e., income statement) with other Cities including: Flint, Michigan; Memphis, Tennessee; Louisville, Kentucky; Grand Rapids, Michigan; Boston, Massachusetts; Portland, Oregon; Charlotte, North Carolina; and Kansas City, Missouri. Most of the cities chosen were comparable in size to Detroit. Grand Rapids was chosen because it is the State of Michigan's second largest City and in good financial condition. Flint was chosen because it has similar challenges as Detroit. We also chose a mix of cities that were either in good or poor fiscal health for comparative purposes.

The City of Detroit's fiscal health, has improved since the exit from bankruptcy on December 10, 2014. However, even with the benefits from the bankruptcy exit, the City has a way to go to match fiscally healthy cities such as Grand Rapids. The City has a high Pension and Debt burden (e.g., Legacy Costs) that will mostly be paid out of future General Fund revenues lessening amounts available to provide essential services such as public safety. In addition, the City is among the lowest in total assessed property value (taxable value) and this combined with the low median income for the City's population adversely impacts the City's collection of tax revenue to provide funding to pay for both the large debt burden and provide satisfactory services. While the bankruptcy eliminated the City's retiree health care obligations, the City still has a significant obligation for retiree pensions, which for the City's civilian retirement system (General Retirement

System) is of great concern because it has the highest turnover ratios among the cities compared and is in risk of exhausting its assets and becoming a greater burden on the City's General Fund[1]. Furthermore, the City of Detroit's infrastructure (Capital Assets) is aged and depreciated and the City will need funds to replace it[2]. Also, the City has the highest amount of tax abatements of the cities compared.

The results of our comparison of the City of Detroit's FY 2018 Governmental Activities financial statements with other cities are detailed below.

City	Liquidity	Solvency	Asset Maint.	Pension Burden	Debt Burden	Tax Burden	Taxable Value	Pension Turnover	Taxes Abated
Detroit	344.5%	85.5%	64.6%	1,894.4	2,514.2	999.6	9,140.4	13.2%	19.6%
Flint	371.7%	40.5%	79.9%	2,697.7	312.8	356.6	7,535.8	N/A	N/A
Memphis	236.4%	113.4%	48.7%	398.0	2,526.5	1,119.6	19,313.6	8.4%	3.8%
Louisville	399.0%	111.7%	72.7%	1,260.5	926.0	753.8	95,285.4	N/A	7.3%
Grand Rapids	689.2%	131.3%	70.4%	785.7	539.6	696.4	23,283.6	8.4%	5.8%
Boston	279.2%	69.9%	50.4%	2,011.2	2,565.4	3,724.1	N/A	9.3%	0.4%
Portland	362.8%	62.4%	76.7%	5,618.2	1,744.0	1,054.6	90,427.5	N/A	1.9%
Charlotte	715.3%	283.5%	40.9%	451.9	1,754.5	865.1	109,534.1	N/A	N/A
Kansas City	184.7%	177.1%	40.2%	1,498.1	3,561.6	1,454.8	16,328.7	6.3%	7.7%

- Detroit's liquidity has improved and it has the ability to pay all its current obligations. However, most of the City's cash and investments at June 30, 2018 are either obligated, restricted or assigned to a specific purpose.

- Detroit was essentially insolvent in FY 2018 as the City's Governmental Activities unrestricted net position on June 30, 2018 was a $1.756 billion deficit and the net position was a $341.9 million deficit. The deficit was primarily due to the net pension liability total of $1.275 billion and the $1.112 billion of debt that will have to be paid from the General Fund.[3] Other cities such as Boston

[1] It is important to note, however, that City Council approved the establishment of the retirement protection trust fund to help finance a huge looming pension obligation in 2024 and help stabilize pension obligations thereafter. In March 2017, Moody's Investors Service considered the establishment of this trust fund a "credit positive".

[2] In FY 2019 the City was able to issue $135.0 million of Unlimited Tax General Obligation (UTGO) bonds to finance capital projects and improve the City's infrastructure. This was a huge accomplishment considering the Plan of Adjustment (POA) assumed the City would be unable to issue general obligation bonds to finance capital projects for quite some time. It is also important to note that the City in recent years has allocated significant General Fund surplus dollars for capital projects in accordance with the POA.. The City's FY 2019 budget included $52.2 million for capital projects from General Fund surplus dollars, and the FY 2020 budget included $32.5 million for capital projects from surplus dollars.

[3] While the City eliminated a substantial amount of its obligations with the bankruptcy settlements, it did incur additional debt to provide for some of the settlements and restructuring/Quality of Life projects. Much of the new debt such as the 2014 B(1) and B(2) bonds was limited tax general obligation (LTGO) debt and will have to be paid from the general revenues of the City. This along with other "secured" LTGO bond debt issued before the bankruptcy will divert the City's General Fund's revenues, which could have been used for core City services such as police and fire, to pay off the debt service. Of the City's governmental activity's $1.380 billion of General Obligation bond debt at June 30, 2018, a total of $1.112 billion is LTGO debt which will ultimately have to be paid from the general revenue (source: page 80 of City of Detroit's FY 2018 CAFR).. Furthermore, much of the debt issued for the bankruptcy settlements was structured to defer principal payments for several years and will have a greater adverse impact on the General Fund in the years (2025-2030) the principal becomes due. For example, the City is not required to make a payment on the 2014 B (1) bonds principal totaling $616.6 million until June 30, 2025 when the first principal payment will be $30.8 million. The OCFO has taken commendable steps to reduce the LTGO debt and gross debt service for fiscal years 2025-2030 by redeeming certain bond obligations. In FY 2018, the OCFO redeemed $52.3 million of the 2014 C bonds with surplus funds. Recently (FY 2019), on December 13, 2018, the City purchased and canceled, at a discount from par, $197,652,356 of its Financial Recovery bonds, Series 2014 B ($192,227,454 Series 2014 B (1) at a purchase price of $87 per $100 in principal amount and $5,424,902 Series 2014 B (2) at a purchase price of $85 per $100 in principal amount) in exchange for the proceeds from the 2018 DSA Bonds. The OCFO estimates the debt service for FY 2025-2030 will be reduced by $155 million because of these redemptions. Debt

and Portland reported a negative net position in their governmental activities for FY 2018, primarily due to their pension and OPEB (Other Postemployment Benefit) liabilities.

- Detroit's capital assets (infrastructure) are older (more depreciated) and likely in need of replacement.

- Detroit's pension burden is lower due to reductions achieved in the bankruptcy. However, the pension obligations are still high and a challenge, as the City has been setting aside funding ($105.0 million as of June 30, 2018) to meet them.

- Detroit's debt burden is higher than most other cities.

- Detroit's tax revenue collected per population decreased in FY 2018 as collections of property taxes were down due to reductions in tax assessments and UTGO debt service.

- Detroit's taxable value per population is significantly lower than cities of similar size because of the low assessed value of its property.

- Detroit's civilian retirement system's payout of benefits is a higher percentage of its available assets than most other cities that we compared.[4]

- Detroit's property taxes abated are higher than any other City that we compared[5].

This comparative analysis reveals the City of Detroit has a long way to go in matching the fiscal health of other comparable cities. Detroit will be paying for its legacy costs (pension and debt) long into the future. Detroit needs to: increase its tax and revenue base; improve and maintain its revenue collections and liquidity; reduce its debt burden on the General Fund; raise its property value; attract new residents and businesses without incentivizing them abatement programs; improve its infrastructure; and ensure that pension system assets are properly managed and maintained.

Background

The Legislative Policy Division made a comparative study of the City of Detroit's 2018 CAFR Government Wide Statement of Net Position (i.e., income statement) and Statement of Activities for Governmental Activities (i.e., income statement) with other Cities including: Flint, Michigan; Memphis, Tennessee; Louisville, Kentucky; Grand Rapids, Michigan; Boston, Massachusetts; Portland, Oregon; Charlotte, North Carolina; and Kansas City, Missouri. Most of the cities chosen were comparable in size to Detroit. Grand Rapids was chosen because it is the State of Michigan's second largest City and in good financial condition. Flint was chosen because it has similar challenges as Detroit. We also chose a mix of cities that were either in good or poor fiscal health.

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service beginning in fiscal year 2025 would have increased by approximately $31 million per year through fiscal year 2030 in absence of this transaction. In addition, to the reduced debt service, the City will also save approximately $21.7 million ($11.7 million interest savings on 2014 C Bonds and $10 million on 2014 B(1) and 2014 B(2) Bonds) as a result of these transactions (source: pages 117-118 of City's FY 2018 CAFR)..

[4] Many other cities pension plans were combined with their State pension plans or with an independent retirement services company who administers the retirement plan for local units of government on a not-for-profit basis and we cannot fairly compare them to Detroit's pension plan.

[5] Charlotte and Flint did not report any tax abatements. Charlotte did footnote large amounts of direct expenditures for sports arena and other public projects that it owned.

Many cities that we would have liked to include in the analysis had not completed or posted their FY 2018 CAFR at the time we prepared this report.[6]

Not all the cities we reviewed are truly comparable to the City of Detroit. Portland and Louisville don't have pension systems that are comparable to Detroit's. We also found that many cities had vibrant tourism and businesses that contributed significant revenue to the City which boosted their revenue per population totals. Some of these cities were allowed to have other taxing sources such as sales tax. We tried to select measures that we could fairly compare and draw reliable conclusions from.

Detailed below are the measures and formula (Ratio Equation) we used to compare Detroit and the other cities.

Measure	Ratio Equation
Liquidity	Cash & investments/current liabilities
Liquidity/Solvency	Total assets/total liabilities
Asset Maintenance	Accum. depreciation/capital assets
Pension Burden	Net pension liability/population
Debt Burden	Long-term debt/population
Tax Burden	Taxes/population
Community Well Being	Taxable value/population
Pension Turnover GRS	Total expenses/net position
Taxes Abated	Tax abatements/property tax revenues

We also analyzed the City of Detroit data from 2011 to 2018 for these measures to show the performance trend over the past 8 years. Listed below is the City of Detroit trend data for the fiscal years 2011 to 2018.

	Fiscal Year							
Measure	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Liquidity	40.6%	25.8%	40.1%	59.6%	222.3%	268.4%	359.8%	344.5%
Solvency	85.7%	83.0%	79.3%	99.1%	65.9%	88.4%	82.1%	85.5%
Asset Maintenance	62.7%	63.3%	64.6%	64.7%	65.8%	61.5%	63.4%	64.6%
Debt Burden	4,369.0	4,370.6	4,616.5	3,524.5	2,796.8	2,687.6	2,578.7	2,514.2
Tax Burden	995.8	969.7	941.7	936.3	990.3	1,048.3	1,140.9	999.6
Taxable Value	15,168.1	14,182.4	13,221.8	12,583.1	10,800.8	9,608.0	8,974.6	9,140.4
Pension Turnover	14.0%	18.3%	18.2%	20.3%	14.3%	15.3%	13.8%	13.2%
Tax Abatement							12.7%	19.6%

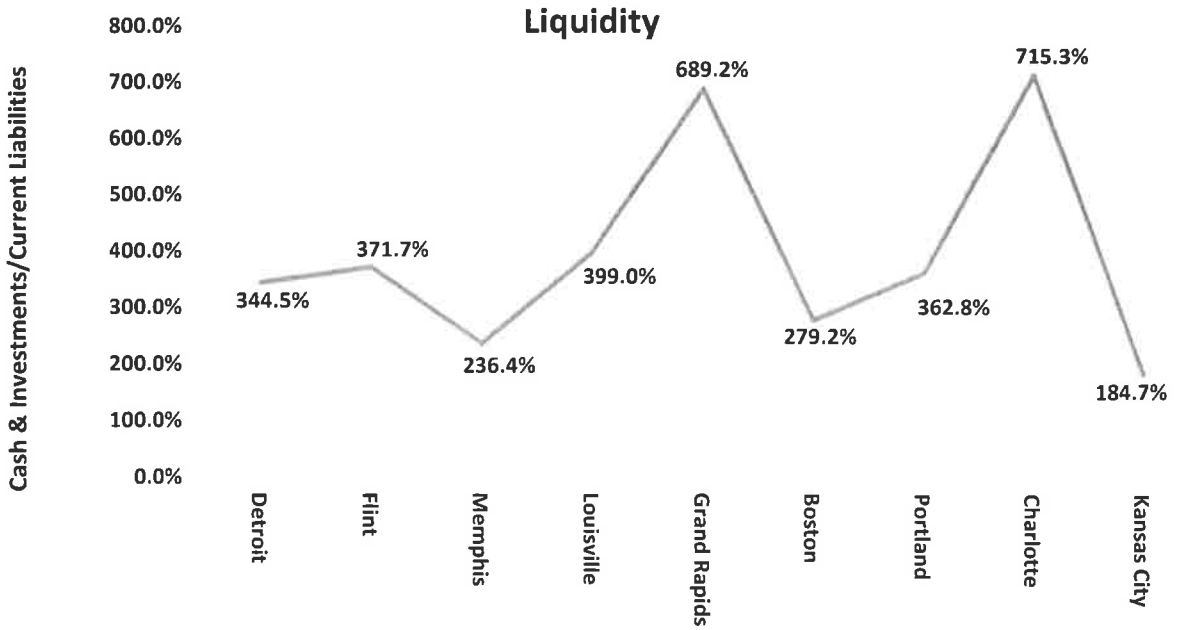
Comparative Analysis

Liquidity

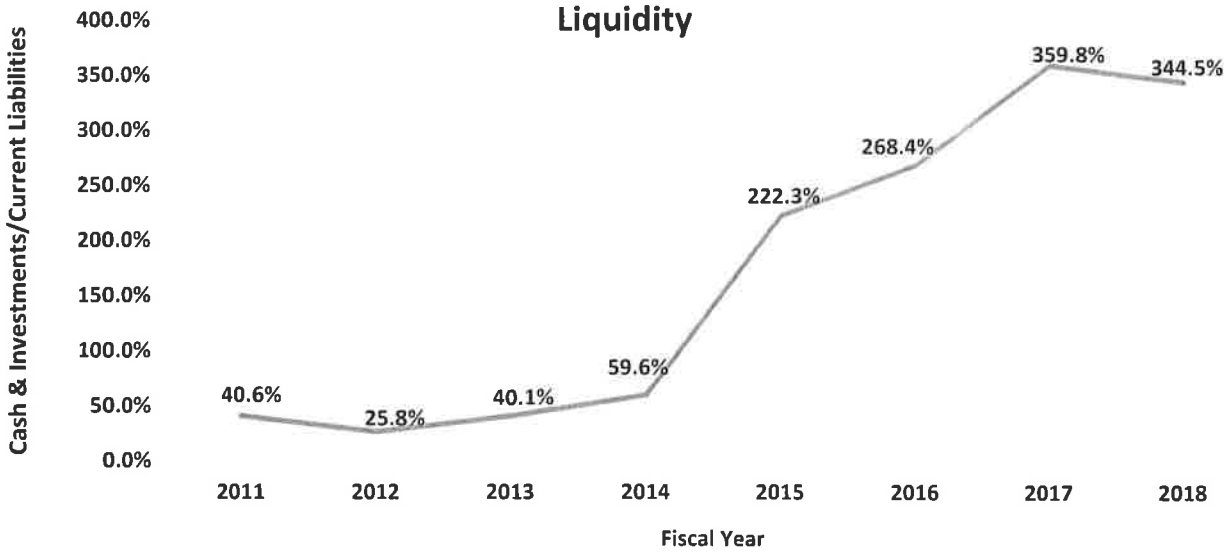
Liquidity measures the City's cash and investments and ability to meet its current obligations. In the past (pre-bankruptcy) when the City's liquidity was poor it had insufficient cash to meet its current obligations such as pension annual required contributions and payments to vendors. The

[6] Detroit produced its 2018 CAFR before the December 31st deadline, which creates benchmarking issues when other cities haven't finished or posted their CAFRs.

graph below shows that Detroit's liquidity is in the middle of the cities we compared. The City has the ability to more than meet its current obligations.



