

# Legislative Analysis



## CREATE LOCAL UNIT RECOVERY STATUS FUND

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4447 (proposed substitute H-3)**

**Sponsor: Rep. Thomas A. Albert**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4448 as introduced**

**Sponsor: Rep. Gary Howell**

**Committee: Local Government and Municipal Finance**

**Complete to 9-17-19**

### SUMMARY:

House Bills 4447 and 4448 would respectively amend the Protecting Local Government Retirement and Benefits Act and 1909 PA 283, the county road law, to establish the Local Unit Recovery Status Fund to provide grants to county road commissions with underfunded pensions.

**House Bill 4447** would create the Local Unit Recovery Status Fund within the state treasury. The state treasurer could receive money or other assets from any source for deposit into the fund and would direct the investment of the fund and credit interest and earnings from fund investments to the fund. The state treasurer would also be considered the fund's administrator for auditing purposes. Any money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the general fund.

#### Fund grants

Within five years after the effective date of the bill, a county road commission could apply for a grant from the fund if the following conditions were met:

- The commission's actuarial liability for its retirement health system is less than 40% funded or its retirement pension is less than 60% funded according to the most recent annual report.
- The Municipal Stability Board approves the commission's corrective action plan under the act, and the plan addresses the issues described below.
- The county road commission board approves any changes required to be made to the corrective action plan.

The bill would require that the commission's corrective action plan address all of the following conditions:

- The commission will not offer or provide a retirement benefit other than a ***health care stipend*** to its employees hired after the commission approves the corrective action plan. (***Health care stipend*** would mean a fixed amount paid to a former employee on an ongoing basis either to pay for medical care or to offset the cost of

a retirement health benefit. A health care stipend would not be considered a retirement health benefit under the act.)

- The commission will not reopen a retirement benefit or reoffer any other retirement benefit after the state treasurer makes a grant to the irrevocable trust created under the bill or to a retirement pension system of the commission. This would not include changes to the cost of living adjustment, the multiplier, or any other change to a closed benefit of a retirement system with active members.
- The commission will make its actuarially determined contributions to the retirement health benefit component of a retirement system using measures that ensure sustainability, as determined by the state treasurer.
- The commission will make its annual required contributions to the retirement pension benefit component of a retirement system.
- The commission's retirement system will use uniform actuarial assumptions established by the state treasurer under the act. If the state treasurer changes those assumptions after the commission has already applied, the retirement system is not required to use the new assumptions to meet this condition.
- The Municipal Stability Board determines that the corrective action plan has a reasonable likelihood that one of the following will apply, as applicable:
  - The retirement pension system will be 60% funded within 20 years after the plan has taken effect.
  - The retirement health system will be 40% funded within 30 years after the plan has taken effect.

If a county road commission met the above conditions, the state treasurer could make grants from the fund, on appropriation, to the irrevocable trust created by the commission (see below). Any grant money received from the fund would have to be deposited into the appropriate irrevocable trust of the commission within 30 days.

The state treasurer would have to establish a method of prioritizing the fund for distribution that incorporates at least the following factors:

- Low funding ratios.
- High ratio of actuarially determined contributions to the commission's revenue.
- The amount of any additional contributions necessary to be eligible under the requirements described above.
- A commission's past history of making the full actuarially determined contribution or payments over that amount.

Up to a 50% matching grant from the fund would be available for a grant to a retirement pension benefit plan, based on any money contributed above the actuarially determined contribution, including contributions from the county general fund and county road millages.

Up to a 50% matching grant from the fund would be available for a grant to a retirement health benefit plan, based on any money contributed toward a full actuarially determined contribution.

The state treasurer could not make a matching grant to a local unit of government if both of the following applied:

- The actuarial liability of the local unit of government's retirement health system was 40% or more funded according to its most recent annual report.
- The actuarial liability of the local unit of government's retirement pension system was 80% or more funded according to its most recent annual report.

If the Municipal Stability Board determined that the conditions of a commission's corrective action plan were not being met by the date established by the state treasurer, the commission would have to pay to back all money received from the fund, with interest. The board would continue to monitor the commission until it was no longer underfunded.

