

5111--A

2015-2016 Regular Sessions

I N S E N A T E

May 1, 2015

Introduced by Sen. MARCHIONE -- (at request of the State Comptroller) --
read twice and ordered printed, and when printed to be committed to
the Committee on Finance -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, the civil service law and the
general municipal law, in relation to authorizing the state and
certain local governments to establish other post employment benefits
(OPEB) trusts and establishing the other post employment benefits
(OPEB) investment fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The state finance law is amended by adding a new section
2 97-llll to read as follows:
3 S 97-LLLL. OTHER POST EMPLOYMENT BENEFITS ("OPEB") INVESTMENT FUND. 1.
4 THERE IS HEREBY ESTABLISHED IN THE SOLE CUSTODY OF THE STATE COMPTROLLER
5 A SPECIAL INVESTMENT FUND TO BE KNOWN AS THE OTHER POST EMPLOYMENT BENE-
6 FITS INVESTMENT FUND.
7 2. FOR PURPOSES OF THIS SECTION:
8 (A) "FUND" SHALL MEAN THE OTHER POST EMPLOYMENT BENEFITS INVESTMENT
9 FUND CREATED BY THIS SECTION;
10 (B) "COMPTROLLER" SHALL MEAN THE STATE COMPTROLLER;
11 (C) "STATE" SHALL MEAN THE STATE OF NEW YORK;
12 (D) "LOCAL GOVERNMENT" SHALL HAVE THE SAME MEANING AS SET FORTH IN
13 PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION SIX-T OF THE GENERAL MUNICI-
14 PAL LAW;
15 (E) "OTHER PUBLIC CORPORATION" SHALL MEAN ANY PUBLIC CORPORATION OTHER
16 THAN A LOCAL GOVERNMENT THAT IS AUTHORIZED TO ESTABLISH AN IRREVOCABLE
17 TRUST; AND
18 (F) "PARTICIPATING TRUSTEE" SHALL MEAN THE TRUSTEE FOR THE STATE, AND
19 THE TRUSTEE FOR ANY LOCAL GOVERNMENT OR ANY OTHER PUBLIC CORPORATION
20 THAT INVESTS MONEYS IN THE FUND PURSUANT TO THIS SECTION.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD03005-05-5

1 3. THE FUND SHALL CONSIST OF ALL MONEYS PAID TO THE COMPTROLLER BY THE
2 STATE PURSUANT TO SECTION ONE HUNDRED SIXTY-NINE OF THE CIVIL SERVICE
3 LAW, BY LOCAL GOVERNMENTS PURSUANT TO SECTION SIX-T OF THE GENERAL
4 MUNICIPAL LAW AND BY ANY OTHER PUBLIC CORPORATION THAT ESTABLISHES AN
5 OTHER POST EMPLOYMENT BENEFITS TRUST. THE MONEYS IN THE FUND SHALL NOT
6 BE WITHIN THE STATE TREASURY, AND SHALL NOT BE DEEMED TO BE STATE FUNDS
7 FOR ANY PURPOSE. NOTWITHSTANDING THE PROVISIONS OF SECTION FOUR OF THIS
8 CHAPTER, OR ANY OTHER PROVISION OF LAW, MONEYS MAY BE DISBURSED FROM THE
9 FUND FOR ANY AUTHORIZED PURPOSE WITHOUT APPROPRIATION.

10 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE MONEYS IN THE FUND
11 MAY BE INVESTED BY THE COMPTROLLER IN ACCORDANCE WITH THE INVESTMENT
12 OPTIONS SELECTED PURSUANT TO THE WRITTEN INVESTMENT POLICY DEVELOPED BY
13 EACH PARTICIPATING TRUSTEE IN ANY INVESTMENTS IN COMPLIANCE WITH THE
14 FOLLOWING STANDARDS:

15 (A) THE COMPTROLLER SHALL EXERCISE SUCH JUDGMENT, CARE, SKILL,
16 PRUDENCE AND DILIGENCE UNDER THE CIRCUMSTANCES THEN PREVAILING THAT A
17 KNOWLEDGEABLE AND PRUDENT INVESTOR ACTING IN A LIKE CAPACITY AND FAMIL-
18 IAR WITH SUCH MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A
19 LIKE CHARACTER AND WITH LIKE AIMS; AND