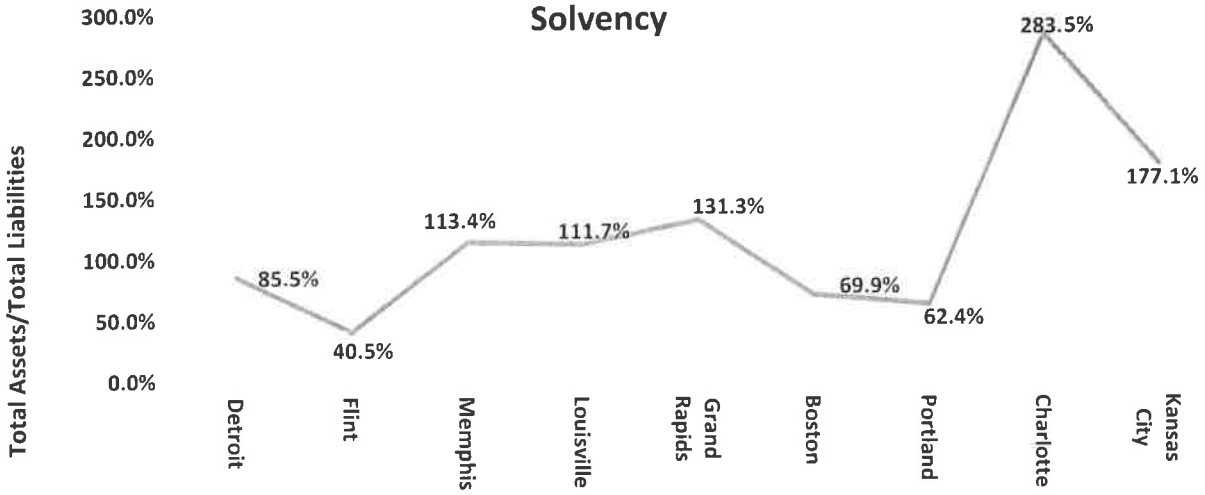
The graph below shows Detroit's liquidity trend over the past eight years and shows significant improvement. The City's liquidity was lowest during the period before it entered bankruptcy. The liquidity improvement was mainly due to the elimination of obligations and receipt of bond proceeds for Quality of Life projects through the Plan of Adjustment.



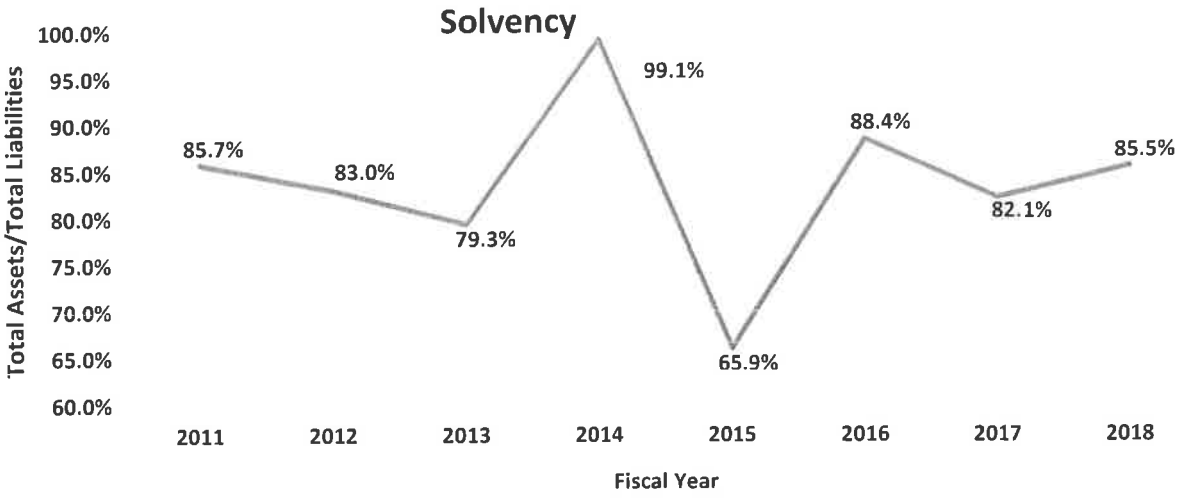
The City needs to maintain its liquidity over 200% to ensure it has sufficient cash and investments to meet its current obligations. Although the City's liquidity position has significantly improved coming out of bankruptcy, cautionary notes are warranted. First, the City still has looming increases in pension and debt obligations, as will be discussed below. Secondly, although $643.4 million in General Fund cash and investments as of June 30, 2018 is sizable, the lion share of it is either obligated, restricted or assigned to a specific purpose.

Solvency

Solvency measures all the City's assets available to meet all its obligations. A ratio of less than 100.0% is unsatisfactory and means the City has a net position deficit and is insolvent. The graph below shows that even with Detroit's exit from bankruptcy it is insolvent. Flint, Boston and Portland had lower ratios than Detroit. All the insolvent cities have large pension and debt burdens and a net position deficit. Many cities are having difficulty with solvency due to the implementation of the Governmental Accounting Standards Board Statement (GASB) No. 68, *Accounting and Financial Reporting for Pensions* and GASB No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other than Pensions*[7].



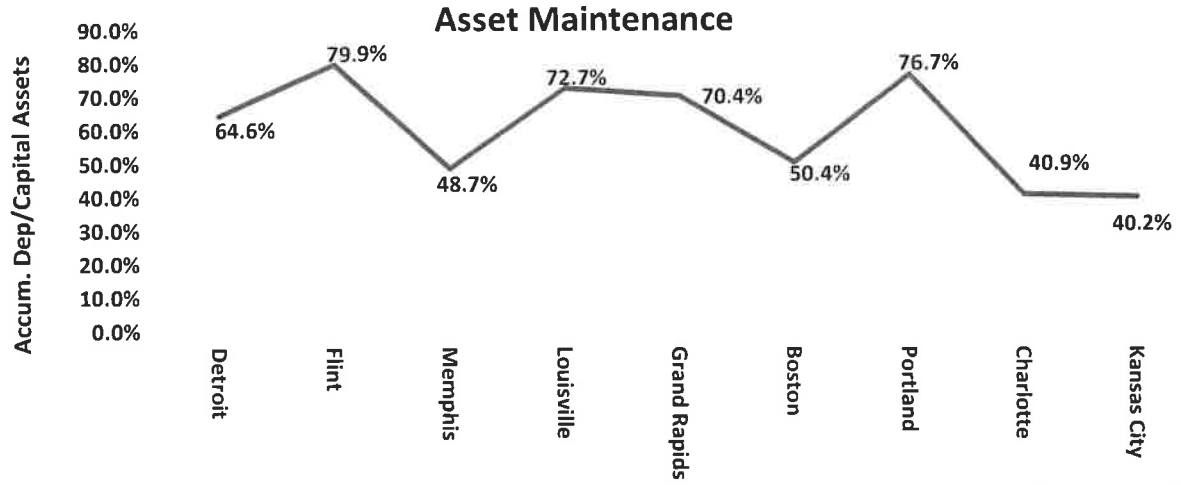
The graph below details Detroit's solvency over the past eight years and shows improvement in 2014 but a sharp decline in FY 2015. This was primarily due to the implementation of GASB 68 which added the net pension liability to the Governmental Activities Statement of Net Position in FY 2015 and the large amount had an adverse impact on the City's net position. The improvement in FY 2016- FY 2018 was due to the pension settlements in bankruptcy which reduced the net pension liability by $1.1 billion. Detroit still needs significant reductions in its long-term debt and net pension liability to be solvent financially on a long-term basis.



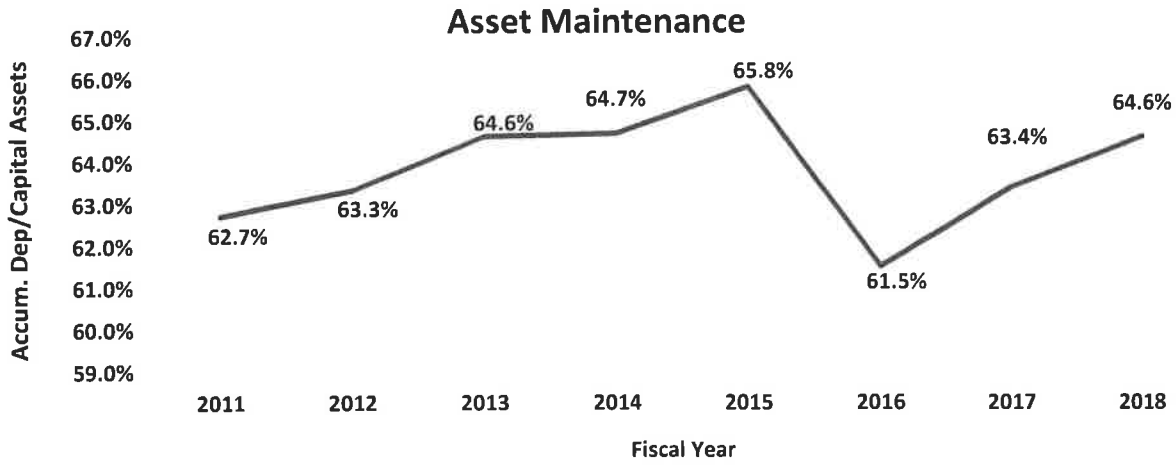
[7] The City eliminated its retiree health care plan in bankruptcy which greatly reduced its postemployment benefits other than pensions long-term obligations.

Asset Maintenance

Asset maintenance compares the City's accumulated depreciation to depreciable capital assets. It shows the age of assets and infrastructure. A higher percentage indicates that assets are more depreciated and older. Detroit maintains a huge amount of infrastructure and assets for a large area that is much greater than its population needs[8]. As a result, the maintenance and replacement costs are more than the City with its depressed population and tax base can currently afford. The graph below shows a high asset maintenance ratio for those cities that are struggling financially such as Flint and Portland. Detroit's asset maintenance ratio is relatively high. Detroit infrastructure and assets such as streets, water pipes and mains, buildings, and vehicles will likely need to be replaced or renovated soon or maintenance costs will increase. The normal process is to find grants or issue debt to fund such replacements. As noted above, In FY 2019 the City was able to issue $135.0 million of Unlimited Tax General Obligation (UTGO) bonds to finance capital projects and improve the City's infrastructure. This was a huge accomplishment considering the Plan of Adjustment assumed the City would be unable to issue general obligation bonds to finance capital projects for quite some time.



The following graph details Detroit's asset maintenance percentage over the past eight years. The ratio declined in FY 2016 because of a large write-off of fully or nearly fully depreciated capital assets resulting from a comprehensive inventory conducted in FY 2016. The City still has a high asset maintenance percentage and consideration needs to be given to improving the aging City infrastructure through replacement, and renovations.

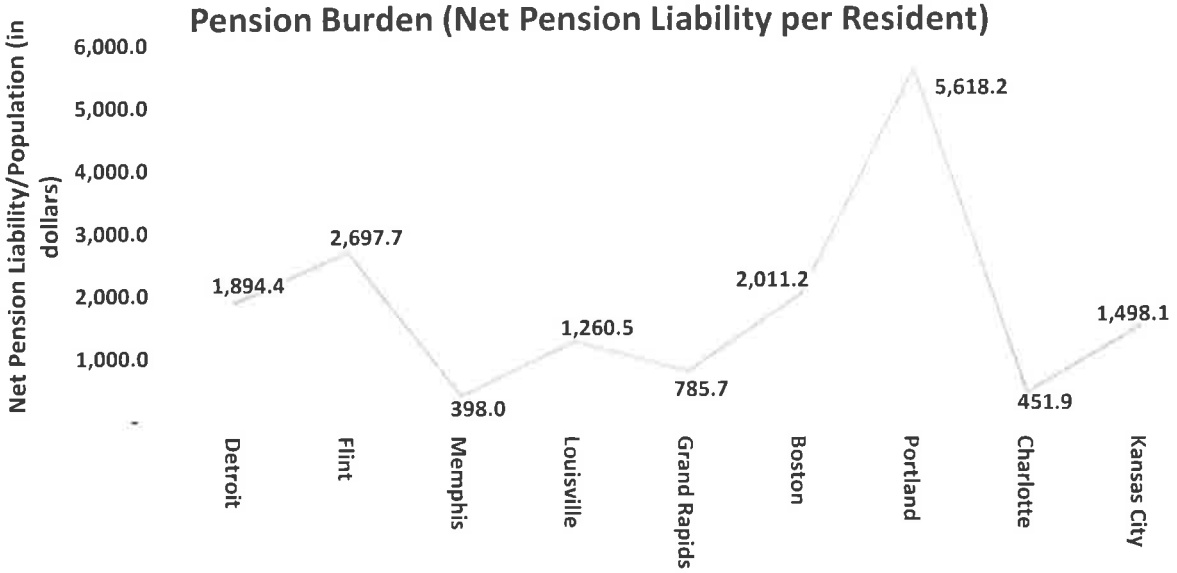


[8] The Cities of Boston, San Francisco and the borough of Manhattan could fit inside the land area of Detroit. The City once had nearly 2 million in population in 1950 and now has approximately 670,000.

Pension Burden

Pension Burden measures the City's Net Pension Obligation per the population. A large Net Pension Liability is a burden to a governmental entity as it represents legacy obligations that must be paid out of the current resources of the government.

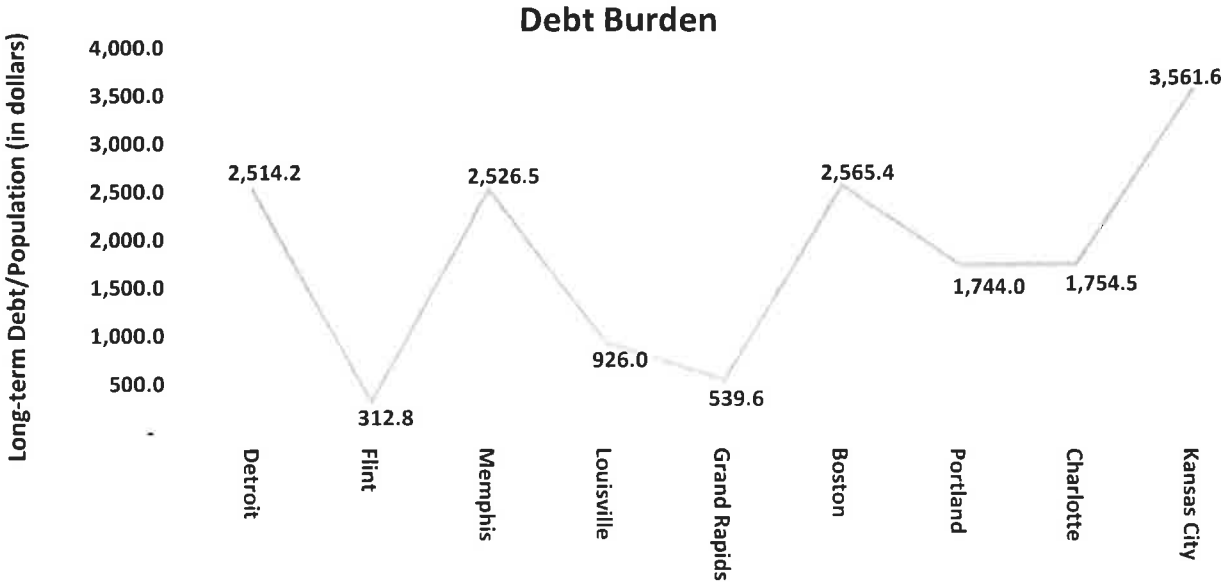
In FY 2015 the City and most other governments implemented the provisions of GASB No. 68, *Accounting and Financial Reporting for Pensions and* GASB Statement No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date – an amendment of GASB Statement No. 68.* As a result, the government-wide statements and the proprietary funds now include a Net Pension Liability for the City's unfunded legacy pension costs. The City recorded a $1.275 billion Net Pension Liability on the June 30, 2018 City's Governmental Activities' Statement of Net Position. Detroit's pension burden is not as high as the other cities that are struggling financially such as Flint and Portland in FY 2018 because the pension settlements in bankruptcy allowed Detroit to reduce its net pension liability. However, Detroit still has a significant net pension liability that is a challenge to fund with its limited tax and other revenue sources.



