

# HOUSE BILL No. 5421

March 2, 2016, Introduced by Reps. Cox, Tedder, LaVoy, Lane, McCready, Bumstead, Lauwers, Leutheuser, Singh, Chirkun and Poleski and referred to the Committee on Financial Liability Reform.

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**  
10       **PLAN FOR ADJUSTMENT**, and used for the accumulation and investment

1 of funds for the purpose of funding health care for retired  
2 employees of the public corporation.

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

10 (i) A BANKRUPTCY TRUST BENEFICIARY.

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

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

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

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

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

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

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

26 (I) ~~(e)~~ "Public corporation" means ~~any~~ A county, city,  
27 village, township, authority, district, board, or commission in

1 this state.

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

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

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

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

27 (3) IF THERE IS A VACANCY ON THE BOARD OF TRUSTEES, THE

1 VACANCY MUST BE FILLED IN A MANNER PROVIDED BY THE COURT OR THE  
2 PLAN FOR ADJUSTMENT.

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

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

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

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

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

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

26 (B) THE COMPENSATION OF A MEMBER OF THE BOARD MUST NOT EXCEED  
27 THE CAP IMPOSED UNDER A COURT ORDER, INCLUDING A PLAN FOR

1 ADJUSTMENT, IF ANY.

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

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

17 (E) SUBJECT TO THE CAP DESCRIBED IN SUBDIVISION (B), IF THE  
18 PUBLIC CORPORATION THAT WAS RESPONSIBLE FOR FUNDING THE BANKRUPTCY  
19 TRUST SPONSORS A RETIREMENT SYSTEM, A BANKRUPTCY TRUST BENEFICIARY  
20 IS ALSO A MEMBER OF THE RETIREMENT SYSTEM, THE RETIREMENT SYSTEM'S  
21 GOVERNING BOARD INCLUDES AN ELECTED RETIRANT OF THE RETIREMENT  
22 SYSTEM, AND THE RETIREMENT SYSTEM COMPENSATES ITS BOARD MEMBERS AS  
23 PROVIDED IN SECTION 8A(3) OF THE PUBLIC EMPLOYEE RETIREMENT BENEFIT  
24 PROTECTION ACT, 2002 PA 100, MCL 38.1688A, THE BANKRUPTCY TRUST  
25 SHALL COMPENSATE THE BANKRUPTCY TRUST BENEFICIARY AT NO LESS THAN  
26 THE COMPENSATION GIVEN TO THE ELECTED RETIRANT.

27 (F) FOR A NONVOTING EX OFFICIO MEMBER, THE PER-MEETING STIPEND

1 MUST BE CALCULATED BASED ON AN HOURLY RATE. THE HOURLY RATE MUST BE  
2 50% OF THE HOURLY RATE PAID DESCRIBED IN SUBDIVISION (D).

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

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

10 (I) A MEMBER OF THE BOARD MAY DECLINE COMPENSATION FROM THE  
11 BANKRUPTCY TRUST.

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

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

24 SEC. 4C. (1) IN ADDITION TO THE METHOD OF REMOVING A MEMBER OF  
25 THE BOARD OF TRUSTEES AS PROVIDED IN SECTION 4A, THE REMOVAL OF A  
26 MEMBER OF THE BOARD MAY BE INITIATED BY EITHER OF THE FOLLOWING  
27 METHODS:

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

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

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

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

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

21 (5) THE BANKRUPTCY TRUST BENEFICIARIES OR ORGANIZATION THAT  
22 FILED A PETITION OR PROPOSAL, AS APPLICABLE, UNDER SUBSECTION (3)  
23 SHALL PAY THE COSTS OF CONDUCTING AN ELECTION UNDER THIS SECTION.  
24 IF THE BALLOT PROPOSAL IS APPROVED UNDER SUBSECTION (4), THE  
25 INDIVIDUALS OR ORGANIZATION MAY BE REIMBURSED FOR THE COST OF  
26 CONDUCTING THE ELECTION FROM THE BANKRUPTCY TRUST.