

SUBSTITUTE FOR  
HOUSE BILL NO. 5421

A bill to amend 1999 PA 149, entitled  
"Public employee health care fund investment act,"  
by amending section 2 (MCL 38.1212) and by adding sections 4a, 4b,  
and 4c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2. As used in this act:

2       (A) "BANKRUPTCY TRUST" MEANS A TRUST CREATED BY A COURT ORDER,  
3       INCLUDING A PLAN FOR ADJUSTMENT.

4       (B) "BANKRUPTCY TRUST BENEFICIARY" MEANS AN INDIVIDUAL WHO IS  
5       ELIGIBLE TO RECEIVE HEALTH CARE BENEFITS UNDER A BANKRUPTCY TRUST.

6       (C) "BOARD OF TRUSTEES" OR "BOARD" MEANS THE GOVERNING BOARD  
7       OF A BANKRUPTCY TRUST.

8       (D) ~~(a)~~ "Fund" means a public employee health care fund  
9       created ~~pursuant to~~ UNDER this act OR A COURT ORDER, INCLUDING A

1 **PLAN FOR ADJUSTMENT**, and used for the accumulation and investment  
 2 of funds for the purpose of funding health care for retired  
 3 employees of the public corporation.

4 (E) "INDEPENDENT PROFESSIONAL TRUSTEE" MEANS A PERSON THAT HAS  
 5 EXPERT KNOWLEDGE, EXTENSIVE EXPERIENCE, OR BOTH, WITH RESPECT TO  
 6 ECONOMICS, FINANCE, INSTITUTIONAL INVESTMENTS, ADMINISTRATION OF  
 7 PUBLIC OR PRIVATE HEALTH AND WELFARE BENEFIT PLANS, EXECUTIVE  
 8 MANAGEMENT, BENEFITS ADMINISTRATION, OR ACTUARIAL SCIENCE. AN  
 9 INDEPENDENT PROFESSIONAL TRUSTEE DOES NOT INCLUDE ANY OF THE  
 10 FOLLOWING:

11 (i) A BANKRUPTCY TRUST BENEFICIARY.

12 (ii) A CURRENT OR FORMER EMPLOYEE OF THE PUBLIC CORPORATION  
 13 THAT WAS RESPONSIBLE FOR FUNDING THE BANKRUPTCY TRUST.

14 (iii) AN EMPLOYEE OF AN AFFILIATE OF THE PUBLIC CORPORATION.

15 (F) ~~(b)~~-"Investment fiduciary" means a person ~~or persons~~ who  
 16 ~~do~~ DOES any of the following:

17 (i) Exercises any discretionary authority or control in the  
 18 investment of the fund's or trust's assets.

19 (ii) Renders investment advice to a fund or trust for a fee or  
 20 other direct or indirect compensation.

21 (G) "NONINDEPENDENT TRUSTEE" MEANS A BANKRUPTCY TRUST  
 22 BENEFICIARY OR A CURRENT OR FORMER EMPLOYEE OF THE PUBLIC  
 23 CORPORATION THAT WAS RESPONSIBLE FOR FUNDING THE BANKRUPTCY TRUST.

24 (H) "PLAN FOR ADJUSTMENT" MEANS A PLAN FOR THE ADJUSTMENT OF  
 25 DEBTS ENTERED AND APPROVED BY A FEDERAL BANKRUPTCY COURT FOR A  
 26 PUBLIC CORPORATION.

27 (I) ~~(e)~~-"Public corporation" means ~~any~~ A county, city,

1 village, township, authority, district, board, or commission in  
2 this state.

3 (J) ~~(d)~~—"Qualified person" means ~~a person or group of persons~~  
4 **AN INDIVIDUAL** who ~~are~~**IS** eligible to receive health care benefits  
5 and who ~~are~~**IS** designated as a qualified person by the public  
6 corporation.

7 (K) ~~(e)~~—"Trust" means a trust created under the authority of a  
8 state or federal law for the purpose of funding retiree health care  
9 benefits.