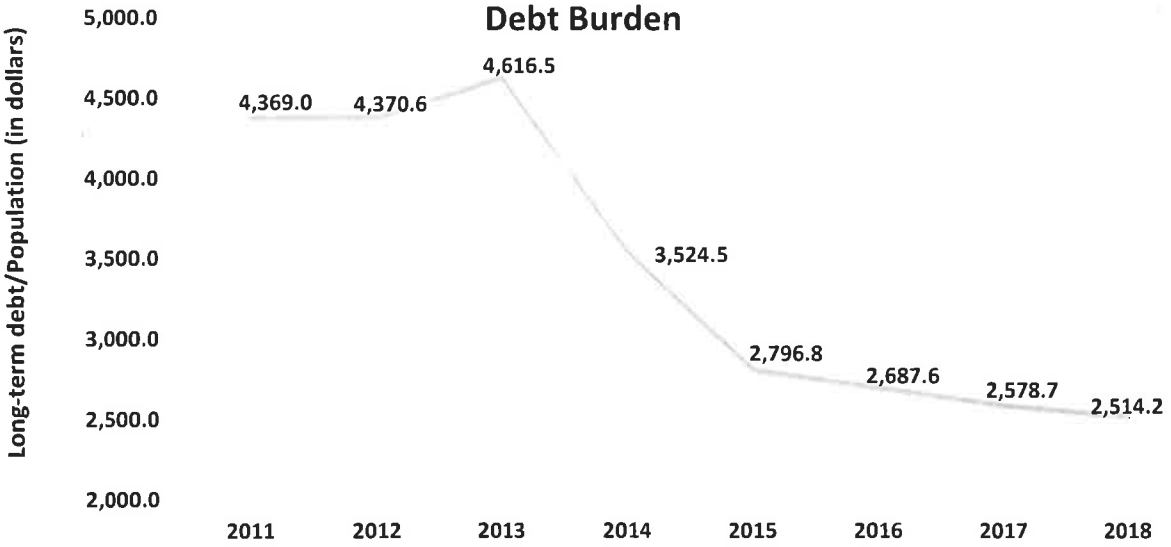
Debt Burden

Debt burden measures the City's long-term debt to population. A large debt burden is a concern when there are insufficient assets available to cover it. It is more likely funds for debt payments will have to come out of future revenues, which will decrease revenues to pay for essential services such as public safety.

As detailed in the graph below, Detroit had a higher debt to population ratio than the other cities except for Memphis, Boston, and Kansas City. Memphis, Boston and Kansas City have higher debt burdens, but also had higher assessed property values and the ability to raise more tax revenues to fund the debt as it comes due.



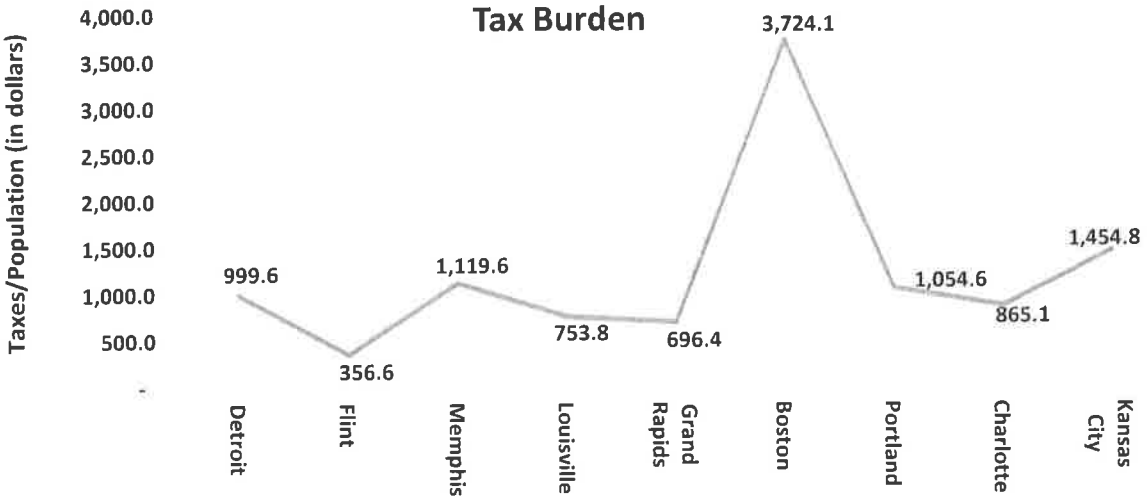
The following graph details Detroit's debt burden over the past eight years. Detroit's debt burden decreased significantly in FY 2014 mainly because of the elimination of $766.1 million of retiree health benefits (OPEB) liabilities. In FY 2015 the debt burden decreased due to the elimination of debt, mainly POCs, through the Bankruptcy's Plan of Adjustment. The FY 2016 reduction was due to the retirement of debt including $30 million of the bankruptcy exit financing. As noted previously (see footnote 3), the OCFO has done its best over the past three years to lower the City's debt obligations by refunding and retiring certain debt.



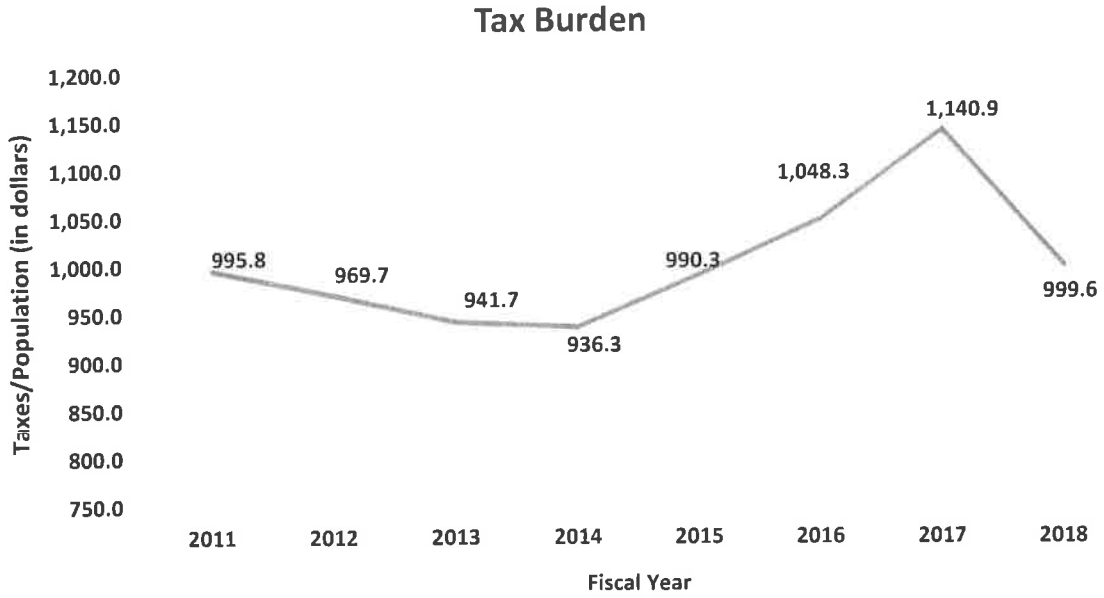
Detroit's debt burden will continue to be a drain on General Fund revenues well into the future. Most of the City's debt lacks a dedicated revenue source like the property tax millage that pays for the debt service on the unlimited tax general obligation bonds. The newer Limited Tax General Obligation bond debt issued per the Plan of Adjustment was secured and will be paid off with revenues from income tax and State revenue sharing. Such debt will always impair a City's fiscal health.

Tax Burden

Tax burden measures the tax revenues per the population. A high tax burden can mean many things. The obvious is that the citizen taxpayers may be paying a high rate of taxes. On the positive side it may mean that tourists, businesses and other sources are providing tax revenue and the rate is high because it is only spread over the City's population. The graph below shows Detroit's tax burden is in the middle range of the cities we benchmarked. Detroit has a high millage property tax rate and other taxes such as income, utility and casino taxes. The tax burden would be even higher if the City's assessed property values and the median income level wasn't so low. Also, other cities derive more tax revenues from non-citizens such as tourists and businesses.



Detroit needs to increase its tax base and revenues. The following graph shows Detroit's tax burden over the past eight years.

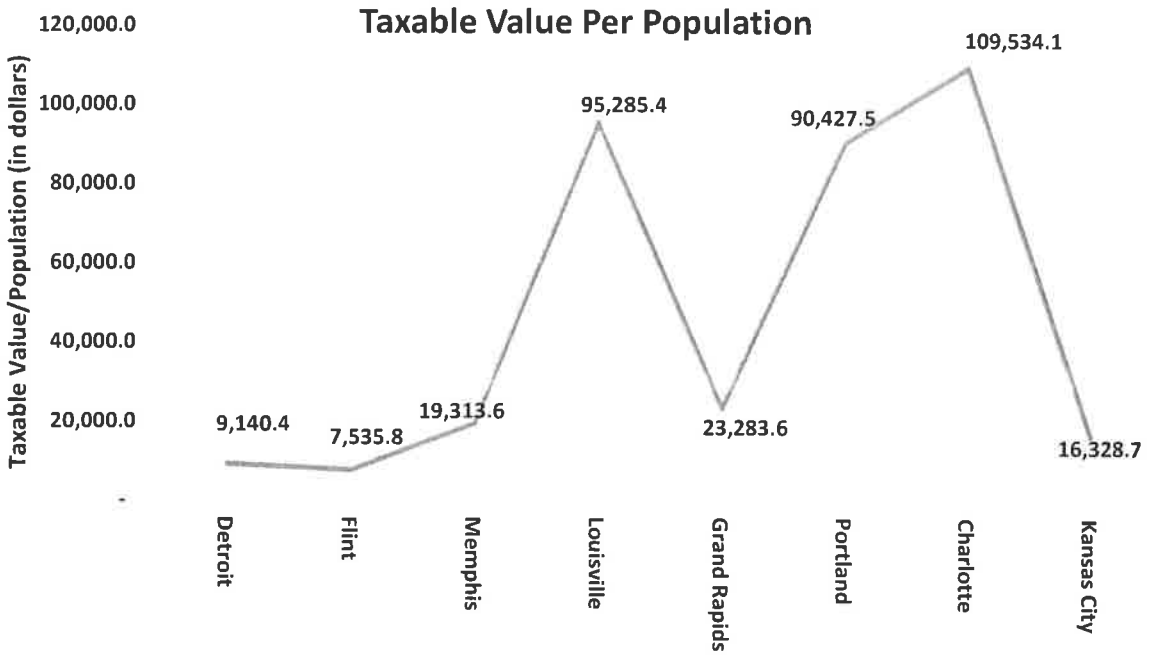


The Tax Burden increased in FY 2016 and FY 2017, mainly because property, income and wagering taxes were much higher than the prior years and the City's population continued to decline per the Census Bureau estimate on July 1, 2017. Detroit's property tax revenue collected decreased in FY 2018 as collections of property taxes were down due to reductions in tax assessments and UTGO debt service.

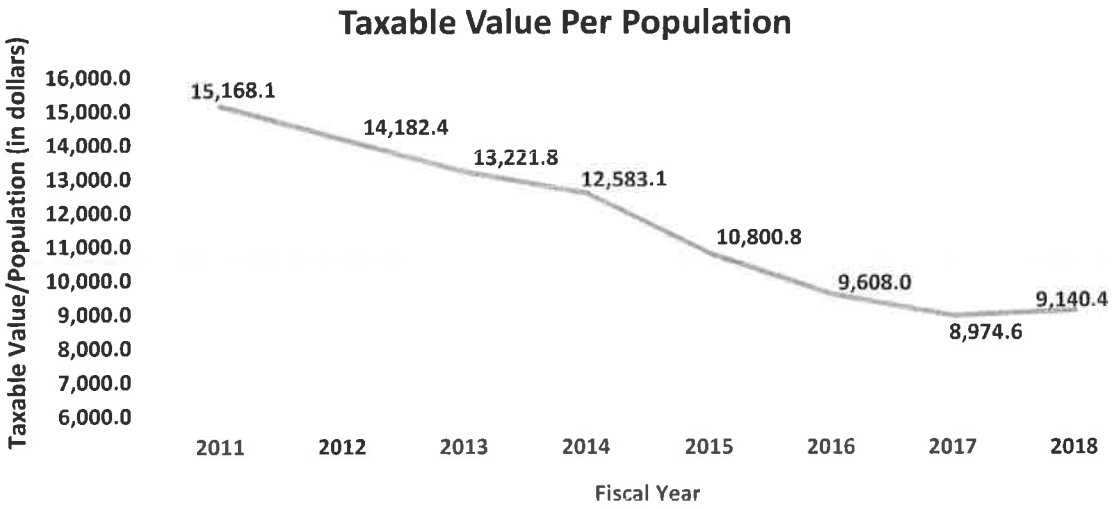
Detroit's tax burden declined from 2010 to 2014 due to reduced tax revenue collections, primarily property and wagering taxes. Also, assessed property values have fallen in the City contributing to the decline in property tax revenues. The Headlee amendment of 1978, which restricts property tax revenues a city can collect, has adversely impacted tax revenues to Michigan cities. This contributes to the low tax burdens for cities in Michigan.

Taxable Value

Taxable Value measures the taxable property values including residential, commercial, industrial and personal property, per the population. The graph below shows that the fiscally healthy cities have higher taxable values per their population than Detroit. As a result, they are able to generate higher tax revenues.



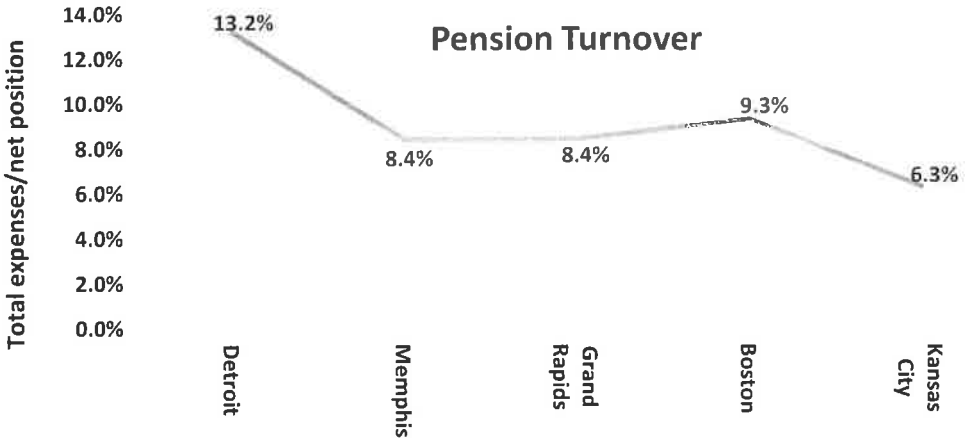
The graph below shows Detroit's taxable value trend over the past eight years. Detroit's taxable value increased in FY 2018, for the first time in eight years. The City still has a low taxable value because of the poverty, foreclosures, and reductions in assessed values due to the city-wide reappraisal of residential and commercial properties and improvements in the City's assessors division.



Detroit's property values and tax base needs to increase in order for it to obtain tax revenues sufficient to provide satisfactory services and maintain infrastructure for its residents.