20 (B) THE COMPTROLLER SHALL PRUDENTLY DIVERSIFY THE INVESTMENT OF THE
21 FUND'S PORTFOLIO AMONG INVESTMENT TYPES AND WITHIN INVESTMENT TYPES IN A
22 MANNER CONSISTENT WITH THE FOREGOING UNLESS UNDER THE CIRCUMSTANCES IT
23 IS CLEARLY PRUDENT NOT TO DO SO.

24 5. THE COMPTROLLER SHALL MAINTAIN A SEPARATE ACCOUNT FOR EACH PARTIC-
25 IPATING TRUSTEE. HOWEVER, MONEYS OF PARTICIPATING TRUSTEES MAY BE
26 COMMINGLED FOR THE COMPTROLLER'S INVESTMENT PURPOSES, PROVIDED THAT THE
27 MONEY OF EACH PARTICIPATING TRUSTEE SHALL BE SEPARATELY ACCOUNTED FOR.

28 6. THE COMPTROLLER SHALL, WITHIN HIS OR HER DISCRETION, ESTABLISH
29 SUB-FUNDS AND INVEST SUCH SUB-FUNDS SEPARATELY TO PROVIDE PARTICIPATING
30 TRUSTEES WITH A NUMBER OF OPTIONS TO MEET VARIOUS INVESTMENT OBJECTIVES.
31 SUCH OPTIONS SHALL REFLECT VARYING LEVELS OF RISK FOR SUCH INVESTMENT.
32 INVESTMENT EARNINGS SHALL BE PRORATED AMONG PARTICIPATING TRUSTEES IN
33 EACH SUB-FUND IN PROPORTION TO THE AMOUNT OF INVESTMENTS HELD BY PARTIC-
34 IPATING TRUSTEES.

35 7. THE COMPTROLLER MAY HIRE SUCH OFFICERS AND EMPLOYEES AND CONTRACT
36 WITH SUCH ADVISORS AND AGENTS AS THE COMPTROLLER DEEMS NECESSARY FOR THE
37 MANAGEMENT AND INVESTMENT OF MONEYS IN THE FUND. ANY OFFICERS AND
38 EMPLOYEES EMPLOYED BY THE COMPTROLLER FOR THE MANAGEMENT AND INVESTMENT
39 OF MONEYS IN THE FUND SHALL BE OFFICERS AND EMPLOYEES OF THE COMP-
40 TROLLER, PROVIDED, HOWEVER, THAT ANY COSTS ASSOCIATED WITH THE EMPLOY-
41 MENT OF SUCH OFFICERS AND EMPLOYEES AND ANY ADVISORS OR AGENTS SHALL BE
42 CHARGED AGAINST THE FUND. SUCH CHARGES SHALL BE INCLUDED IN THE ADMINIS-
43 TRATIVE FEE CHARGED TO PARTICIPATING TRUSTEES IN THE FUND PROVIDED,
44 HOWEVER, THAT, ANNUALLY, SUCH FEE SHALL NOT EXCEED AN AMOUNT EQUAL TO
45 THE ACTUAL EXPENSES INCURRED OR THREE PERCENT OF THE TOTAL CONTRIBUTION
46 MADE TO THE FUND BY PARTICIPATING TRUSTEES IN A FISCAL YEAR, WHICHEVER
47 IS LESS.

