Legislative Analysis

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BANKRUPTCY TRUSTS

House Bill 5421 (H-1) As Reported from Committee
Sponsor: Rep. Laura Cox
Committee: Financial Liability Reform

Complete to 3-23-16

SUMMARY:

House Bill 5421 would amend the Public Employee Health Care Fund Investment Act to codify the process for removing bankruptcy trust trustees, establish trust meeting requirements, and cap compensation for trustees. The bill is described in more detail below.

Removing a Trustee
The bill would create the following mechanisms for a removing a trustee:

- The trust's appointing authority (identified by the court or plan of adjustment) would be able to remove a trustee without cause with 30 days' notice and could remove a trustee immediately for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.
- The trust's board of trustees could remove another trustee with a 2/3 vote of the board after 30 days' notice if they determine that allowing the trustee to serve could cause a loss of confidence in the Board or immediately for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.
- The removal of board members could be initiated by either a petition signed by at least 20% of the trust beneficiaries or by a proposal by an organization or union that represents at least 50% of the trust beneficiaries, and the petition or proposal would have to be approved by a majority of voting trust beneficiaries.

Trust Duties
The bill would require that the board of trustees meet at least quarterly and that the board's business must be conducted at a public meeting in compliance with the Open Meetings Act. The board would have to prepare an annual summary of the trust's administrative expenditures and expenditures related to trustee conference attendance and send the annual report to each trust beneficiary by mail.

Trustee Compensation
If a bankruptcy trust provides trustees with compensation, the bill would establish the following conditions:

- A trustee could only be compensated for attending a meeting in person, unless the board, by a vote of 2/3, allows a member to be compensated for attending via phone.
- A trustee's compensation must not exceed any cap imposed under a court order or plan of adjustment.

- A nonindependent trustee's (a trust beneficiary or former employee of the public corporation that funded the trust) compensation must be reasonable for services rendered.
- The per-meeting stipend for a trustee would be capped at $25.00 per hour. However, the board could increase the cap with a 2/3 vote. A nonvoting ex officio member would get half that hourly rate.
- The number of trustee compensated hours would be capped at 45 per month for the trust's first 2 years of existence, and 24 hours per month thereafter.
- If the public corporation has a retirement system which compensates its board members equally whether an active member or retired, then the trust shall compensate a trustee at no less than the compensation given to the elected retiree board member.
- An independent professional trustee could, with the vote of 2/3 of the board, be paid an annual retainer fee paid in equal monthly installments.
- The board could, with a majority vote, lower or eliminate compensation for board members.
- A board member could decline compensation.
- A board member who works full-time for the public corporation responsible for funding the trust or by an employee organization whose members are beneficiaries would serve without compensation.
- A board member may be reimbursed for actual and necessary expenses incurred in performance of duties, and the board could, with a 2/3 vote, reimburse members for costs related to attending an education conference.
- The compensation of board members could be revised as initiated by either a petition signed by at least 20% of the trust beneficiaries or by a proposal by an organization or union that represents at least 50% of the trust beneficiaries, and the petition or proposal would have to be approved by a majority of voting trust beneficiaries.

FISCAL IMPACT:

The bill would have no fiscal impact on state or local units of government. The bankruptcy trust is a voluntary employee beneficiary association (VEBA) which is a separate, tax-exempt entity, and any changes to the trust's expenditures for trustee compensation would affect the trust fund balance and the future payouts to trust beneficiaries.

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