



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5421 (Substitute H-1 as passed by the House)
Sponsor: Representative Laura Cox
House Committee: Financial Liability Reform
Senate Committee: Appropriations

Date Completed: 5-17-16

CONTENT

The bill would amend the Public Employee Health Care Fund Investment Act to do the following:

- **Define various terms related to the plan for adjustment for the City of Detroit.**
- **Specify that a trustee of a bankruptcy trust would serve at the pleasure of the appointing authority.**
- **Specify conditions under which the authority could remove a trustee, or the board of trustees could remove a trustee.**
- **Establish limits and requirements pertaining to the compensation of a member of the board of trustees.**

The proposed definitions are as follows:

- "Bankruptcy trust" would mean a trust created by a court order, including a plan for adjustment.
- "Bankruptcy trust beneficiary" would mean an individual who is eligible to receive health care benefits under a bankruptcy trust.
- "Board of trustees" or "board" would mean the governing board of a bankruptcy trust.
- "Independent professional trustee" would mean a person who has expert knowledge or experience with respect to economics, investments, administration of benefit plans, and other items, and excluding a bankruptcy trust beneficiary, a current or former employee of the public corporation responsible for funding the bankruptcy trust, and an employee of an affiliate of the public corporation (a county, city, village, township, authority, district, board, or commission in the State).

Board of Trustees of a Bankruptcy Trust

The bill would allow the appointing authority (the authority identified by the court or by the plan for adjustment) to remove a bankruptcy trust trustee without cause after providing 30 days' notice, and to immediately remove a trustee for incompetence, dereliction of duty, or other good cause. The board of trustees, with a two-thirds vote and after 30 days' notice, could remove a trustee if the board determined that allowing the trustee to serve could cause loss of confidence in the administration of the bankruptcy trust, and could immediately remove a trustee for incompetence, dereliction of duty, or other good cause.

The bill would require a vacancy on the board of trustees to be filled in a manner provided by the court or plan for adjustment. The board of trustees would have to meet at least quarterly,

and business of the board would have to be conducted at a public meeting. Any writing of the board would be subject to the Freedom of Information Act.

The bill would require the board to prepare a summary annual report that included the trust's administrative expenditures and expenditures to a member of the board attending educational conferences that were paid by the bankruptcy trust. The board would have to send a copy of the annual report by first-class mail to each bankruptcy trust beneficiary.

In addition to the methods described above, the bill would allow the removal of a member of the board, or a change in the compensation of board members, if initiated by either of the following: a petition is signed by not less than 20% of the bankruptcy trust beneficiaries; or, a proposal submitted by an organization (including a union) representing not less than 50% of the bankruptcy trust beneficiaries.

The bill would require the retirement system administering the pension benefits of the bankruptcy trust beneficiaries to submit a ballot question proposing the removal of a member of the board of trustees, or a question changing the compensation paid to members of the board of trustees, to the trust beneficiaries at least 60 days after the petition or proposal was filed with the system. If a majority of the beneficiaries approved the ballot proposal, the board would be required to implement the proposal within 14 days after the election. The bill would require the beneficiaries or organization that filed a petition or proposal to pay the costs of conducting an election. If the proposal were approved, the individuals or organization could be reimbursed for the cost of conducting the election from funds in the bankruptcy trust.

Compensation of Trustees

The bill would allow a member of the board of trustees to receive compensation for attending a meeting only if attending in person; however, if two-thirds of the members voted to approve, a member could be compensated for attending a meeting via telephone. The compensation of a member of the board could not exceed the cap imposed under a court order or plan for adjustment. Compensation for a member who was a nonindependent trustee would have to be reasonable for the services rendered. An independent professional trustee could be paid an annual retainer fee if approved by two-thirds of the voting board members.

The bill would require the per-meeting stipend of a member of the board (other than a nonvoting ex officio member) to be calculated based on an hourly rate not to exceed \$25 per hour. A member could not receive more than 45 hours of compensation in any one month for the first two years after the establishment of a bankruptcy trust. After the first two years, a board member who was a beneficiary could not receive more than 24 hours of compensation in any one month. However, the board could increase the per-meeting stipend by a vote of two-thirds of the voting members and subject to the vote of the bankruptcy trust beneficiaries. (The per-meeting stipend for a nonvoting ex officio member would have to be calculated on an hourly rate, which would be 50% of the \$25 hourly rate, or \$12.50, paid to other board members.)

If the public corporation that was responsible for funding the bankruptcy trust sponsored a retirement system, a bankruptcy trust beneficiary who was a member of the board of trustees also were a member of the public corporation's retirement system, the retirement system's governing board included an elected retirant of the system, and the system compensated its board members as provided in the Public Employee Retirement Benefit Protection Act, the bill would require the bankruptcy trust to compensate the bankruptcy trust beneficiary who was a member of the board of trustees at not less than the compensation given to the elected retirant.

The bill would allow the board of trustees to lower or eliminate the compensation of members of the board, subject to a court order, and if approved by a majority vote. In addition, the bill

would allow a member of the board to decline compensation from the trust. Further, the bill would prohibit compensation for a member of the board who was a beneficiary and who was employed full-time by the public corporation that was responsible for funding the trust, or who was employed by an employee organization whose members were bankruptcy trust beneficiaries.

The bill would allow a member of the board of trustees to be reimbursed for actual and necessary expenses incurred in the performance of official duties while attending a meeting of the board. In addition, the bill would allow the board, with a two-thirds vote, to reimburse a member for the costs related to attending an educational conference if determined necessary.

MCL 38.1212 et al.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. However, the bill would provide for reimbursement to trustees for actual and necessary expenses incurred in the performance of their duties such as attending trustee board meetings. The bill also would allow reimbursement of related costs for attending an educational conference with a two-thirds vote of the board. The bill also specifies that the board could vote to increase, lower, or completely eliminate any reimbursements. In addition, the bill would allow a board member to decline any reimbursements if he or she so chose.

Any costs for reimbursements would be paid from the bankruptcy trust fund. The bankruptcy trust is a voluntary employee beneficiary association (VEBA) that is a separate, tax-exempt entity allowed under Federal tax laws. Any reimbursements (or election by a board to eliminate reimbursements) would have a direct fiscal impact on the trust fund's assets. Reimbursements would decrease the trust's assets while a decision by the board to disallow any reimbursements would increase the fund's assets. As noted above, reimbursements would be capped under the bill at \$25 per hour for board trustees and \$12.50 for ex-officio members. Additionally, the maximum number of hours per month that could be reimbursed would be set at 45 hours for the first two years and then 24 hours per month. The actual costs of reimbursements is indeterminate and dependent on the actual number of trustees and hours for which reimbursement would be requested.

Fiscal Analysts: Joe Carrasco
Kathryn Summers

S1516\S5421sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.