48 8. THE COMPTROLLER SHALL ENTER INTO AN AGREEMENT WITH EACH PARTICIPAT-
49 ING TRUSTEE. EACH SUCH AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO,
50 THE FOLLOWING TERMS:

51 (A) A STATEMENT THAT THE COMPTROLLER SHALL BE UNDER NO OBLIGATION TO
52 REVIEW OR VERIFY THE ESTIMATED COSTS OF BENEFITS TO BE FUNDED WITH MONEY
53 CONTRIBUTED TO THE FUND;

54 (B) A PROVISION THAT THE PARTICIPATING TRUSTEE SHALL DETERMINE THE
55 AMOUNTS OF MONEY TO BE CONTRIBUTED TO THE FUND AND DESIGNATE THE
56 SUB-FUNDS IN WHICH THE MONEYS SHALL BE INVESTED. THE COMPTROLLER SHALL

1 ACCEPT SUCH AMOUNTS AND HIS OR HER ONLY RESPONSIBILITY SHALL BE TO
2 INVEST THE MONEYS IN THE SUB-FUNDS DIRECTED BY THE PARTICIPATING TRUSTEE
3 AND TO REPORT THE CONTRIBUTIONS, WITHDRAWALS, BALANCES AND EARNINGS, TO
4 THE PARTICIPATING TRUSTEE ON A REGULAR BASIS TO BE SET FORTH IN THE
5 AGREEMENT, BUT NO LESS FREQUENTLY THAN ANNUALLY;

6 (C) A STATEMENT THAT IT SHALL BE THE RESPONSIBILITY OF THE PARTICIPAT-
7 ING TRUSTEE TO DETERMINE COSTS ELIGIBLE TO BE FUNDED FROM MONEYS IN THE
8 FUND AND THE COMPTROLLER'S ONLY OBLIGATION SHALL BE TO MAKE PAYMENTS ON
9 THE DATES AND IN THE AMOUNTS REQUESTED BY THE PARTICIPATING TRUSTEE;

10 (D) A REQUIREMENT THAT THE PARTICIPATING TRUSTEE SHALL ANNUALLY, ON A
11 DATE PROVIDED IN THE AGREEMENT, PROVIDE THE COMPTROLLER WITH A SCHEDULE
12 OR AMENDED SCHEDULE OF MONEYS EXPECTED TO BE CONTRIBUTED TO THE FUND AND
13 WITHDRAWALS EXPECTED TO BE MADE FROM ITS ACCOUNT. SUCH SCHEDULE SHALL BE
14 BINDING ON THE PARTICIPATING TRUSTEE;

15 (E) A PROVISION THAT THE MONEY IN THE FUND SHALL BE PAID TO THE
16 PARTICIPATING TRUSTEE OR ITS DESIGNEE UPON REQUISITION AS PROVIDED IN
17 THE AGREEMENT;

18 (F) A PROVISION FOR THE ASSESSMENT OF ADMINISTRATIVE COSTS, INVESTMENT
19 FEES AND OTHER CHARGES, INCLUDING ANY PENALTIES TO BE IMPOSED FOR EARLY
20 OR EXCESSIVE WITHDRAWALS, AND FOR THE DEDUCTION OF SUCH FEES AND CHARGES
21 FROM INVESTMENT EARNINGS;

22 (G) A STATEMENT BY THE PARTICIPATING TRUSTEE RELATING TO ITS CONSIDER-
23 ATION OF THE RISKS INVOLVED IN THE INVESTMENT SUB-FUNDS TO WHICH IT IS
24 ALLOCATING ITS MONEYS AND ITS UNDERSTANDING OF ITS RESPONSIBILITY FOR
25 ANY LOSSES RESULTING FROM SUCH RISKS;

26 (H) A STATEMENT THAT NEITHER THE COMPTROLLER NOR ANY OFFICER, EMPLOY-
27 EE, AGENT OR ADVISOR OF THE COMPTROLLER SHALL BE LIABLE FOR ANY LOSS OR
28 EXPENSE SUFFERED BY THE FUND IN THE ABSENCE OF BAD FAITH, WILLFUL
29 MISCONDUCT OR INTENTIONAL WRONGDOING; AND

30 (I) A PROVISION FOR THE TERMINATION OF THE PARTICIPATING TRUSTEE'S
31 INCLUSION IN THE FUND, INCLUDING THE DISPOSITION AND/OR TRANSFER OF
32 ACCUMULATED ASSETS.

