

HOUSE BILL No. 5575

May 8, 2014, Introduced by Reps. Durhal and Walsh and referred to the Committee on Detroit's Recovery and Michigan's Future.

A bill to create the Michigan settlement administration authority; to provide for the operation of the authority; to create certain funds; to authorize the resolution of certain potential claims against the state; and to prescribe the powers and duties of the authority and certain other state officials and state employees.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan settlement administration authority act".

3 Sec. 2. The legislature finds and declares the following:

4 (a) As part of a municipal bankruptcy case involving a
5 qualified city, the city's retirement systems and certain of their
6 members have asserted that this state may be obligated to pay any
7 deficiencies in pension benefits payable to retirees, an assertion

1 that this state disputes.

2 (b) To settle a portion of a municipal bankruptcy case and if
3 certain conditions are satisfied, this state shall make a
4 contribution to reduce deficiencies in pension benefits of certain
5 members of certain retirement systems, in order to avoid additional
6 ongoing and future litigation and to partially settle the case, in
7 return for, among other things, full releases from any claims
8 against this state for alleged deficiencies in pension benefits.

9 (c) Partial settlement of the case and this state's
10 contribution in support serves important public purposes and will
11 be beneficial to the entire state due to 1 or more of the
12 following:

13 (i) It will enhance the retirement income for many qualified
14 city retirees, some of whom reside or will reside in other parts of
15 this state, and reduce the likelihood of their seeking public
16 assistance.

17 (ii) It will facilitate prompt resolution of certain municipal
18 bankruptcy cases and save taxpayers ongoing litigation costs.

19 (iii) It will protect this state and its taxpayers from
20 potential claims from parties associated with the retirement
21 systems of a qualified city.

22 (d) Establishing the authority and execution by the authority
23 of its powers granted under this act fulfill in all respects a
24 public and governmental purpose for the benefit of the people of
25 this state.

26 Sec. 3. As used in this act:

27 (a) "Authority" means the Michigan settlement administration

1 authority created under section 4.

2 (b) "Board" means the board of directors of the authority.

3 (c) "Contribution agreement" means the contribution agreement
4 in substantially the form included with a qualified city's plan for
5 adjustment.

6 (d) "Countercyclical budget and economic stabilization fund"
7 means the countercyclical budget and economic stabilization fund
8 created in section 351 of the management and budget act, 1984 PA
9 431, MCL 18.1351.

10 (e) "Operating expenses" means the reasonable operating
11 expenses of the authority, including without limitation the cost of
12 preparation of accounting and other reports, costs of authority
13 meetings or other required activities of the authority, counsel
14 fees, including fees of the attorney general, and fees and expenses
15 incurred for consultants and fiduciaries and any other costs
16 authorized in this act.

17 (f) "Person" means an individual, corporation, limited or
18 general partnership, association, joint venture, limited liability
19 company, or a governmental entity, including this state.

20 (g) "Plan for adjustment" means the final plan for adjustment
21 filed by a qualified city in a bankruptcy proceeding.

22 (h) "Qualified beneficiaries" means members of the retirement
23 systems and any beneficiaries of the retirees who are entitled to
24 all or part of a member's retirement benefit.

25 (i) "Qualified city" means a city with a plan for adjustment
26 and with a population of more than 600,000 that has a retirement
27 system for members who retire with years of service as an employee

1 of that city.

2 (j) "Retirement systems" means the police and fire retirement
3 system of a qualified city and the general retirement system of a
4 qualified city.

5 (k) "Settlement administration fund" or "fund" means the
6 settlement administration fund created in section 8.

7 (l) "State treasurer" means the state treasurer of this state
8 or his or her designee who is designated by a written instrument
9 signed by the state treasurer and maintained in a permanent file
10 and whose signature has the same force and effect as the signature
11 of the state treasurer for all purposes under this act.

12 Sec. 4. The Michigan settlement administration authority is
13 created as a public body corporate and politic within the
14 department of treasury. The authority is a state institution within
15 the meaning of section 9 of article II of the state constitution of
16 1963 and an instrumentality of this state exercising public and
17 essential governmental functions. The exercise by the authority of
18 the powers conferred by this act is an essential governmental
19 function of this state.