10 **SEC. 4A. (1) A TRUSTEE OF A BANKRUPTCY TRUST SERVES AT THE**  
11 **PLEASURE OF THE APPOINTING AUTHORITY. THE APPOINTING AUTHORITY MAY,**  
12 **AFTER PROVIDING 30 DAYS' NOTICE TO A TRUSTEE, REMOVE THE TRUSTEE**  
13 **WITHOUT CAUSE. THE APPOINTING AUTHORITY MAY IMMEDIATELY REMOVE A**  
14 **TRUSTEE FOR INCOMPETENCE, DERELICTION OF DUTY, MALFEASANCE,**  
15 **MISFEASANCE, OR NONFEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE. AS**  
16 **USED IN THIS SUBSECTION, "APPOINTING AUTHORITY" IS THE AUTHORITY**  
17 **IDENTIFIED BY THE COURT OR THE PLAN FOR ADJUSTMENT.**

18 (2) THE BOARD OF TRUSTEES, BY A VOTE OF 2/3 OF THE VOTING  
19 MEMBERS SERVING, MAY, AFTER PROVIDING 30 DAYS' NOTICE TO A TRUSTEE,  
20 REMOVE THE TRUSTEE IF THE BOARD DETERMINES THAT ALLOWING THE  
21 TRUSTEE TO SERVE COULD CAUSE LOSS OF CONFIDENCE IN THE  
22 ADMINISTRATION OF THE BANKRUPTCY TRUST AND THAT REMOVING THE  
23 TRUSTEE IS IN THE BEST INTEREST OF THE BANKRUPTCY TRUST  
24 BENEFICIARIES. THE BOARD, BY A VOTE OF 2/3 OF THE VOTING MEMBERS  
25 SERVING, MAY IMMEDIATELY REMOVE A TRUSTEE FOR INCOMPETENCE,  
26 DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR NONFEASANCE IN  
27 OFFICE, OR ANY OTHER GOOD CAUSE.

1 (3) IF THERE IS A VACANCY ON THE BOARD OF TRUSTEES, THE  
2 VACANCY MUST BE FILLED IN A MANNER PROVIDED BY THE COURT OR THE  
3 PLAN FOR ADJUSTMENT.

4 (4) THE BOARD OF TRUSTEES SHALL MEET AT LEAST QUARTERLY.

5 (5) THE BUSINESS THAT THE BOARD OF TRUSTEES MAY PERFORM SHALL  
6 BE CONDUCTED AT A PUBLIC MEETING OF THE BOARD HELD IN COMPLIANCE  
7 WITH THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

8 (6) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR  
9 RETAINED BY THE BOARD OF TRUSTEES IN THE PERFORMANCE OF AN OFFICIAL  
10 FUNCTION IS SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442,  
11 MCL 15.231 TO 15.246.

12 (7) THE BOARD OF TRUSTEES SHALL PREPARE A SUMMARY ANNUAL  
13 REPORT THAT INCLUDES THE BANKRUPTCY TRUST'S ADMINISTRATIVE  
14 EXPENDITURES AND EXPENDITURES RELATED TO A MEMBER OF THE BOARD  
15 ATTENDING EDUCATIONAL CONFERENCES THAT ARE PAID BY THE BANKRUPTCY  
16 TRUST, IF ANY. THE BOARD OF TRUSTEES SHALL SEND A COPY OF THE  
17 SUMMARY ANNUAL REPORT BY FIRST-CLASS MAIL TO EACH BANKRUPTCY TRUST  
18 BENEFICIARY AT THE BANKRUPTCY TRUST BENEFICIARY'S LAST KNOWN  
19 ADDRESS.

20 SEC. 4B. (1) SUBJECT TO A PLAN FOR ADJUSTMENT AND SECTION 4C,  
21 IF A BANKRUPTCY TRUST PROVIDES FOR THE COMPENSATION OF THE MEMBERS  
22 OF THE BOARD OF TRUSTEES, ALL OF THE FOLLOWING APPLY:

23 (A) A MEMBER OF THE BOARD MAY BE COMPENSATED ONLY FOR  
24 ATTENDING A MEETING OF THE BOARD IN PERSON. HOWEVER, BY A VOTE OF  
25 2/3 OF THE VOTING MEMBERS SERVING, A MEMBER MAY BE COMPENSATED FOR  
26 ATTENDING A MEETING TELEPHONICALLY.