#### Irrevocable trusts

The bill would also authorize and create an irrevocable trust under the act for each retirement system. The trust would have to be established and administered in accordance with section 115 of the Internal Revenue Code. In addition, all of the following would apply to an irrevocable trust:

- The governing board of each retirement system would serve as the grantor of the trust and would administer the trust created for that retirement system in order to pay retirement health benefits. The members of the retirement system board or other governing body would act as the trustees of the trust.
- The trustees would have to adopt a written trust agreement that contained all of the following provisions:
  - Recitals describing the creation and purpose of the trust.
  - Language reflecting the requirements of these provisions.
  - Sections outlining the management and operation of the trust.
  - A description of the various accounts that carry out the functions of the trust.
  - Provisions setting forth the powers and duties of the trustees.
  - Policies and procedures for administering the trust.
- Each trust would be managed and operated separately and independently from the other trusts. The trustees could contract with public or private entities for bookkeeping, benefit payments, and other plan functions.
- Assets contributed to the trust would be irrevocable and could not be refused, refunded, or returned to the employer or employee making the contribution.
- Assets of the trust could be used only to provide retirement health benefits and pay fees and expenses for the administrative costs of carrying out that function and could not be diverted for any other purpose.
- Assets of the trust would have to be invested in accord with the Public Employee Retirement System Investment Act.
- Assets of the trust, and the ability of a retiree to receive retirement health benefits, would not be subject to execution, garnishment, attachment, bankruptcy or insolvency laws, or other process of law and would be unassignable.
- The governing board of a retirement system could occasionally authorize the deposit of any eligible money within the retirement system into the trust to pay for eligible retirement health benefits. Distributions from the trust could be made to satisfy the obligations of the retirement system to provide health benefits.

- The trustees would have to prepare annual financial statements for the trust in accordance with generally accepted accounting principles, along with an audit of those financial statements by a qualified independent certified accounting firm for each fiscal year in accordance with generally accepted auditing standards.
- The trust would not be considered invalid due to any indefiniteness or uncertainty of the individuals designated as beneficiaries. In addition, the trust would not be considered invalid due to violating any existing law against perpetuities, against suspension of the power of alienation of title to property, or against trusts for the purpose of the accumulation of income. Each trust could continue for the amount of time necessary to accomplish its purpose.
- Assets and income of the trust would be exempt from taxation by the state or any of its political subdivisions (such as municipal governments or school districts). Distribution from the trust would not be treated as taxable income to former employees or their retiree health dependents by the state or its political subdivisions.
- A trustee of the trust would not be considered personally liable for any of the trust's liabilities, losses, or expenses (except those arising from the trustee's willful misconduct or intentional wrongdoing), would not be responsible for the adequacy of the trust to meet its legal obligations, and would not be required to take action to enforce the payment of any of the trust's contributions or appropriations.
- A trustee of the trust could be indemnified by the trust against costs, liabilities, losses, damages, or expenses, including attorney fees, as provided in the trust's agreement, unless the costs, liabilities, losses, damages, or expenses arose out of or resulted from the willful misconduct or intentional wrongdoing of the trustee.
- Any assets remaining in the trust after all payments for eligible retirement health benefits have been paid and all other liabilities have been settled would have to be distributed to the state, the local unit of government, or other employers within the applicable retirement system if the employers are organizations whose income is excluded under section 115(1) of the Internal Revenue Code.

MCL 38.2803

**House Bill 4448** would amend Public Act 283 of 1909 to allow the board of commissioners of any county to levy taxes to pay for the unfunded actuarial accrued liability of a county road commission retirement system.

MCL 224.20b

## **FISCAL IMPACT:**

**House Bill 4447** would have an unknown fiscal impact on state and local government. The bill authorizes the creation of the Local Unit Recovery Status Fund to provide matching grants to county road commission retirement systems that meet eligibility requirements described above, but provides no deposit or revenue source for the fund. Therefore, grant funding would be unavailable until a deposit was made or revenue source was

implemented. The fiscal impact on local units of government, specifically county road commissions, would be specific to the local unit and would depend on both the availability of funds and, since it is a matching grant, actions taken on the part of the local unit to meet the eligibility requirements. The bill does not create a mandate or requirement that a local unit participate in the fund. As written, once the granted funds were placed in the irrevocable trust, as required under the bill, the assets of the trust could only be used to pay for retirement health benefits and the administrative costs of providing retirement health benefits.

The Department of Treasury would realize increased administrative costs associated with the administration of the fund. Whether the costs incurred would be absorbed under current appropriation levels is unknown.

**House Bill 4448** would amend section 20b of the county road law, which deals with the authority of county boards of commissioners to propose to county voters the question of a tax levy for highway, road, and street purposes. Note that the section does not give to a county road commission authority to levy taxes in its own name; the taxing authority lies with a county board of commissioners. Currently, several counties levy county road taxes for improvements to the county road system.

House Bill 4448 would specifically authorize a county board of commissioners to include on the ballot proposal for a county “road tax” levy the question of whether the tax levy should include funding for the unfunded actuarial accrued liability of the retirement system of the county road commission in that county.

The bill is authorizing; it does not establish any new mandates for county government or county road commissions. As a result, the fiscal impact would depend on the number of counties that elected to establish road millages and to use road tax proceeds for unfunded retirement liability. The bill would have no fiscal impact on state government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.