Pension Turnover

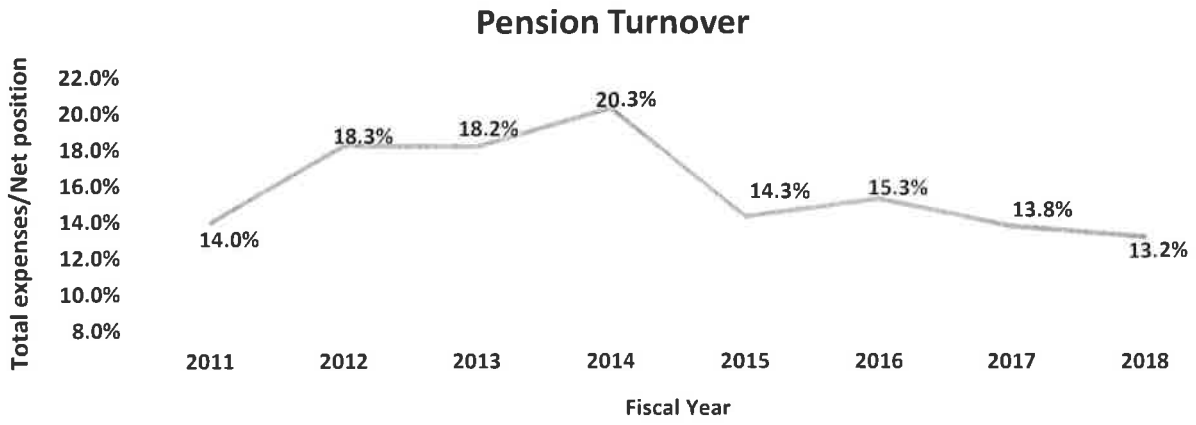
Pension Turnover measures the City's General Retirement System (GRS – Civilian Retirees Legacy System Component II) total annual expenses divided by the net position (assets less liabilities) of the Fund. It measures the turnover/depletion of the pension fund's assets. The graph below shows Detroit's GRS assets are turning over much quicker than the other cities. If the City's pension fund assets were depleted there would be a greater burden on the City's general fund to pay for retiree pensions.



If the City's legacy general retirement pension assets ($1,953,261,347) on June 30, 2018 did not increase and the annual payment/deductions ($258,290,329) remained the same, than the assets would be fully depleted in 7.6 years (1,953,261,347/258,290,329 or 100%/13.2%). Flint, Louisville, Portland and Charlottes' general retirement pensions were not comparable and we did not include them in the analysis[9].

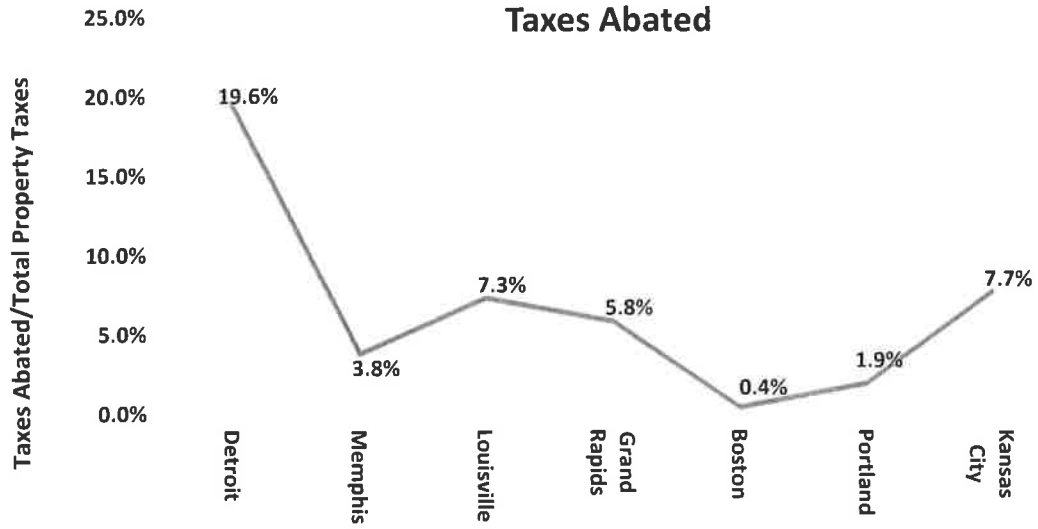
[9] Flint, Louisville, Portland and Charlottes' general retirement pensions were not comparable to Detroit's since their pension plans were either combined with their State pension plans or were a part of an independent retirement services company who administers the retirement plan for local units of government on a not-for-profit bases.

The graph below shows Detroit's pension turnover rate over the past eight years. The rate increased from 2012 to 2014, as the City had a larger number of retirees and benefits and expenses paid out due to the bankruptcy. The rate decreased in FY 2015 due the reduction of benefits and expenses and contributions made per the "Grand Bargain" in accordance with the Plan of Adjustment. The bankruptcy resulted in the: (1) freezing of the GRS pension plan; (2) 4.5% cut to retiree benefits; (3) Annuity clawback; (4) elimination of the cost of living adjustment; and (5) "Grand Bargain" proceeds, which will increase the GRS pension fund assets and lower the turnover rate.



Taxes Abated

Taxes abated measures the City's property tax revenues foregone, as a percentage of property tax revenues[10], to encourage economic development or some other special purpose that benefits the City. The City of Detroit has granted a large amount of tax abatements over the years in an effort to facilitate economic development in the City and to enhance the City's economic well being. Tax Abatements were reported for the first time for FY 2017, as required by GASB Statement No. 77, "Tax Abatement Disclosures"[11]. The graph below details that Detroit had the largest amount of property taxes abated of the cities we compared.



[10] Property tax revenues plus tax abatements

[11] Pages 119-120 of the 2017 CAFR, Note 14 and pages 116-117 of the 2018 CAFR, Note 13

In FY 2018, Detroit had $38.7 million of tax abatements or 19.6% of the property tax revenues and abatements combined. Detroit had $36.0 million of tax abatements per the 2017 CAFR or 12.7% of the property tax revenues and abatements combined. The increase in the percentage of tax abatements in FY 2018, as previously noted, was due to the reductions in tax assessments and UTGO debt service property tax revenue.

Other cities reported much less in taxes abated than Detroit. Memphis had the next largest amount at $16.7 million but was only 3.8% of its property tax revenues and abatements combined because of the larger amount of property tax revenue collected. Kansas City had the second highest percentage at 7.7%. The City of Detroit needs to carefully manage abatements to ensure that the benefits are greater than the loss of property tax revenue.

57

City of Detroit

OFFICE OF THE CITY CLERK

Janice M. Winfrey
City Clerk

Andre P. Gilbert II
Deputy City Clerk

August 20, 2019

Honorable City Council
1340 Coleman A. Young Municipal Center
Detroit, MI 48226

Re: Application for Neighborhood Enterprise Zone Certificate for Corktown

Dear Council Members:

On October 21, 1992, your Honorable Body established Neighborhood Enterprise Zones. I am in receipt of one (1) application for a Neighborhood Enterprise Zone Certificate. **THIS APPLICATION HAS BEEN REVIEWED AND RECOMMENDED FOR APPROVAL BY THE CITY PLANNING COMMISSION, A COPY OF WHICH IS ATTACHED.** Therefore, the attached Resolution, if adopted by your Honorable Body, will approve this application.

Respectfully submitted,

Janice M. Winfrey
City Clerk

JMW:aj
Enc.

Resolution

By Council Member_____

WHEREAS, Michigan Public Act 147 of 1992 allows the local legislative body to establish Neighborhood Enterprise Zones for the purpose of providing exemption from as valorem property taxes, and the imposition of specific property tax in lieu of as valorem taxes; and

WHEREAS, The Detroit City Council has established a Neighborhood Enterprise Zone for the following area, in the manner required by and pursuant to Public Act 147 of 1992.

NOW, THEREFORE, BE IT RESOLVED, That the City Council approve the following address for receipt of Neighborhood Enterprise Zone Certificate for a fifteen-year period:

Zone	**Address**	**Application No.**
Corktown	1710 Bagley	06-8557

City of Detroit

CITY PLANNING COMMISSION

208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-6225 Fax: (313) 224-4336
e-mail: cc-cpc@detroitmi.gov

August 21, 2019

HONORABLE CITY COUNCIL

RE: Neighborhood Enterprise Zone Certificate Application for the rehabilitation a single-family home located at 1710 Bagley Avenue in the Corktown Neighborhood Enterprise Zone area. (RECOMMEND APPROVAL)

The office of the City Planning Commission (CPC) has received an application requesting a Neighborhood Enterprise Zone (NEZ) certificate forwarded from the office of the City Clerk for the rehabilitation of a single-family home located at 1710 Bagley Avenue. This application corresponds to a qualified facility which is to be newly renovated. The project consists of all new flooring, windows, HVAC, interior remodeling of the bathroom, and select demolition. CPC staff has reviewed the application and recommends approval.

The subject property has been confirmed as being within the boundaries of the Corktown NEZ which was established by a vote of Council on October 26, 1994, and should be eligible for NEZ certificates under State Act 147 of 1992 as currently written. The anticipated cost of rehabilitation is $43,575.00. The applicant is seeking a 15 year tax abatement. The NEZ certificate application appears to have been submitted prior to the issuance of any applicable building permits.

Please contact our office should you have any questions.

Respectfully submitted,

Marcell R. Todd, Jr., Director CPC
George A. Etheridge, City Planner, LPD

cc: Janice Winfrey, City Clerk

David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Senior City Planner
Janese Chapman
Deputy Director

John Alexander
LaKisha Barclift, Esq.
M. Rory Bolger, Ph.D., AICP
Elizabeth Cabot, Esq.
Tasha Cowen
Richard Drumb
George Etheridge
Deborah Goldstein

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Christopher Gulock, AICP
Derrick Headd
Marcel Hurt, Esq.
Kimani Jeffrey
Anne Marie Langan
Jamie Murphy
Carolyn Nelson
Kim Newby
Analine Powers, Ph.D.
Jennifer Reinhardt
Sabrina Shockley
Thomas Stephens, Esq.
David Teeter
Theresa Thomas
Kathryn Lynch Underwood
Ashley A. Wilson

- **In 2016, the Council developed a new system of review for the approval of certain NEZ certificates:**

  LPD assisted in developing a system for which the Council applied a greater level of scrutiny at the NEZ Zone approval stage. The recent upswing in the use of NEZs for the development of apartment buildings and condos downtown and in "Downtown Revitalization Districts," [1] instead of just neighborhood single family residents, created a need for this review.

This Neighborhood Enterprise Zone was established in 1994, which is prior to the development of a system of additional financial review for NEZs in **2016**, therefore there is no additional fiscal review for this item.

[1] Created under Michigan 2008: Public Act 204 & Public Act 228

City of Detroit
OFFICE OF THE CITY CLERK

Janice M. Winfrey
City Clerk

Andre P. Gilbert II
Deputy City Clerk

August 20, 2019

Honorable City Council
1340 Coleman A. Young Municipal Center
Detroit, MI 48226

Re: Application for Neighborhood Enterprise Zone Certificate for West Village

Dear Council Members:

On October 21, 1992, your Honorable Body established Neighborhood Enterprise Zones. I am in receipt of one (1) application for a Neighborhood Enterprise Zone Certificate. **THIS APPLICATION HAS BEEN REVIEWED AND RECOMMENDED FOR APPROVAL BY THE CITY PLANNING COMMISSION, A COPY OF WHICH IS ATTACHED.** Therefore, the attached Resolution, if adopted by your Honorable Body, will approve this application.

Respectfully submitted,

Janice M. Winfrey
City Clerk

JMW:aj
Enc.

Resolution

By Council Member_____

WHEREAS, Michigan Public Act 147 of 1992 allows the local legislative body to establish Neighborhood Enterprise Zones for the purpose of providing exemption from as valorem property taxes, and the imposition of specific property tax in lieu of as valorem taxes; and

WHEREAS, The Detroit City Council has established a Neighborhood Enterprise Zone for the following area, in the manner required by and pursuant to Public Act 147 of 1992.

NOW, THEREFORE, BE IT RESOLVED, That the City Council approve the following address for receipt of Neighborhood Enterprise Zone Certificate for a seventeen-year period:

Zone	**Address**	**Application No.**
West Village	1718 Van Dyke	06-8584

City of Detroit

CITY PLANNING COMMISSION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-6225 Fax: (313) 224-4336
e-mail: cc-cpc@detroitmi.gov

August 21, 2019

HONORABLE CITY COUNCIL

RE: Neighborhood Enterprise Zone Certificate Application for the rehabilitation of four (4) apartment units located at 1718 Van Dyke Avenue in the West Village Neighborhood Enterprise Zone area. (RECOMMEND APPROVAL)

The office of the City Planning Commission (CPC) has received an application requesting a Neighborhood Enterprise Zone (NEZ) certificate forwarded from the office of the City Clerk for the rehabilitation of four (4) apartment units located at 1718 Van Dyke Avenue. This application corresponds to a qualified facility which is to be newly renovated. The project consists of all new plumbing, electrical and HVAC, exterior siding and the addition of insulation. Some reconfiguration of the interior walls to make the units more efficient will also occur. The first and second floors will be divided into two units. The third floor is currently an attic, and is anticipated to be incorporated into the second floor units. CPC staff has reviewed the application and recommends approval.

The subject property has been confirmed as being within the boundaries of the West Village NEZ which was established by a vote of Council on November 15, 2000, and should be eligible for NEZ certificates under State Act 147 of 1992 as currently written. The anticipated cost of rehabilitation is $122,550.00. The applicant is seeking a 17 year tax abatement given this historic nature of the property. The NEZ certificate application appears to have been submitted prior to the issuance of any applicable building permits.

Please contact our office should you have any questions.

Respectfully submitted,

Marcell R. Todd, Jr., Director CPC
George A. Etheridge, City Planner, LPD

cc: Janice Winfrey, City Clerk

David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
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- **In 2016, the Council developed a new system of review for the approval of certain NEZ certificates:**

  LPD assisted in developing a system for which the Council applied a greater level of scrutiny at the NEZ Zone approval stage. The recent upswing in the use of NEZs for the development of apartment buildings and condos downtown and in "Downtown Revitalization Districts," [1] instead of just neighborhood single family residents, created a need for this review.

This Neighborhood Enterprise Zone was established in 2000, which is prior to the development of a system of additional financial review for NEZs in **2016**, therefore there is no additional fiscal review for this item.

[1] Created under Michigan 2008: Public Act 204 & Public Act 228

59

MEMORANDUM

TO: **Lawrence Garcia, Corporation Counsel**

Boysie Jackson, Chief Procurement Officer

FROM: **Janee' Ayers, Chair**

DATE: **July 24, 2019**

RE: **Request for Amendment(s) to the Procurement Ordinance**

I am requesting the Law and Procurement departments to please provide an analysis for Council to consider a potential cap on equalization credits.

Thank you in advance for your time and effort,

Janee' Ayers
Detroit City Council

cc: Colleagues
City Clerk

City of Detroit
COUNCILMAN SCOTT R. BENSON

60

MEMORANDUM

TO: **David Massaron, CFO**

FROM: **Hon. Scott Benson, City Council District 3**

CC: Hon. Janee Ayers, Chair, Budget, Audit & Finance Standing Committee
Hon. Janice Winfrey, City Clerk
David Whitaker, Director, LPD
Irv Corely, LPD
Stephanie Washington, City Council Liaison

VIA: Hon. Brenda Jones, City Council President

DATE: 19 July 2019

RE: **PENSION FUNDING POLICY**

The pension systems are currently debating the establishment of a funding policy, which will set the City of Detroit's annual payment obligation to both systems. The General Pension and the Police and Fire Pension Systems are discussing the policies separately and have different priorities under which they could conceivably adopt a policy. It is imperative that Detroit provide input for these conversations to ensure we are preparing our budget team for this impending financial obligation.

Any funding policy adopted by the pension systems will have major implications for:

1. Detroit's financial health.
2. Our ability to comply with the Plan of Adjustment.
3. The required monthly pension contribution from our current employees.

The proposed amortization schedules have the City's annual obligation set at approximately $190m to $240m. These numbers are much higher than anticipated during the bankruptcy proceedings, which set the payment at $140m, and could place Detroit on a path of financial insolvency if we are committed to this funding level and can't grow the City's general fund by an amount sufficient to offset this proposed annual obligation.

Please provide responses to the following questions:

1. The administration's plan for funding/managing the City's pension obligation beyond the Retiree Protection Plan
2. The City programs that will be defunded to comply with any pension obligations above the budgeted $140m.
3. A suggested amortization schedule for submission to the pension system.