27 (B) THE COMPENSATION OF A MEMBER OF THE BOARD MUST NOT EXCEED

1 THE CAP IMPOSED UNDER A COURT ORDER, INCLUDING A PLAN FOR  
2 ADJUSTMENT, IF ANY.

3 (C) FOR A MEMBER WHO IS A NONINDEPENDENT TRUSTEE, THE  
4 COMPENSATION MUST BE REASONABLE FOR THE SERVICES RENDERED IN THE  
5 PERFORMANCE OF HIS OR HER DUTIES.

6 (D) SUBJECT TO THE CAP DESCRIBED IN SUBDIVISION (B), THE PER-  
7 MEETING STIPEND OF A MEMBER OF THE BOARD OTHER THAN A NONVOTING EX  
8 OFFICIO MEMBER MUST BE CALCULATED BASED ON AN HOURLY RATE NOT TO  
9 EXCEED \$25.00 PER HOUR. FOR THE FIRST 2 YEARS AFTER THE  
10 ESTABLISHMENT OF A BANKRUPTCY TRUST, A MEMBER SHALL NOT RECEIVE  
11 MORE THAN 45 HOURS OF COMPENSATION IN ANY 1 MONTH. BEGINNING 2  
12 YEARS AFTER THE ESTABLISHMENT OF THE BANKRUPTCY TRUST, A MEMBER WHO  
13 IS A BANKRUPTCY TRUST BENEFICIARY MUST NOT RECEIVE MORE THAN 24  
14 HOURS OF COMPENSATION IN ANY 1 MONTH. SUBJECT TO THE CAP DESCRIBED  
15 IN SUBDIVISION (B), BY A VOTE OF 2/3 OF THE VOTING MEMBERS SERVING,  
16 AND SUBJECT TO THE VOTE OF BANKRUPTCY TRUST BENEFICIARIES DESCRIBED  
17 IN SECTION 4C, THE BOARD MAY INCREASE THE PER-MEETING STIPEND.

18 (E) SUBJECT TO THE CAP DESCRIBED IN SUBDIVISION (B), IF THE  
19 PUBLIC CORPORATION THAT WAS RESPONSIBLE FOR FUNDING THE BANKRUPTCY  
20 TRUST SPONSORS A RETIREMENT SYSTEM, A BANKRUPTCY TRUST BENEFICIARY  
21 WHO IS A MEMBER OF THE BOARD OF TRUSTEES IS ALSO A MEMBER OF THE  
22 RETIREMENT SYSTEM, THE RETIREMENT SYSTEM'S GOVERNING BOARD INCLUDES  
23 AN ELECTED RETIRANT OF THE RETIREMENT SYSTEM, AND THE RETIREMENT  
24 SYSTEM COMPENSATES ITS BOARD MEMBERS AS PROVIDED IN SECTION 8A(3)  
25 OF THE PUBLIC EMPLOYEE RETIREMENT BENEFIT PROTECTION ACT, 2002 PA  
26 100, MCL 38.1688A, THE BANKRUPTCY TRUST SHALL COMPENSATE THE  
27 BANKRUPTCY TRUST BENEFICIARY WHO IS A MEMBER OF THE BOARD OF

1 TRUSTEES AT NO LESS THAN THE COMPENSATION GIVEN TO THE ELECTED  
2 RETIRANT.

3 (F) FOR A NONVOTING EX OFFICIO MEMBER, THE PER-MEETING STIPEND  
4 MUST BE CALCULATED BASED ON AN HOURLY RATE. THE HOURLY RATE MUST BE  
5 50% OF THE HOURLY RATE PAID DESCRIBED IN SUBDIVISION (D).

6 (G) SUBJECT TO THE CAP DESCRIBED IN SUBDIVISION (B), BY A VOTE  
7 OF 2/3 OF THE VOTING MEMBERS SERVING, AN INDEPENDENT PROFESSIONAL  
8 TRUSTEE MAY BE PAID AN ANNUAL RETAINER FEE PAYABLE IN EQUAL MONTHLY  
9 INSTALLMENTS.

10 (H) SUBJECT TO A COURT ORDER, INCLUDING A PLAN FOR ADJUSTMENT,  
11 BY A MAJORITY VOTE OF VOTING MEMBERS SERVING, THE BOARD OF TRUSTEES  
12 MAY LOWER OR ELIMINATE THE COMPENSATION OF MEMBERS OF THE BOARD.

13 (I) A MEMBER OF THE BOARD MAY DECLINE COMPENSATION FROM THE  
14 BANKRUPTCY TRUST.