20 Sec. 5. The authority shall exercise its duties independently
21 of the state treasurer. Any administrative functions of the
22 authority shall be performed under the direction and supervision of
23 the state treasurer.

24 Sec. 6. (1) The authority shall exercise its duties through
25 its board of directors.

26 (2) The board shall consist of 5 members as follows:

27 (a) The state treasurer.

1 (b) The director of the department of licensing and regulatory
2 affairs.

3 (c) One member appointed by the governor with the advice and
4 consent of the senate, who has knowledge, skill, or experience in
5 the legal field of bankruptcy.

6 (d) One member appointed by the governor from a list of 2 or
7 more individuals nominated by the speaker of the house of
8 representatives who have knowledge, skill, or experience in the
9 field of bankruptcy, finance, accounting, or other relevant field.

10 (e) One member appointed by the governor from a list of 2 or
11 more individuals nominated by the senate majority leader who have
12 knowledge, skill, or experience in the field of bankruptcy,
13 finance, accounting, or other relevant field.

14 (3) The appointed members shall serve for a term of 1 year.
15 The appointed members shall serve until a successor is appointed. A
16 vacancy shall be filled for the balance of the unexpired term in
17 the same manner as the original appointment.

18 (4) The state treasurer or director of the department of
19 licensing and regulatory affairs may appoint a representative to
20 serve in his or her absence.

21 (5) Members of the board shall serve without compensation but
22 may receive reasonable reimbursement for necessary travel and
23 expenses incurred in the discharge of their duties.

24 (6) The state treasurer shall serve as chairperson of the
25 board.

26 (7) A majority of the appointed and serving members of the
27 board shall constitute a quorum of the board for the transaction of

1 business. A member may participate in a meeting by the use of
2 amplified telephonic or video conferencing equipment. A member
3 participating by the use of video conferencing equipment shall be
4 considered to be present for purposes of a quorum and for purposes
5 of voting. Actions of the board shall be approved by a majority
6 vote of the members present at a meeting.

7 (8) In fulfilling its duties under this act, the authority may
8 seek legal counsel from the state attorney general or financial
9 expertise from the state treasurer. If it is unable to obtain
10 necessary assistance from the state attorney general or state
11 treasurer, then the authority may contract for the services of
12 legal counsel, financial expert, or other expert advice.

13 (9) The members of the board and any agent of the authority
14 are subject to 1968 PA 317, MCL 15.321 to 15.330, and 1968 PA 318,
15 MCL 15.301 to 15.310.

16 (10) A member of the board or agent of the authority shall
17 discharge the duties of his or her position in a nonpartisan
18 manner, with good faith, and with that degree of diligence, care,
19 and skill that an ordinarily prudent person would exercise under
20 similar circumstances in a like position. In discharging the
21 duties, a member of the board or agent of the authority, when
22 acting in good faith, may rely upon the opinion of legal counsel or
23 other expert advice.

24 Sec. 7. The authority shall have all of the following powers:

25 (a) To make and amend bylaws.

26 (b) To sue and be sued, to have a seal, and to make, execute,
27 and deliver contracts, conveyances, and other instruments necessary

1 to the exercise of the authority's powers.

2 (c) To make and execute contracts including without limitation
3 the contribution agreement, trust agreements, and escrow
4 agreements, and all other instruments necessary or convenient for
5 the exercise of its powers and functions, and commence any action
6 to protect or enforce any right conferred upon it by any law,
7 contract, or other agreement.

8 (d) To engage the services of legal counsel or other advisors,
9 consultants, and fiduciaries as necessary to effectuate the
10 purposes of this act.

11 (e) To pay its operating expenses.

12 Sec. 8. (1) The settlement administration fund is created
13 within the state treasury.

14 (2) The state treasurer may receive money or other assets from
15 any source for deposit into the fund. The state treasurer shall
16 direct the investment of the fund. The state treasurer shall credit
17 to the fund interest and earnings from fund investments.