Please provide a response by 15 August 2019. If you have any questions do not hesitate to contact my office at, 313-224-1198

Coleman A. Young Municipal Center • 2 Woodward Ave., Suite 1340 • Detroit, Michigan 48226
(313) 224-1198 Fax (313) 224-1684
bensons@detroitmi.gov

61

City of Detroit
COUNCILMAN SCOTT R. BENSON

MEMORANDUM

TO: **David Whitaker, Director, LPD**
FROM: **Scott Benson, City Council District 3**

CC: Hon. Janice Winfrey, City Clerk
David Massaron, CFO
Stephanie Washington, Liaison to Mayor's Office
VIA: Brenda Jones, Detroit City Council President

DATE: 26 Aug 2019

RE: **CASINO GAMING BILLS: HB 4311, HB 4312 (H-2), HB 4323**

My office is requesting LPD review and provide a report on the attached House Bills, which authorize internet gaming and set the tax rate for this industry. The State's legislative analysis from the House Fiscal Agency states:

"***FISCAL IMPACT:*** In general, the bills likely would result in a net reduction in revenues for state and local governments, including the City of Detroit, mainly due to the incentives produced by the lower tax rate on internet gaming adjusted gross receipts (AGR) and the revenue distribution differences between the internet gaming tax revenue and brick-and-mortar gaming tax revenue. See ***Fiscal Information***, below, for a detailed fiscal analysis."

Based upon the above analysis my office is concerned about the potential for a negative impact on the City's general fund. With this in mind, please ensure your report addresses this concern. In addition, provide suggested language to be sent to the Michigan House Detroit Delegation that ensures a high percentage of the revenues generated are committed, by law, to be invested inside Detroit's neighborhoods and outside of the 7.2 square mile investment area.

Please provide this report by 27 September 2019. Reach out to my office at 313-224-1198 with any questions.

SRB

CITY CLERK 2019 AUG 27 PM 1:49

Coleman A. Young Municipal Center • 2 Woodward Ave., Suite 1340 • Detroit, Michigan 48226
(313) 224-1198 Fax (313) 224-1684
bensons@detroitmi.gov

Legislative Analysis

HOUSE FISCAL AGENCY

LAWFUL INTERNET GAMING ACT

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

Analysis available at
http://www.legislature.mi.gov

House Bill 4311 as referred to second committee
Sponsor: Rep. Brandt Iden

House Bill 4312 (H-2) as referred to second committee
Sponsor: Rep. Wendell Byrd

House Bill 4323 as referred to second committee
Sponsor: Rep. LaTanya Garrett

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Complete to 5-1-19

BRIEF SUMMARY: House Bill 4311 would create the Lawful Internet Gaming Act; allow internet gaming to be conducted in accordance with the new act; license various activities; create the Division of Internet Gaming in the Michigan Gaming Control Board (MGCB); impose a tax on the conduct of licensed internet gaming; create the Internet Gaming Fund; prohibit certain conduct; establish civil sanctions and criminal penalties for violations of the act; and authorize the promulgation of rules.

House Bill 4312 would place the maximum term of imprisonment for a felony violation of the Lawful Internet Gaming Act within the sentencing guidelines.

House Bill 4323 would exempt gambling conducted under the Lawful Internet Gaming Act from the provisions of the Michigan Penal Code.

Tie-bars: House Bill 4311 is tie-barred to HB 4308, House Bill 4312 is tie-barred to HBs 4311 and 4173, and House Bill 4323 is tie-barred to HB 4311. A bill cannot take effect unless the bill to which it is tie-barred is also enacted.

Effective date: Each bill would take effect 90 days after it is enacted.

FISCAL IMPACT: In general, the bills likely would result in a net reduction in revenues for state and local governments, including the City of Detroit, mainly due to the incentives produced by the lower tax rate on internet gaming adjusted gross receipts (AGR) and the revenue distribution differences between the internet gaming tax revenue and brick-and-mortar gaming tax revenue. See ***Fiscal Information***, below, for a detailed fiscal analysis.

THE CONTENT OF THE BILLS:

House Bill 4311 would create the Lawful Internet Gaming Act, a description of which follows.

Definitions

The act provides definitions for numerous terms used throughout it. These include:

Authorized participant: An individual who is at least 21 years of age with a valid internet wagering account with an internet gaming operator.

Casino: A building or buildings in which gaming is lawfully conducted under the Michigan Gaming Control and Revenue Act (the initiated law voted on by Michigan electors which authorized the three Detroit casinos) or in which Class III gaming is conducted by an Indian tribe under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission.

Internet gaming: Operating, conducting, or offering for play an internet game.

Internet game: A game of skill or chance offered for play through the internet in which a person wagers money or something of monetary value for the opportunity to win money or something of monetary value. Free plays or extended playing time won on a game of skill or chance would not be "something of monetary value." The term would include gaming tournaments conducted via the internet in which persons compete in games authorized by the Division of Internet Gaming.

Internet gaming operator: A person issued an internet gaming license from the Division of Internet Gaming to conduct internet gaming or otherwise authorized to operate, conduct, or offer internet gaming.

Internet wagering: Risking money or something of monetary value on an internet game.

Internet wagering account: An electronic ledger in which deposits, withdrawals, internet wagers, monetary value of prizes, certain charges authorized by the authorized participant, and adjustments to the account are recorded.

Applicability of Act, Location of Operation/Equipment

The Lawful Internet Gaming Act would allow internet gaming only to the extent that it is conducted in accordance with the act. A law inconsistent with the act would not apply to internet gaming, and the act would not apply to lottery games offered by the Bureau of Lottery, Class II and Class III gaming conducted exclusively on Indian lands by a properly licensed Indian tribe, or a fantasy contest conducted under the Fantasy Contests Consumer Protection Act.

Under the act, an internet wager would be considered placed when received by the internet gaming operator, regardless of the location of the participant at the time the wager was placed. An internet wager received by an internet gaming licensee would be considered to be gambling or gaming conducted in the licensee's casino, regardless of the authorized participant's location at the time the wager was placed. The intermediate routing of electronic data in connection with internet wagering, including routing across state lines, would not determine the location or locations in which the wager is initiated, received, or otherwise made.

Aggregating computers or other internet access devices in order to enable multiple players to simultaneously play an internet game would be restricted to licensed internet gaming operators.

Division of Internet Gaming, Multijurisdictional Gaming, Sports Betting

The Division of Internet Gaming ("the Division") would be established in the MGCB to administer, regulate, and enforce the system of internet gaming established by the act. The Division would have jurisdiction over licensees and could take enforcement action as provided in the act against an unlicensed person offering internet gaming in the state.

Under the act, the Division could enter into agreements with other jurisdictions, including Indian tribes, for multijurisdictional internet gaming by gaming licensees if consistent with state and federal law and for gaming conducted only in the United States. The Division could permit internet gaming operators to conduct internet wagering on amateur or professional sporting events or contests.

Internet Gaming License, Application and License Fees

An applicant for an internet gaming license would have to hold a casino license or be an Indian tribe that lawfully conducts Class III gaming under the required license. After receiving an application and application fee, the Division would have to issue a license if the internet gaming proposed by the applicant complied with the act and the applicant was otherwise eligible and suitable (with the burden on the applicant to establish suitability).

In determining whether an applicant is eligible and suitable, the Board could request and consider the financial situation of the applicant, historical compliance with casino-related licensing requirements, criminal history, or history of bankruptcy.

An application fee of $100,000 would have to accompany the application. Departmental rules could allow for a refund of the fee, or a partial refund if not wholly expended in processing the application, and provide the circumstances under which a fee would be refunded.

An internet gaming license would be valid for five years and could be renewed for five-year periods. The initial license fee would be $200,000 payable at the time the license is issued. The yearly fee would be $100,000. Application and license fees would be deposited into the Internet Gaming Fund created by the act. An institutional investor (such as a financial institution or pension fund) holding less than 30% of the equity of an applicant would be exempt from licensure under the act.

Tribal Internet Gaming

A federally recognized tribe in Michigan could apply to the Division to conduct internet gaming and would have to include relevant information on its application, such as the name and location of its casinos, relevant tribal law and governing documents, and financial information.

Issuance, maintenance, and renewal of internet gaming licenses to tribal casinos would be based on all of the following:

- Compliance with the act and related rules.
- Adoption and maintenance of technical standards consistent with those adopted by the Division.
- Maintenance of a mechanism to determine that participants are at least 21 years old and in allowed jurisdictions.
- Adoption and maintenance of responsible gaming measures.
- Maintenance and operation of a casino operating Class III gaming and containing at least 50% of the gaming positions in place as of the act's effective date.

- Timely payment of 8% of the gross gaming revenue received from internet gaming.
- Provision of internet gaming records for verification of the 8% amount upon request by the Division.
- Provision of a waiver of sovereign immunity to consent to the Division's jurisdiction for specified purposes, as well as to the exclusive jurisdiction of Michigan's court system (expressly waiving the exhaustion of tribal revenues).

Under the bill, the state (acting through the governor) would have to negotiate any amendments to a tribe's compact necessary to ensure compliance with the act and any applicable federal law upon request by any Indian tribe. If the governor failed to enter into negotiations or failed to negotiate in good faith, the tribe could initiate a cause of action against the governor in state or federal court.

The Division would have to exercise its limited direct regulatory and enforcement authority in a manner that is not arbitrary, capricious, or contradictory to the act. The act would only regulate internet gaming and would not extend to any further aspect of tribal gaming operations beyond those granted to the state under a compact with the tribe.

Internet Gaming Vendor and Gaming Platform Vendor Provider Licenses

An internet gaming vendor would be a person providing to an internet gaming operator goods, software, or services that directly affect the wagering, play, and results of authorized internet games. Only a person licensed under the act could provide goods, software, or services as an internet gaming vendor to an internet gaming operator.

A provisional license would be available to enable the applicant for a vendor license to conduct business with an internet gaming operator or applicant before receiving a vendor's license. The provisional license would expire on the date listed.

A vendor license would be valid for five years and would be renewable for additional five-year periods if eligibility and suitability standards continued to be met. Applications would be made on forms provided by the Division and would have to include certain information specified in the act, such as financial information regarding the applicant.

A nonrefundable fee to be determined by the Division (but not to exceed $5,000) would have to accompany the application with a fee of $5,000 payable upon issuance of a license. The annual fee would be $2,500.

An internet gaming platform provider would pay a license fee of $100,000 at the time of issuance of the license and $50,000 each year after that. [Note: ***Internet gaming platform provider*** is not defined in the act, nor are any requirements specified. The act defines ***internet gaming platform*** to mean an integrated system of hardware, software, and servers through which an internet gaming operator operates, conducts, or offers internet gaming.]

Application and license fees, taxes, and payments would be deposited into the Internet Gaming Fund created under the act. Information included with the application and records pertaining to the application process would be confidential and not subject to the Freedom of Information Act (FOIA). An institutional investor holding less than 30% of the equity of an applicant would be exempt from licensure under the act.

Jurisdiction of the Division, Civil Fines, Civil Remedies

The Division would have jurisdiction over and responsibility to supervise all internet gaming operations governed by the act. The Division could do the following to effectuate the act:

- Develop qualifications, standards, and procedures for approval and licensure of internet gaming operators and gaming vendors. [Note: internet gaming platform provider licensee is not mentioned here.]
- Conduct hearings pertaining to violations of the act or rules.
- Develop and enforce testing and auditing requirements for internet gaming platforms, internet wagering, and internet wagering accounts.
- Develop and administer civil fines (not to exceed $5,000 per violation) for internet gaming operators and internet gaming vendor licensees that violate the act or departmental rules.

The Division could investigate, issue cease and desist orders, and obtain injunctive relief against a person that is not licensed and that is offering internet gaming in the state. Information, records, interviews, reports, and other data supplied to or used by the Division in the course of an investigation of a licensee would be confidential and not be subject to FOIA.

Rule Promulgation

Within one year after the act took effect, the Division would be required to promulgate rules governing the licensing, administration, and conduct of internet gaming necessary to carry out the act. The rules could only include things expressly authorized by the act, including the following:

- Types of internet games to be offered; poker, blackjack, cards, slots, and other games typically offered at a casino must be offered.
- Qualifications, standards, and procedures for approval and licensure of internet gaming licensees and internet gaming vendor operators.
- Requirements to ensure responsible gaming.
- Technical and financial standards for internet wagering, wagering accounts, and internet gaming platforms, systems, and software or other electronic components for internet gaming.
- Procedures for conducting contested case hearings.
- Requirements for multijurisdictional agreements entered into with other jurisdictions. These would include qualifications, standards, and procedures for approval of internet gaming vendors providing internet gaming platforms in connection with the agreement.
- Procedures and requirements for the acceptance, by an internet gaming operator, of internet wagers initiated or otherwise made by persons in other jurisdictions, if the Division authorized multijurisdictional gaming.

Age Verification Requirements, Requirements of Internet Gaming Operators

An internet gaming operator have to provide one or more mechanisms on the gaming platform it uses that are designed to:

- Reasonably verify that an authorized participant is at least 21 years of age. An individual would have to satisfy the verification requirements in order to establish an internet gaming account or to make an internet wager on an internet game.
- Limit internet wagering to transactions that are initiated and received or otherwise made by an authorized participant located in Michigan or a jurisdiction in the United States in which internet gaming is legal.
- Detect and prevent the unauthorized use of internet wagering accounts, and detect and prevent fraud, money laundering, and collusion.

An internet gaming operator could not knowingly authorize an individual less than 21 years old or an individual whose name appears in the responsible gaming database created under the act to establish an internet gaming account or knowingly allow them to wager on internet games offered by the licensee—unless required and authorized by the Division for testing purposes or to otherwise fulfill the purposes of the act.

Responsible Gaming Database, Posting of Compulsive Gambling Hotline

The Division could develop responsible gaming measures, including a statewide responsible gaming database that would identify individuals who are prohibited from establishing an internet wagering account or participating in internet gaming offered by an internet gaming operator. An individual's name could be placed in the database if any of the following apply to the individual:

- He or she has been convicted in any jurisdiction of a felony, a crime of moral turpitude, or a crime involving gaming.
- He or she has violated the act or another gaming-related act.
- He or she has performed an act, or has a notorious or unsavory reputation, such that his or her participation in internet gaming under the act would adversely affect public confidence and trust in internet gaming.
- His or her name is on a valid and current exclusion list maintained by Michigan or another U.S. jurisdiction.

Names of individuals to be included on the list could be provided by an internet gaming operator in a format specified by the Division.

The number of the toll-free compulsive gambling hotline maintained by the state would have to be displayed in a clear, conspicuous, and accessible manner on the internet gaming platform used by an internet gaming operator. Also, responsible services and technical controls would have to be offered to authorized participants. This would consist of both temporary and permanent self-exclusion for all internet games offered and the ability for authorized participants to establish their own periodic deposit and internet wagering limits and maximum playing times.

A participant could voluntarily prohibit himself or herself from establishing an internet wagering account with an operator. The voluntary self-exclusion list could be incorporated into the responsible gaming database and both be maintained by the Division in a confidential manner. Both lists would be exempt from disclosure under FOIA.

Prohibited Conduct, Criminal Penalties

The act would prohibit a person from doing any of the following:

- Offering internet gaming for play if not an internet gaming operator (except if exempt as a lottery game, tribal casino, or fantasy contest). This would be a felony punishable by imprisonment for up to 10 years or a fine of up to $100,000, or both.
- Knowingly making a false statement on an application for a license issued under the act.
- Knowingly providing false testimony to MGCB or its authorized representative while under oath.

A license could not be issued to a person that committed a listed violation. An action to prosecute a violation could be brought by the attorney general or a county prosecuting attorney

in the county in which the violation occurred or in Ingham County, at either of the officials' discretion.

Gross Gaming Revenue Tax, Allocation of Tax

An internet gaming licensee would be subject to an 8% tax on the gross gaming revenue from internet gaming conducted under the act, payable monthly. No other tax, payment, or fee could be imposed on an internet gaming operator for internet gaming.