15 (J) A MEMBER OF THE BOARD WHO IS A BANKRUPTCY TRUST  
16 BENEFICIARY AND WHO IS EMPLOYED FULL-TIME BY THE PUBLIC CORPORATION  
17 THAT WAS RESPONSIBLE FOR FUNDING THE BANKRUPTCY TRUST OR BY AN  
18 EMPLOYEE ORGANIZATION WHOSE MEMBERS ARE BANKRUPTCY TRUST  
19 BENEFICIARIES SHALL SERVE WITHOUT COMPENSATION.

20 (2) A MEMBER OF THE BOARD OF TRUSTEES MAY BE REIMBURSED FOR  
21 HIS OR HER ACTUAL AND NECESSARY EXPENSES INCURRED IN THE  
22 PERFORMANCE OF HIS OR HER OFFICIAL DUTIES WHILE ATTENDING A MEETING  
23 OF THE BOARD. THE BOARD, BY A VOTE OF 2/3 OF THE VOTING MEMBERS  
24 SERVING, MAY REIMBURSE A MEMBER FOR THE COSTS RELATED TO ATTENDING  
25 AN EDUCATIONAL CONFERENCE IF THE BOARD DETERMINES THE CONFERENCE IS  
26 NECESSARY.

27 SEC. 4C. (1) IN ADDITION TO THE METHOD OF REMOVING A MEMBER OF

1 THE BOARD OF TRUSTEES AS PROVIDED IN SECTION 4A, THE REMOVAL OF A  
2 MEMBER OF THE BOARD MAY BE INITIATED BY EITHER OF THE FOLLOWING  
3 METHODS:

4 (A) A PETITION SIGNED BY NOT LESS THAN 20% OF THE BANKRUPTCY  
5 TRUST BENEFICIARIES.

6 (B) A PROPOSAL BY AN ORGANIZATION, INCLUDING, BUT NOT LIMITED  
7 TO, A UNION, THAT REPRESENTS NOT LESS THAN 50% OF THE BANKRUPTCY  
8 TRUST BENEFICIARIES.

9 (2) THE COMPENSATION OF MEMBERS OF THE BOARD OF TRUSTEES AS  
10 PROVIDED IN SECTION 4B MAY BE CHANGED BY EITHER OF THE METHODS  
11 DESCRIBED IN SUBSECTION (1).

12 (3) A PETITION OR PROPOSAL, AS APPLICABLE, UNDER SUBSECTION  
13 (1) OR (2) MUST BE FILED WITH THE BOARD OF THE RETIREMENT SYSTEM  
14 THAT ADMINISTERS THE PENSION BENEFITS OF THE BANKRUPTCY TRUST  
15 BENEFICIARIES. THE RETIREMENT SYSTEM SHALL SUBMIT THE BALLOT  
16 QUESTION PROPOSING THE REMOVAL OF A MEMBER OF THE BOARD OF TRUSTEES  
17 OR CHANGING THE COMPENSATION PAID TO MEMBERS OF THE BOARD OF  
18 TRUSTEES TO THE BANKRUPTCY TRUST BENEFICIARIES NOT LESS THAN 60  
19 DAYS AFTER THE FILING OF THE PETITION OR PROPOSAL, AS APPLICABLE.

20 (4) IF A MAJORITY OF THE VOTING BANKRUPTCY TRUST BENEFICIARIES  
21 APPROVE THE BALLOT PROPOSAL DESCRIBED IN SUBSECTION (3), THE BOARD  
22 OF TRUSTEES SHALL IMPLEMENT THE BALLOT PROPOSAL WITHIN 14 DAYS  
23 AFTER THE ELECTION.

24 (5) THE BANKRUPTCY TRUST BENEFICIARIES OR ORGANIZATION THAT  
25 FILED A PETITION OR PROPOSAL, AS APPLICABLE, UNDER SUBSECTION (3)  
26 SHALL PAY THE COSTS OF CONDUCTING AN ELECTION UNDER THIS SECTION.  
27 IF THE BALLOT PROPOSAL IS APPROVED UNDER SUBSECTION (4), THE

- 1 INDIVIDUALS OR ORGANIZATION MAY BE REIMBURSED FOR THE COST OF
- 2 CONDUCTING THE ELECTION FROM THE BANKRUPTCY TRUST.