18 (3) Money in the fund at the close of the fiscal year shall
19 remain in the fund and shall not lapse to the general fund.

20 (4) The authority shall expend money from the fund only as
21 provided in this act.

22 Sec. 9. (1) The authority shall either disburse the money in
23 the fund to the retirement systems or return the money to the
24 countercyclical budget and economic stabilization fund as set forth
25 in this section.

26 (2) The authority shall cause \$194,800,000.00 to be paid to
27 the retirement systems for the benefit of qualified beneficiaries

1 if and only if the authority determines in writing that both of the
2 following conditions have been satisfied:

3 (a) The bankruptcy court has entered an order approving a plan
4 for adjustment for a qualified city.

5 (b) The terms and conditions of the contribution agreement
6 have been satisfied.

7 (3) If the authority determines in writing that at least 1 of
8 the conditions in subsection (2) has not been satisfied, then the
9 money in the fund shall be returned to the countercyclical budget
10 and economic stabilization fund.

11 (4) If the authority has failed to make a finding in writing
12 under subsection (2) or (3) by May 1 immediately following the
13 approval of the plan for adjustment, then the money in the fund
14 shall be returned to the countercyclical budget and economic
15 stabilization fund.

16 Sec. 10. (1) If the authority causes \$194,800,000.00 to be
17 paid to the retirement systems for the benefit of qualified
18 beneficiaries, then the state treasurer shall determine whether
19 there is substantial compliance with the conditions and
20 requirements of the settlement of pension claims set forth in the
21 contribution agreement, the plan for adjustment, and any order of
22 the bankruptcy court.

23 (2) The money received by the retirement systems shall be
24 utilized to enhance the retirement benefits of certain qualified
25 beneficiaries.

26 (3) The state treasurer shall submit a report to the governor
27 and both houses of the legislature on whether there is substantial

1 compliance with the conditions and requirements of the settlement
2 of pension claims as provided in the contribution agreement. The
3 state treasurer shall submit the report annually beginning
4 September 1 immediately following the payment of the money to the
5 retirement systems and ending 20 years thereafter.

6 Sec. 11. It is determined that the creation of the authority,
7 the appropriation made to the authority, and the carrying out of
8 the authority's authorized purposes are in all respects a public
9 and governmental purpose for the benefit of the people of this
10 state and for the improvement of their health, safety, welfare,
11 comfort, and security, and that these purposes are public purposes,
12 and that the authority will be performing an essential governmental
13 function in the exercise of the powers conferred upon it by this
14 act.

15 Sec. 12. The obligation to make this state's contribution
16 described in the contribution agreement is not a general obligation
17 or indebtedness of this state or the authority and is subject to
18 the satisfaction of the conditions described in the contribution
19 agreement, the plan for adjustment, and the order of a bankruptcy
20 court.

21 Sec. 13. (1) This state, a state official or state-related
22 entity, as defined in the plan for adjustment, the state treasurer,
23 the authority, a board member, an agent of the authority, and any
24 other legal, financial, or other expert providing advice to the
25 authority does not have any liability or obligation arising from or
26 related to the contributions or funding of the retirement systems,
27 except for the authority's disbursement or return of funds as

1 provided in section 9.

2 (2) This state, a state official or state-related entity, as
3 defined in the plan for adjustment, the state treasurer, the
4 authority, a board member, an agent of the authority, and any other
5 legal, financial, or other expert providing advice to the authority
6 does not have any liability for the representations, warranties,
7 covenants, determinations, agreements, or other obligations of this
8 state or the authority, or under any of the certificates, notices,
9 or agreements delivered pursuant to the contribution agreement, the
10 plan for adjustment, or the order of a bankruptcy court confirming
11 the plan for adjustment.

12 Sec. 14. Any action or proceeding related to the duties and
13 obligations or otherwise arising under this act or with respect to
14 the contribution agreement or the plan for adjustment shall be
15 brought in the bankruptcy court that approved the plan for
16 adjustment. However, if the bankruptcy court determines it does not
17 have jurisdiction, an action or proceeding described in this
18 section shall be brought in the court of claims, which court shall
19 have exclusive jurisdiction.