The tax would have to be allocated as follows:

- 30% to the city in which the internet gaming licensee's casino is located, for use in that city in connection with the following:
  - Hiring, training, and deployment of street patrol officers.
  - Neighborhood and downtown economic development programs designed to create jobs, with a focus on blighted neighborhoods.
  - Public safety programs such as emergency medical services, fire department programs, and street lighting.
  - Anti-gang and youth development programs.
  - Other programs designed to contribute to the improvement of the quality of life.
  - Relief to the taxpayers of the city from one or more taxes or fees imposed by the city.
  - Costs of capital improvements.
  - Road repairs and improvements.
- 55% to the state to be deposited into the Internet Gaming Fund.
- 5% to be deposited in the state School Aid Fund.
- 5% to be deposited in the Michigan Transportation Fund.
- 5% to the Michigan Agricultural Equine Industry Development Fund. (However, if that amount exceeded $3 million in a fiscal year, the excess would have to be deposited in the Internet Gaming Fund.)

If the combined total of the 30% allocated to the city and the wagering tax under the Michigan Gaming Control and Revenue Act were less than $179 million, the Board would have to distribute to the city from the fund an amount equal to the difference between $179 million and the amount received by the city in the previous year. This would have to take place by December 31, 2020, and each December 31 thereafter. However, the total amount under the 30% allocation and this dispersal could not be more than 55% of the total tax imposed under this section in the fiscal year.

Internet Gaming Fund

The Internet Gaming Fund would be created in the treasury. Money or assets required to be paid into the fund or received from any other sources would be received by the state treasurer. Interest and earnings from fund investments would be credited to the fund. MGCB would be the administrator for auditing purposes. MGCB would be required to expend money from the Fund, on appropriation, for its costs of regulating and enforcing internet gaming under the act, as well as $1.0 million to the Compulsive Gaming Prevention Fund.

Of the 8% gross gaming revenue (under section 7(1)(f) of the bill), 75% of the payments would have to be deposited into the Internet Gaming Fund, with the remaining 25% deposited into the Michigan Strategic Fund.

House Bill 4312 would amend the Code of Criminal Procedure to specify that internet gaming offenses under Section 13 of the proposed new Lawful Internet Gaming Act would be a Class D felony against the public order punishable by a maximum term of imprisonment of 10 years. Additionally, Bingo—false statements would be a Class G felony against the public trust punishable by a maximum term of imprisonment of 2 years.

MCL 777.14d

House Bill 4323 would add a new section to the Michigan Penal Code to specify that Chapter 44 (Gambling) would not apply to gambling conducted under the proposed Lawful Internet Gaming Act.

Proposed MCL 750.310d

BACKGROUND INFORMATION:

House Bills 4311, 4312, and 4323 are part of a series of reintroduced bills regarding gaming regulation in Michigan. The bills' counterparts in the 2017-18 legislative session—House Bills 4926, 4928, and 4927, respectively—were passed by the House and Senate but vetoed by the governor. In his veto message,[1] Governor Snyder cited unknown budgetary concerns and a desire for more careful study of the issue.

FISCAL INFORMATION:

In general, the bills likely would result in a net reduction in revenues for state and local governments, including the City of Detroit, mainly due to the incentives produced by the lower tax rate on internet gaming adjusted gross receipts (AGR) and the revenue distribution differences between the internet gaming tax revenue and brick-and-mortar gaming tax revenue.

Determining a fiscal impact is difficult in both scope and magnitude due to the financial, legal, and tax structure of the Michigan gaming industry; the dynamic interplay between the different types of gaming offered in Michigan (commercial casinos, tribal casinos, and a state-run lottery); and the relatively small sample size of states that have legalized internet casino gaming (Delaware [2012], Nevada [2013], and New Jersey [2013]). Additionally, casino revenues are affected by economic conditions, societal trends, expansion of gaming in other states, and the offering of alternative gaming opportunities, all of which make differentiating between correlation and causation when reviewing other states difficult.

New Jersey's online gaming market is structured most similarly to the proposed online gaming market under this bill. However, there are notable differences that limit its usefulness as a direct comparable for Michigan's gaming market. While Michigan's population is almost one million greater than New Jersey's, New Jersey has a per capita personal income that is 40% greater than Michigan's. In addition, population demographics and the dependence on tourism as a source of business for casino gaming diminish the value of direct comparisons.

For purposes of this analysis, the most notable difference is that New Jersey licensees pay a higher tax rate (15%) on internet gaming AGR than brick-and-mortar AGR (8%), while under

[1] https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130293/Veto%20Letter%204926%20-%204928.pdf

the provisions of this bill Michigan licensees would pay a lower tax rate of 8% on internet gaming AGR (minus the monetary value of free play) than brick-and-mortar casino AGR, where the effective rate exceeds 19%.[2] In Michigan, the commercial casinos in Detroit would have a strong incentive to promote internet gaming at the expense of brick-and-mortar casino gaming because AGR received from internet wagering would be levied a tax rate significantly lower than AGR from the brick-and-mortar facility.

The scope and magnitude of the fiscal impact would depend on whether online gaming had a substitution, neutral, or stimulative effect on other forms of gaming. All of these factors are discussed in more detail below.

As background, in 2018 AGR from New Jersey internet gaming totaled approximately $300.0 million, which represented 10% of the overall casino gaming market (based on AGR). Assuming that internet gaming AGR comprises approximately 12% of the total amount wagered, roughly $2.5 billion was wagered online in New Jersey in 2018.

The narrative below assumes a mature market and does not represent short term changes immediately following the adoption of the bill's provisions.

State School Aid Fund

The State School Aid Fund (SAF) likely would realize reduced revenues under House Bill 4311. Currently, a wagering tax of 19% is levied on casino AGR. Of that amount, 42.6% ($0.081) is distributed to the SAF. Under the bill, internet gaming AGR would be taxed at a rate of 8%, with 5% ($0.004) of the tax revenues deposited in the SAF. Therefore, every dollar of AGR lost at brick-and-mortar casinos due to internet gaming would result in a $0.077 loss to the SAF.

The reduction in revenues would be directly related to the substitutive effect internet gaming would have on brick-and-mortar casinos. Any net new wagering from online gaming would offset a portion of the losses due to the substitution effect of online gaming.

Table 1 provides this information another way. The table shows how much internet wagering would need to occur to hold the SAF harmless at various brick-and-mortar wagering loss scenarios.

Table 1
Internet Wagering Needed to Hold School Aid Fund Harmless at Various Brick-and-Mortar Casino Wagering Loss Scenarios

% Wagering Loss at Detroit Casinos	SAF Loss	Internet Wagering Required for SAF Hold Harmless
1%	$1,169,721	$2,436,918,384
5%	5,848,604	12,184,591,919
10%	11,697,208	24,369,183,838
15%	17,545,812	36,553,775,757

Note: Based on 2018 MGCB AGR data for Detroit Commercial Casinos; assumes AGR comprises 12% of total wagering.

[2] In addition to the 19% wagering tax on adjusted gross receipts, the Detroit casinos pay a municipal services fee and development agreement payment based on adjusted gross receipts.

Internet gaming also could reduce lottery sales, mainly by diverting participants from the iLottery platform or instant ticket sales, because many of the games offered could be considered substantially similar from a user perspective. Payouts for individuals playing casino-operated games would be higher. Higher payout rates likely would lead to increased internet gaming play at the expense of iLottery and instant ticket play. Lottery AGR (net revenue) is deposited in the SAF. Therefore, any diminishment in lottery sales from the introduction of online gaming would result in lower SAF transfers from the Bureau of State Lottery. In 2017 net revenues from iLottery totaled $80.0 million. Based on net revenues totaling 12% of total sales for iLottery games and 27% of total sales for instant ticket games, every dollar of wagering iLottery lost to internet gaming would require $250 of internet wagering to hold the SAF harmless. Every dollar of instant ticket sales lost to internet gaming would require approximately $550 of internet wagering to hold the SAF harmless.

Even if no substitution effect were assumed and online gaming had a neutral or stimulative effect on brick-and-mortar casino revenues, the SAF could still realize a decrease in dedicated revenues due to a loss in iLottery revenues. However, the lower tax rate for online gaming likely would result in the Detroit casinos promoting online gaming at the expense of brick-and-mortar gaming. The strength of this incentive would be affected by any expected non-gaming revenue a casino expected from brick-and-mortar casino patrons.

City of Detroit Revenues

The City of Detroit ("City") likely would realize reduced revenues under House Bill 4311. Currently, a wagering tax of 19% is levied on casino AGR. Of that amount, 57.4% ($0.109) is distributed to the City. In 2018, the City received approximately $157.4 million from the casino wagering tax. Under the bill, internet gaming AGR would be taxed at a rate of 8%, with 30% ($0.024) of the tax revenues allocated to the City. Therefore, every dollar of AGR lost at brick-and-mortar casinos due to internet gaming would result in a $0.085 loss to the City.

Table 2 provides this information another way. The table shows how much internet wagering would need to occur to hold the City wagering tax revenues harmless at various AGR loss scenarios.

Table 2
Internet Wagering Needed to Hold the City of Detroit Harmless at Various Brick-and-Mortar Casino Wagering Loss Scenarios

% Wagering Loss at Detroit Casinos	City of Detroit Revenue Loss	Internet Wagering Needed for City of Detroit Hold Harmless
1%	$1,574,069	$546,551,654
5%	7,870,344	2,732,758,270
10%	15,740,688	5,465,516,540
15%	23,611,031	8,198,274,810

Note: Based on 2018 MGCB AGR data for Detroit Commercial Casinos; assumes AGR comprises 12% of total wagering.

It should be noted that if the impact on brick-and-mortar casino revenue were relatively neutral or stimulative, the City would realize increased revenues. The magnitude of the increase would depend on AGR from online gaming and a combination of the effective tax rate and any new revenues directly attributable to enhanced brick-and-mortar play due to online gaming.

However, the commercial casinos in Detroit would have an incentive to promote online gaming at the expense of brick-and-mortar play due to the lower tax rate of online gaming. As noted above, the strength of this incentive would be affected by any non-gaming revenue a casino expected from brick-and-mortar casino patrons.

The bill includes a specified tax revenue minimum of $179.0 million for the City. If the City failed to generate $179.0 million from its wagering tax distribution and internet gaming distribution, MGCB would be required to distribute the difference from the Internet Gaming Fund. The amount of revenue the City received from its internet gaming tax and additional Internet Gaming Fund distribution could not exceed 55% of the total internet gaming tax imposed in the fiscal year. Whether or not the floor could be satisfied in any given year would be a function of combined revenues from the wagering taxes and available revenues in the Internet Gaming Fund.

As written, the calculation for the $179.0 million fails to include the development agreement revenues and the additional 1% wagering tax dedicated to Detroit under section 12(7) of the Michigan Gaming Control and Revenue Act, 1997 PA 69, MCL 432.212. Therefore, it is possible that the Internet Gaming Fund would have to allocate funds to the City to make up the calculated shortfall even in a scenario where there was no substitution effect and the internet gaming taxes were considered entirely new revenue.

Tribal Gaming – Payments to the State of Michigan

Tribal casino payments to the State of Michigan under the Tribal-State Compacts are made directly to the Michigan Strategic Fund and Michigan Economic Development Corporation (MSF/MEDC). Any fiscal impact would depend on the negotiated terms related to online gaming revenue sharing payments and the decisions made regarding revenue sharing payments to the state. Of the 12 tribes, 6 tribes do not currently make revenue sharing payments to the state. The other 6 tribes pay between 4% and 12% of net win. Payments to MSF/MEDC totaled $57.3 million in 2017.

If the tribes that currently do not make revenue sharing payments to the state negotiate a revenue sharing agreement for online gaming, the state would realize increased revenues. However, the magnitude and purpose of those revenues for the state would depend on the terms of the negotiated compact.

Any fiscal impact related to tribes that currently make revenue sharing payments to the state would depend on the percentage of the online gaming payment agreed upon and the substitution effect of online gaming versus brick-and-mortar casino gaming.

Alternatively, tribal casinos that currently make revenue sharing payments to MSF/MEDC could choose to withhold payments if they deemed online gaming to be an expansion of gaming. Each tribe would have to determine whether revenues generated from online gaming would exceed revenues saved from withholding state payments.

It is not known how much of the internet gaming market tribal casinos could acquire. Increased internet gaming market share could further reduce SAF and City revenues.

Tribal Gaming – Payments to Local Units of Government

The provisions of the bill likely would result in reduced tribal casino payments to local units of government by an unknown amount. Any fiscal impact would depend on the substitution

effect. All tribal casinos make payments equal to 2% of net win to local units of government in their defined regional area. These payments totaled $29.7 million in 2017. These payments cannot be withheld for an expansion of gaming violation of the Tribal-State Compacts. From the 8% tax rate levied on internet gaming offered by the tribal casinos, 75% must be allocated in the Internet Gaming Fund and 25% must be allocated to the Michigan Strategic Fund.

Michigan Transportation Fund

The bill would increase revenues to the Michigan Transportation Fund (MTF) by an unknown amount. The bill directs that 5% of the tax revenues received be deposited in the MTF established in section 10 of 1951 PA 51 ("Act 51") to be distributed in accordance with the provisions of section 10(1)(*l*) of Act 51. The MTF is the primary collection and distribution fund for state restricted transportation revenue. The Act 51 distribution provisions referenced in the bill provide for the distribution of net MTF revenue as follows: 39.1% to the State Trunkline Fund (STF); 39.1% to county road commissions; 21.8% to cities and villages.

As provided by section 11 of Act 51, the STF is used for construction and preservation of the state trunkline highway system as well as administration of the Michigan Department of Transportation. The MTF distributions to county road commissions and to cities and villages are used primarily for the preservation of local road systems as provided by sections 12 and 13 of Act 51.

The amount of internet gaming tax revenue that would be credited to the MTF would depend on the total internet gaming tax revenue generated, which in turn would depend on adjusted gross receipts identified and taxed from online gaming.

Administration and Enforcement

The bill would create a new division within the Michigan Gaming Control Board. This would increase costs associated with staffing, office space, information technology, and other administrative, enforcement, audit, and regulatory costs. The extent of these costs is unknown. However, the bill would authorize the licensing and application fees levied on internet gaming licensees and vendors to be used to cover administrative expenses. In addition, 55% of the funds collected under the internet gaming tax is deposited in the Internet Gaming Fund in part for regulation and enforcement. Presumably, the funds collected and allocated for administration under the bill would be sufficient to cover necessary expenses related to administration and enforcement of the provisions of the bill.

Compulsive Gaming Prevention Fund

The bill would increase revenues for the Compulsive Gaming Prevention Fund by $1.0 million annually due to the required deposit from the Internet Gaming Fund created under the bill.

Impact on the Judiciary and/or State and Local Corrections

The bill would have an indeterminate fiscal impact on the state's correctional system and on local court systems. Information is not available on the number of persons who might be convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly $38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $3,700 per supervised offender in the same year.

Civil fines would increase revenues going to the state Justice System Fund, which supports the Legislative Retirement System, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and various justice-related endeavors in the judicial branch.

The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

A representative of Greektown Casino testified in support of the bills. (3-12-19)

Representatives of the following organizations testified in support of House Bill 4311 (3-12-19):

Fan Duel and Draft Kings
MGM Grand Detroit
GEOComply
The Stars Group

The following organizations indicated support for the bills (3-12-19):

Michigan Gaming Control Board
Michigan Thoroughbred Owners and Breeders Association
Michigan Chamber of Commerce
City of Detroit

The following organizations indicated support for House Bills 4311 and 4312 (3-12-19):

Gun Lake Tribe
Pokagon Band of Potawatomi

iDEA Growth (iDevelopment and Economic Association) indicated support for House Bill 4311. (3-12-19)

MGM Grand Detroit indicated support for House Bill 4312. (3-12-19)

The Coalition to Stop Internet Gaming indicated opposition to House Bill 4311. (3-12-19)

Legislative Analysts: Jenny McInerney
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Fiscal Analysts: Ben Gielczyk
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

HOUSE BILL No. 4323

March 12, 2019, Introduced by Rep. Garrett and referred to the Committee on Regulatory Reform.

A bill to amend 1931 PA 328, entitled

"The Michigan penal code,"

(MCL 750.1 to 750.568) by adding section 310d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 310D. THIS CHAPTER DOES NOT APPLY TO GAMBLING CONDUCTED UNDER THE LAWFUL INTERNET GAMING ACT.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. ____ or House Bill No. 4311 (request no. 01428'19) of the 100th Legislature is enacted into law.

HOUSE BILL No. 4323

HOUSE BILL No. 4311

March 7, 2019, Introduced by Rep. Iden and referred to the Committee on Regulatory Reform.

A bill to create the lawful internet gaming act; to impose requirements for persons to engage in internet gaming; to create the division of internet gaming; to provide for the powers and duties of the division of internet gaming and other state governmental officers and entities; to impose fees; to impose tax and other payment obligations on the conduct of licensed internet gaming; to create the internet gaming fund; to prohibit certain acts in relation to internet gaming and to prescribe penalties for those violations; to require the promulgation of rules; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "lawful internet gaming act".

HOUSE BILL No. 4311

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

(a) Operating, conducting, and offering for play internet games over the internet involves gaming activity that already occurs throughout this state.

(b) This act is consistent and complies with the unlawful internet gambling enforcement act of 2006, 31 USC 5361 to 5367, and specifically authorizes use of the internet to place, receive, or otherwise knowingly transmit a bet or wager if that use complies with this act and rules promulgated under this act.

(c) This act is consistent and complies with the state constitution of 1963 by ensuring that the internet may be used to place wagers only on games of skill or chance that may be lawfully played in this state and that internet gaming is only conducted by persons who are lawfully operating casinos in this state.

(d) In order to protect residents of this state who wager on games of chance or skill through the internet and to capture revenues generated from internet gaming, it is in the best interest of this state and its citizens to regulate this activity by authorizing and establishing a secure, responsible, fair, and legal system of internet gaming.

Sec. 3. As used in this act:

(a) "Authorized participant" means an individual who has a valid internet wagering account with an internet gaming operator and is at least 21 years of age.

(b) "Board" means the Michigan gaming control board created under section 4 of the Michigan gaming control and revenue act,

1996 IL 1, MCL 432.204.

(c) "Casino" means a building or buildings in which gaming is lawfully conducted under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226, or in which class III gaming is lawfully conducted by an Indian tribe under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission.

(d) "Class II gaming" means that term as defined in 25 USC 2703.

(e) "Class III gaming" means that term as defined in 25 USC 2703.

(f) "Compact" means a tribal-state compact governing the conduct of gaming activities that is negotiated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat 2467.

(g) "Division" means the division of internet gaming established under section 5.

(h) "Fund" means the internet gaming fund created under section 16.

(i) "Gross gaming revenue" means the total of all internet wagers received by an internet gaming operator, less the total of all winnings paid out to authorized participants by the internet gaming operator, during the accounting period. For purposes of this subdivision, internet wagers received by an internet gaming operator do not include the monetary value of free play used by authorized participants.

(j) "Indian lands" means that term as defined in 25 USC 2703.

(k) "Indian tribe" means that term as defined in 25 USC 2703

and any instrumentality, political subdivision, or other legal entity through which an Indian tribe operates its existing casino.

(*l*) "Institutional investor" means a person that is any of the following:

(*i*) A retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees.

(*ii*) An employee benefit plan or pension fund that is subject to the employee retirement income security act of 1974, Public Law 93-406.

(*iii*) An investment company registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64.

(*iv*) A collective investment trust organized by a bank under 12 CFR part 9.

(*v*) A closed end investment trust.

(*vi*) A chartered or licensed life insurance company or property and casualty insurance company.

(*vii*) A chartered or licensed financial institution.

(*viii*) An investment advisor registered under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(*ix*) Any other person that the division determines through rulemaking should be considered to be an institutional investor for reasons consistent with this act.

(m) "Internet" means the international computer network of interoperable packet-switched data networks, inclusive of such additional technological platforms as mobile, satellite, and other electronic distribution channels approved by the division.

(n) "Internet game" means a game of skill or chance that is

offered for play through the internet in which an individual wagers money or something of monetary value for the opportunity to win money or something of monetary value. For purposes of this definition, free plays or extended playing time that is won on a game of skill or chance that is offered through the internet is not something of monetary value. Internet game includes gaming tournaments conducted via the internet in which individuals compete against one another in 1 or more of the games authorized by the division or in approved variations or composites as authorized by the division.

(o) "Internet gaming" means operating, conducting, or offering for play an internet game.

(p) "Internet gaming operator" means a person that is issued an internet gaming license from the division to operate, conduct, or offer internet gaming.

(q) "Internet gaming platform" means an integrated system of hardware, software, and servers through which an internet gaming operator operates, conducts, or offers internet gaming.

(r) "Internet gaming vendor" means a person that provides to an internet gaming operator goods, software, or services that directly affect wagering, play, and results of internet games offered under this act, including goods, software, or services necessary to the acceptance, operation, administration, or control of internet wagers, internet games, internet wagering accounts, or internet gaming platforms. Internet gaming vendor does not include a person that provides to an internet gaming operator only such goods, software, or services that it also provides to others for

purposes not involving internet gaming, including, but not limited to, a payment processor or a geolocation service provider.

(s) "Internet wager" means money or something of monetary value risked on an internet game.

(t) "Internet wagering" means risking money or something of monetary value on an internet game.

(u) "Internet wagering account" means an electronic ledger in which all of the following types of transactions relative to an authorized participant are recorded:

(*i*) Deposits.

(*ii*) Withdrawals.

(*iii*) Internet wagers.

(*iv*) Monetary value of prizes.

(*v*) Service or other transaction-related charges authorized by the authorized participant, if any.

(*vi*) Adjustments to the account.

(v) "Person" means an individual, partnership, corporation, association, limited liability company, Indian tribe, or other legal entity.

(w) "Prizes" includes both monetary and nonmonetary prizes received directly or indirectly by an authorized participant from an internet gaming operator as a direct or indirect result of internet wagering. The value of a nonmonetary prize is the actual cost of the prize.

(x) "Winnings" includes all of the following:

(*i*) The total monetary value of prizes received by authorized participants.

(*ii*) Stakes returned to authorized participants.

(*iii*) Other amounts credited to authorized participants' internet wagering accounts, including the monetary value of loyalty points, and other similar complimentaries and incentives, not including free play, granted to authorized participants as a result of participation in internet games.

Sec. 4. (1) Internet gaming may be conducted only to the extent that it is conducted in accordance with this act.

(2) An internet wager received by an internet gaming operator is considered to be gambling or gaming that is conducted in the internet gaming operator's casino located in this state, regardless of the authorized participant's location at the time the participant initiates or otherwise places the internet wager.

(3) A law that is inconsistent with this act does not apply to internet gaming as provided for by this act.

(4) This act does not apply to any of the following:

(a) Lottery games offered by the bureau of lottery under the McCauley-Traxler-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to 432.47.

(b) Class II and Class III gaming conducted exclusively on Indian lands by an Indian tribe under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission. For purposes of this subdivision, gaming is conducted exclusively on Indian lands only if the individual who places the wager is physically present on Indian lands when the wager is initiated and the wager is received or otherwise made on equipment that is physically located on those

Indian lands, and the wager is initiated, received, or otherwise made in conformity with the safe harbor requirements described in 31 USC 5362(10)(C).

(c) A fantasy contest conducted under the fantasy contests consumer protection act.

(5) Unless licensed as an internet gaming operator under this act, a person shall not aggregate computers or other internet access devices in a place of public accommodation in this state, including a club or other association, to enable multiple players to simultaneously play an internet game.

(6) For purposes of this act, the intermediate routing of electronic data in connection with internet wagering, including routing across state lines, does not determine the location or locations in which the wager is initiated, received, or otherwise made.

Sec. 5. (1) The division of internet gaming is established in the board. The division has the powers and duties specified in this act and all other powers necessary to enable it to fully and effectively execute this act to administer, regulate, and enforce the system of internet gaming established by this act.

(2) The division has jurisdiction over every person licensed by the division and may take enforcement action against a person that is not licensed by the division that offers internet gaming in this state.

(3) The division may enter into agreements with other jurisdictions, including Indian tribes, to facilitate, administer, and regulate multijurisdictional internet gaming by internet gaming

operators to the extent that entering into the agreement is consistent with state and federal laws and if the gaming under the agreement is conducted only in the United States.

(4) The division may permit internet gaming operators licensed by the division to accept internet wagers under this act on any amateur or professional sporting event or contest.

Sec. 6. (1) The division may issue an internet gaming license only to an applicant that is either of the following:

(a) A person that holds a casino license under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(b) An Indian tribe that lawfully conducts class III gaming in a casino located in this state under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission.

(2) The division shall issue an internet gaming license to an applicant described in subsection (1) after receiving the application described in subsection (4) or (5), as applicable, and the application fee, if the division determines that the internet gaming proposed by the applicant complies with this act and the applicant is otherwise eligible and suitable. An applicant is eligible if it meets the requirements set forth in subsection (1)(a) or (b). It is the burden of the applicant to establish by clear and convincing evidence its suitability as to character, reputation, integrity, business probity, and financial ability. The application or enforcement of this subsection by the division must not be arbitrary, capricious, or contradictory to the express provisions of this act. In evaluating the eligibility and

suitability of an applicant under the standards provided in this act, the division shall establish and apply the standards to each applicant in a consistent and uniform manner. In determining whether to grant a license to an applicant, the division may request and consider any or all of the following information from the applicant as a factor in the determination:

(a) Whether the applicant has adequate capitalization and the financial ability and the means to develop, construct, operate, and maintain the proposed internet gaming platform and to offer and conduct internet gaming in accordance with this act and the rules promulgated by the division.

(b) Whether the applicant has the financial ability to purchase and maintain adequate liability and casualty insurance and to provide an adequate surety bond.

(c) Whether the applicant has adequate capitalization and the financial ability to responsibly pay off its secured and unsecured debts in accordance with its financing agreements and other contractual obligations.

(d) Whether the applicant has a history of material noncompliance with casino or casino-related licensing requirements or compacts with this state or any other jurisdiction, where the noncompliance resulted in enforcement action by the body having jurisdiction over the applicant.

(e) Whether the applicant has been indicted for, charged with, arrested for, or convicted of, pleaded guilty or nolo contendere to, forfeited bail concerning, or had expunged any criminal offense under the laws of any jurisdiction, either felony or misdemeanor,

not including traffic violations, regardless of whether the offense has been expunged, pardoned, or reversed on appeal or otherwise. The division may consider mitigating factors, and, for an applicant described in subsection (1)(b), shall give deference to whether the applicant has otherwise met the requirements of the applicant's gaming compact for licensure, as applicable.

(f) Whether the applicant has filed, or had filed against it, a proceeding for bankruptcy or has ever been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt.

(g) Whether the applicant has a history of material noncompliance with any regulatory requirements in this state or any other jurisdiction where the noncompliance resulted in an enforcement action by the regulatory agency having jurisdiction over the applicant.

(h) Whether at the time of application the applicant is a defendant in litigation involving the integrity of its casino business practices.

(3) An internet gaming license issued under this act is valid for the 5-year period after the date of issuance and, if the division determines that the licensee continues to meet the eligibility and suitability standards under this act, is renewable for additional 5-year periods.

(4) A person described in subsection (1)(a) may apply to the division for an internet gaming license to offer internet gaming as provided in this act. The application must be made on forms provided by the division and include the information required by

the division.

(5) A person described in subsection (1)(b) may apply to the division for an internet gaming license to offer internet gaming as provided in this act. The application must be made on forms provided by the division that require only the following information:

(a) The name and location of any of the applicant's casinos.

(b) The tribal law, charter, or any other organizational document of the applicant and other governing documents under which the applicant operates any of its casinos.

(c) Detailed information about the primary management officials of the applicant's casinos who will have management responsibility for the applicant's internet gaming operations.

(d) The current facility license for the applicant's casinos.

(e) The applicant's current tribal gaming ordinance.

(f) The gaming history and experience of the applicant in the United States and other jurisdictions.

(g) Financial information, including copies of the last independent audit and management letter submitted by the applicant to the National Indian Gaming Commission under 25 USC 2710(b)(2)(C) and (D) and 25 CFR parts 271.12 and 271.13.

(h) The total number of gaming positions, including, but not limited to, electronic gaming devices and table games, at each of the applicant's casinos.

(6) An initial application for an internet gaming license must be accompanied by an application fee of $100,000.00. The rules promulgated under section 10 may include provisions for the refund

of an application fee, or the portion of an application fee that has not been expended by the division in processing the application, and the circumstances under which the fee will be refunded.

(7) The division shall keep all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the division in the course of its review or investigation of an application for an internet gaming license or renewal of an internet gaming license confidential and shall use that material only to evaluate the applicant for an internet gaming license or renewal. The materials described in this subsection are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

(8) An application under this section must be submitted and considered in accordance with this act and any rules promulgated under this act.

(9) An internet gaming operator shall pay a license fee of $200,000.00 to the division at the time the initial internet gaming license is issued and $100,000.00 each year after the initial license is issued.

(10) The division shall deposit all application and license fees paid under this act into the fund.

(11) An institutional investor that holds for investment purposes only less than 30% of the equity of an applicant under this section is exempt from the licensure requirements of this act.

Sec. 7. (1) The division shall condition the issuance, maintenance, and renewal of an internet gaming license to a person

described in section 6(1)(b) on the person's compliance with all of the following conditions:

(a) The person complies with this act and rules promulgated by the division pertaining to all of the following:

(*i*) The types of and rules for playing internet games that internet gaming operators may offer under this act.

(*ii*) Technical standards, procedures, and requirements for the acceptance, by the person, of internet wagers initiated or otherwise made by individuals located in this state who are not physically present on the person's Indian lands in this state at the time the wager is initiated or otherwise made.

(*iii*) Procedures and requirements for the acceptance, by the person, of internet wagers initiated or otherwise made by individuals located in other jurisdictions, if the division authorizes multijurisdictional gaming as provided in this act.

(*iv*) Those requirements set forth in section 11.

(b) The person adopts and maintains technical standards for internet gaming platforms, systems, and software that are consistent with the standards adopted by the division under section 10.

(c) The person maintains 1 or more mechanisms on the internet gaming platform utilized by the person that are designed to reasonably verify that an authorized participant is 21 years of age or older and that internet wagering is limited to transactions that are initiated and received or otherwise made by an authorized participant located in this state or, if the division authorizes multijurisdictional internet gaming as provided in this act,

another jurisdiction in the United States authorized by the multijurisdictional agreement.

(d) The person adopts and maintains responsible gaming measures consistent with those described in section 12.

(e) The person continues to maintain and operate in this state a casino offering class III gaming and the casino contains not less than 50% of the gaming positions that were in place as of the effective date of this act.

(f) The person pays to this state 8% of the gross gaming revenue received by that person from all internet gaming it conducts under this act as an internet gaming operator, and the person makes the payments within the time period described in section 14(2).

(g) The person agrees to and timely provides, on written request of the division, books and records directly related to its internet gaming operations for the purpose of permitting the division to verify the calculation of the payments under subdivision (f).

(h) The person provides a waiver of sovereign immunity to the division for the sole and limited purpose of consenting to both of the following:

(*i*) The jurisdiction of the division to the extent necessary and for the limited purpose of providing a mechanism for the division to do all of the following:

(A) Issue, renew, and revoke the person's internet gaming license.

(B) Enforce the payment obligations set forth in this section

and section 14.

(C) Regulate and enforce the provisions of this act described in sections 10(a), (b), (d) to (g), 11, 12(4) and (5), and 13.

(D) Inspect the person's internet gaming operation and records to verify that the person is conducting its internet gaming operation in conformity with the conditions prescribed in this section.

(E) Assess fines or monetary penalties for violations of the provisions or rules referred to in sub-subparagraph (C).

(F) Enforce the payment of internet gaming license fees described in section 6(9).

(*ii*) The exclusive jurisdiction of the courts of this state, and expressly waiving the exhaustion of tribal remedies, with venue in Ingham County, and any courts to which appeals from that venue may be taken, to permit the state to enforce administrative orders of the division, the person's obligation to make payments required under subdivision (f) and section 14, and to enforce collection of the judgments. Any judgment of monetary damages under this subparagraph is deemed limited recourse obligations of the person and does not impair any trust or restricted income or assets of the person.

(2) This state, acting through the governor, shall, at the request of any Indian tribe, negotiate any amendments to an Indian tribe's compact necessary to ensure compliance with this act and any applicable federal laws. If the governor fails to enter into negotiations with any Indian tribe, or fails to negotiate in good faith with respect to any request, the Indian tribe may initiate a

cause of action against the governor in his or her official capacity in either state court or in federal court and obtain those remedies as authorized in 25 USC 2710(d)(7).

(3) The division must exercise its limited direct regulatory and enforcement authority in a manner that is not arbitrary, capricious, or contradictory to this act. Notwithstanding anything in this act to the contrary, this act only regulates internet gaming as provided in this act and does not extend to the division, or any other agency of this state, any jurisdiction or regulatory authority over any aspect of any gaming operations of an Indian tribe described in section 4(4)(b) beyond those rights granted to this state under the compact with the Indian tribe.

Sec. 8. (1) The division may issue an internet gaming vendor license to a person to provide goods, software, or services to internet gaming operators. A person that is not licensed under this section shall not provide goods, software, or services as an internet gaming vendor to an internet gaming operator.

(2) On application by an interested person, the division may issue a provisional internet gaming vendor license to an applicant for an internet gaming vendor license. A provisional license issued under this subsection allows the applicant for the internet gaming vendor license to conduct business with an internet gaming operator before the internet gaming vendor license is issued to the applicant. A provisional license issued under this subsection expires on the date provided in the license by the division.

(3) An internet gaming vendor license issued under subsection (1) is valid for the 5-year period after the date of issuance. An

internet gaming vendor license is renewable after the initial 5-year period for additional 5-year periods if the division determines that the internet gaming vendor continues to meet the eligibility and suitability standards under this act.

(4) A person may apply to the division for an internet gaming vendor license as provided in this act and the rules promulgated under this act.

(5) Except as otherwise provided in this section, an application under this section must be made on forms provided by the division and include the information required by the division. An Indian tribe that submits an application under this section shall provide only the information described in section 6(5).

(6) An application under this section must be accompanied by a nonrefundable application fee in an amount to be determined by the division, not to exceed $5,000.00.

(7) The division shall keep all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the division in the course of its review or investigation of an application for an internet gaming vendor license or renewal of an internet gaming vendor license confidential and shall use that material only to evaluate the applicant for an internet gaming vendor license or renewal. The materials described in this subsection are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

(8) Except as otherwise provided in this subsection, an internet gaming vendor shall pay a license fee of $5,000.00 to the

division at the time an initial internet gaming vendor license is issued to the internet gaming vendor and $2,500.00 each year after the initial license is issued. An internet gaming vendor that provides to an internet gaming operator all or substantially all of an internet gaming platform shall pay a license fee of $100,000.00 to the division at the time the initial license is issued to the vendor and $50,000.00 each year after the initial license is issued.

(9) The division shall deposit all application and license fees paid under this act into the fund.

(10) An institutional investor that holds for investment purposes only less than 30% of the equity of an applicant under this section is exempt from the licensure requirements of this act.

Sec. 9. (1) The division has jurisdiction over and shall supervise all internet gaming operations governed by this act. The division may do anything necessary or desirable to effectuate this act, including, but not limited to, all of the following:

(a) Develop qualifications, standards, and procedures for approval and licensure by the division of internet gaming operators and internet gaming vendors.

(b) Decide promptly and in reasonable order all license applications and approve, deny, suspend, revoke, restrict, or refuse to renew internet gaming licenses and internet gaming vendor licenses. A party aggrieved by an action of the division denying, suspending, revoking, restricting, or refusing to renew a license may request a contested case hearing before the division. A request for hearing under this subdivision must be made to the division in

writing within 21 days after service of notice of the action by the division.

(c) Conduct all hearings pertaining to violations of this act or rules promulgated under this act.

(d) Provide for the establishment and collection of all applicable license fees, taxes, and payments imposed by this act and the rules promulgated under this act and the deposit of the applicable fees, taxes, and payments into the fund.

(e) Develop and enforce testing and auditing requirements for internet gaming platforms, internet wagering, and internet wagering accounts.

(f) Develop and enforce requirements for responsible gaming and player protection, including privacy and confidentiality standards and duties.

(g) Develop and enforce requirements for accepting internet wagers.

(h) Adopt by rule a code of conduct governing division employees that ensures, to the maximum extent possible, that persons subject to this act avoid situations, relationships, or associations that may represent or lead to an actual or perceived conflict of interest.

(i) Develop and administer civil fines for internet gaming operators and internet gaming vendors that violate this act or the rules promulgated under this act. A fine imposed under this subdivision must not exceed $5,000.00 per violation.

(j) Audit and inspect, on reasonable notice, books and records relevant to internet gaming operations, internet wagers, internet

wagering accounts, internet games, or internet gaming platforms, including, but not limited to, the books and records regarding financing and accounting materials held by or in the custody of an internet gaming operator or internet gaming vendor.

(k) Acquire by lease or by purchase personal property, including, but not limited to, any of the following:

(*i*) Computer hardware.

(*ii*) Mechanical, electronic, and online equipment and terminals.

(*iii*) Intangible property, including, but not limited to, computer programs, software, and systems.

(2) The division may investigate and may issue cease and desist orders and obtain injunctive relief against a person that is not licensed by the division that offers internet gaming in this state.

(3) The division shall keep all information, records, interviews, reports, statements, memoranda, and other data supplied to or used by the division in the course of any investigation of a person licensed under this act confidential and shall use that material only for investigative purposes. The materials described in this subsection are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

Sec. 10. Within 1 year after the effective date of this act, the division shall promulgate rules governing the licensing, administration, and conduct of internet gaming under this act. The division shall promulgate the rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The

rules may include only things expressly authorized by this act, including all of the following:

(a) The types of internet games to be offered, which must include, but need not be limited to, poker, blackjack, cards, slots, and other games typically offered at a casino.

(b) The qualifications, standards, and procedures for approval and licensure by the division of internet gaming operators and internet gaming vendors consistent with this act.

(c) Requirements to ensure responsible gaming.

(d) Technical and financial standards for internet wagering, internet wagering accounts, and internet gaming platforms, systems, and software or other electronic components integral to offering internet gaming.

(e) Procedures for conducting contested case hearings under this act.

(f) Requirements for multijurisdictional agreements entered into by the division with other jurisdictions, including qualifications, standards, and procedures for approval by the division of internet gaming vendors providing internet gaming platforms in connection with the agreements.

(g) Procedures and requirements for the acceptance, by an internet gaming operator, of internet wagers initiated or otherwise made by persons located in other jurisdictions, if the division authorizes multijurisdictional gaming as provided in this act.

Sec. 11. (1) An internet gaming operator shall require the internet gaming vendor providing its internet gaming platform to provide 1 or more mechanisms on the internet gaming platform that

the internet gaming operator uses that are designed to reasonably verify that an authorized participant is 21 years of age or older and that internet wagering is limited to transactions that are initiated and received or otherwise made by an authorized participant located in this state or, if the division authorizes multijurisdictional internet gaming as provided in this act, another jurisdiction in the United States authorized by the multijurisdictional agreement.

(2) An individual who wishes to place an internet wager under this act must satisfy the verification requirements under subsection (1) before the individual may establish an internet wagering account or make an internet wager on an internet game offered by an internet gaming operator.

(3) An internet gaming operator shall require the internet gaming vendor providing its internet gaming platform to include mechanisms on its internet gaming platform that are designed to detect and prevent the unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion.

(4) An internet gaming operator shall not knowingly authorize any of the following individuals to establish an internet wagering account or knowingly allow them to wager on internet games offered by the internet gaming operator, except if required and authorized by the division for testing purposes or to otherwise fulfill the purposes of this act:

(a) An individual who is less than 21 years old.

(b) An individual whose name appears in the division's

responsible gaming database.

(5) An internet gaming operator shall require the internet gaming vendor providing its internet gaming platform to display, on the internet gaming platform used by the internet gaming operator, in a clear, conspicuous, and accessible manner evidence of the internet gaming operator's internet gaming license issued under this act.

(6) An internet gaming operator shall not conduct internet gaming until 1 year after the effective date of this act.

Sec. 12. (1) The division may develop responsible gaming measures, including a statewide responsible gaming database identifying individuals who are prohibited from establishing an internet wagering account or participating in internet gaming offered by an internet gaming operator. The executive director of the board may place an individual's name in the responsible gaming database if any of the following apply:

(a) The individual has been convicted in any jurisdiction of a felony, a crime of moral turpitude, or a crime involving gaming.

(b) The individual has violated this act or another gaming-related law.

(c) The individual has performed an act or has a notorious or unsavory reputation such that the individual's participation in internet gaming under this act would adversely affect public confidence and trust in internet gaming.

(d) The individual's name is on a valid and current exclusion list maintained by this state or another jurisdiction in the United States.

(2) The division may promulgate rules for the establishment and maintenance of the responsible gaming database.

(3) An internet gaming operator, in a format specified by the division, may provide the division with names of individuals to be included in the responsible gaming database.

(4) An internet gaming operator shall require the internet gaming vendor providing its internet gaming platform to display, on the internet gaming platform used by the internet gaming operator, in a clear, conspicuous, and accessible manner the number of the toll-free compulsive gambling hotline maintained by this state and offer responsible gambling services and technical controls to authorized participants, consisting of both temporary and permanent self-exclusion for all internet games offered and the ability for authorized participants to establish their own periodic deposit and internet wagering limits and maximum playing times.

(5) An authorized participant may voluntarily prohibit himself or herself from establishing an internet wagering account with an internet gaming operator. The division may incorporate the voluntary self-exclusion list into the responsible gaming database and maintain both the self-exclusion list and the responsible gaming database in a confidential manner.

(6) The self-exclusion list and responsible gaming database established under this section are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

Sec. 13. (1) A person shall not do any of the following:

(a) Offer internet gaming for play in this state if the person

is not an internet gaming operator unless exempt from this act under section 4(4).

(b) Knowingly make a false statement on an application for a license to be issued under this act.

(c) Knowingly provide false testimony to the board or an authorized representative of the board while under oath.

(2) A person that violates subsection (1)(a) is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $100,000.00, or both.

(3) The division shall not issue a license under this act to a person that violates subsection (1).

(4) The attorney general or a county prosecuting attorney may bring an action to prosecute a violation of subsection (1)(a) in the county in which the violation occurred or in Ingham County.

Sec. 14. (1) Except for an internet gaming operator that is an Indian tribe, an internet gaming operator is subject to a tax of 8% on the gross gaming revenue received by the internet gaming operator. An internet gaming operator that is an Indian tribe is subject to the payment requirements under section 7(1)(f).

(2) An internet gaming operator shall pay the tax or payment, as applicable, under subsection (1) on a monthly basis. The payment for each monthly accounting period is due on the tenth day of the following month.

(3) No other tax, payment, or fee may be imposed on an internet gaming operator by this state or a political subdivision of this state for internet gaming conducted under this act. This subsection does not impair the contractual rights under an existing

development agreement between a city and an internet gaming operator that holds a casino license under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(4) In addition to payment of the tax and other fees as provided in this act, and to any payment required pursuant to an existing development agreement described in subsection (3), if a city has imposed a municipal services fee equal to 1.25% on a casino licensee, the city shall charge a 1.25% fee on the gross gaming revenues of an internet gaming operator that holds a casino license under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226, whose casino is in that city.

Sec. 15. (1) The tax imposed under section 14 must be allocated as follows:

(a) Thirty percent to the city in which the internet gaming licensee's casino is located, for use in connection with the following:

(*i*) The hiring, training, and deployment of street patrol officers in that city.

(*ii*) Neighborhood development programs designed to create jobs in that city with a focus on blighted neighborhoods.

(*iii*) Public safety programs such as emergency medical services, fire department programs, and street lighting in that city.

(*iv*) Anti-gang and youth development programs in that city.

(*v*) Other programs that are designed to contribute to the improvement of the quality of life in that city.

(*vi*) Relief to the taxpayers of the city from 1 or more taxes

or fees imposed by the city.

(*vii*) The costs of capital improvements in that city.

(*viii*) Road repairs and improvements in that city.

(b) Fifty-five percent to the state to be deposited in the fund.

(c) Five percent to be deposited in the state school aid fund established under section 11 of article IX of the state constitution of 1963.

(d) Five percent to be deposited in the Michigan transportation fund created under section 10 of 1951 PA 51, MCL 247.660, to be disbursed as provided in section 10(1)(*l*) of 1951 PA 51, MCL 247.660.

(e) Five percent to the Michigan agriculture equine industry development fund created under section 20 of the horse racing law of 1995, 1995 PA 279, MCL 431.320. However, if the 5% allocated under this subdivision to the Michigan agriculture equine industry development fund created under section 20 of the horse racing law of 1995, 1995 PA 279, MCL 431.320, exceeds $3,000,000.00 in a fiscal year, the amount in excess of $3,000,000.00 must be allocated and deposited in the fund created under section 16.

(2) By December 31, 2020 and each December 31 after that date, if the combined amount of money received in the preceding fiscal year by the city in which the internet gaming operator licensee's casino is located from money allocated under subsection (1)(a) and from the wagering tax allocated under section 12(3) of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.212, is less than $179,000,000.00, the board shall distribute from the fund to

the city in which the internet gaming operator licensee's casino is located an amount equal to the difference between $179,000,000.00 and the combined amount of money the city in which the internet gaming operator licensee's casino is located received in the preceding fiscal year from money allocated under subsection (1)(a) and from the wagering tax allocated under section 12(3) of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.212. However, the total amount the city in which the internet gaming operator licensee's casino is located receives for the preceding fiscal year under subsection (1)(a) and this subsection must not be more than 55% of the total tax imposed under section 14 in the fiscal year.

Sec. 15a. Any payments under section 7(1)(f) must be allocated as follows:

(a) Seventy-five percent to this state to be deposited in the fund.

(b) Twenty-five percent to the Michigan strategic fund created under section 5 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2005.

Sec. 16. (1) The internet gaming fund is created in the state treasury.

(2) The state treasurer may receive money or other assets required to be paid into the fund under this act or from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) The board is the administrator of the fund for auditing

purposes.

(4) Except as otherwise provided in section 15(2), the board shall expend money from the fund, on appropriation, for all of the following:

(a) Each year, $1,000,000.00 to the compulsive gaming prevention fund created in section 3 of the compulsive gaming prevention act, 1997 PA 70, MCL 432.253.

(b) The board's costs of regulating and enforcing internet gaming under this act.

Sec. 17. This act does not authorize the construction or operation of a casino that was not constructed or operating before the effective date of this act.

Enacting section 1. This act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This act does not take effect unless Senate Bill No. ____ or House Bill No. 4308 (request no. 01480'19) of the 100th Legislature is enacted into law.

HOUSE BILL No. 4312

March 7, 2019, Introduced by Reps. Byrd and Iden and referred to the Committee on Regulatory Reform.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

by amending section 14d of chapter XVII (MCL 777.14d), as amended by 2016 PA 272.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XVII

Sec. 14d. This chapter applies to the following felonies enumerated in chapters 422 to 432 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
431.257	Pub trst	G	Horse racing — delivery of unclaimed winnings	2
431.307(8)	Pub trst	G	Horse racing — testifying falsely to commissioner while under oath	4

HOUSE BILL No. 4312

1	431.317(9)	Pub trst	E	Horse racing — accepting wagers on live or simulcast horse races without a license	5
2	431.330(6)	Pub trst	G	Horse racing — administering a drug that could affect racing condition	5
3	431.332	Pub trst	G	Horse racing — influencing or attempting to influence result of race	5
4	432.30	Property	G	Lottery — forgery of tickets	5
5	432.218	Pub ord	D	Casino gaming offenses	10
6	**432.313**	**PUB ORD**	**D**	**INTERNET GAMING OFFENSES**	**10**

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. ____ or House Bill No. 4311 (request no. 01428'19) of the 100th Legislature is enacted into law.