33 S 2. The civil service law is amended by adding a new section 169 to
34 read as follows:

35 S 169. OTHER POST EMPLOYMENT BENEFITS ("OPEB") TRUST. 1. FOR PURPOSES
36 OF THIS SECTION:

37 (A) "OPEB TRUST BOARD" OR "BOARD" SHALL MEAN THE BOARD ESTABLISHED
38 PURSUANT TO SUBDIVISION TWO OF THIS SECTION;

39 (B) "STATE" SHALL MEAN THE STATE OF NEW YORK;

40 (C) "FUND" SHALL MEAN THE OTHER POST EMPLOYMENT BENEFITS INVESTMENT
41 FUND CREATED BY SECTION NINETY-SEVEN-LLLL OF THE STATE FINANCE LAW; AND

42 (D) "OTHER POST EMPLOYMENT BENEFITS" SHALL MEAN BENEFITS, EXCEPT
43 PENSIONS OR OTHER BENEFITS FUNDED THROUGH A PUBLIC RETIREMENT SYSTEM,
44 PROVIDED OR TO BE PROVIDED BY THE STATE AS COMPENSATION, WHETHER PURSU-
45 ANT TO STATUTE, CONTRACT OR OTHER LAWFUL AUTHORITY, TO ITS CURRENT OR
46 FORMER OFFICERS OR EMPLOYEES, OR THEIR FAMILIES OR BENEFICIARIES, AFTER
47 SERVICE TO THE STATE HAS ENDED, INCLUDING, BUT NOT LIMITED TO, HEALTH
48 CARE BENEFITS. THE TERM "OTHER POST EMPLOYMENT BENEFITS" SHALL NOT
49 INCLUDE CASH PAYMENTS FOR THE MONETARY VALUE OF SICK LEAVE, VACATION OR
50 OTHER SIMILAR ACCRUALS, RETIREMENT INCENTIVE OR SEPARATION PAYMENTS, OR
51 BENEFITS PROVIDED PURSUANT TO THE CONSOLIDATED OMNIBUS BUDGET RECONCIL-
52 IATION ACT OF 1985 (PUBLIC LAW 99-272), AS AMENDED.

53 2. THERE IS HEREBY ESTABLISHED AN OPEB TRUST BOARD TO CONSIST OF THE
54 PRESIDENT OF THE CIVIL SERVICE COMMISSION, THE DIRECTOR OF THE BUDGET,
55 THE DIRECTOR OF EMPLOYEE RELATIONS, ONE MEMBER APPOINTED BY THE TEMPO-
56 RARY PRESIDENT OF THE SENATE AND ONE MEMBER APPOINTED BY THE SPEAKER OF

1 THE ASSEMBLY. THE BOARD MAY ESTABLISH A TRUST IN ITS CUSTODY FOR THE
2 PURPOSE OF ACCUMULATING ASSETS TO FUND THE COST OF PROVIDING OTHER POST
3 EMPLOYMENT BENEFITS. CONTRIBUTIONS TO SUCH TRUST MAY BE MADE BY STATE
4 APPROPRIATION.

5 3. THE BOARD IS HEREBY DECLARED TO BE THE TRUSTEE OF THE TRUST ESTAB-
6 LISHED PURSUANT TO THIS SECTION PROVIDED, HOWEVER, THAT THE BOARD MAY
7 DESIGNATE THE PRESIDENT OF THE CIVIL SERVICE COMMISSION AS TRUSTEE
8 SUBJECT TO ACCEPTANCE OF SUCH POSITION BY THE PRESIDENT. THE TRUSTEE
9 SHALL BE RESPONSIBLE FOR THE OPERATION AND MANAGEMENT OF THE TRUST,
10 INCLUDING THE INVESTMENT OF TRUST ASSETS, AND SHALL BE SUBJECT TO ALL
11 THE DUTIES AND RESPONSIBILITIES IMPOSED BY LAW ON TRUSTEES, EXCEPT TO
12 THE EXTENT INCONSISTENT WITH THIS SECTION.

13 4. CONTRIBUTIONS TO THE TRUST, AND ANY INTEREST OR OTHER INCOME OR
14 EARNINGS ON CONTRIBUTIONS, SHALL BE IRREVOCABLE BEFORE ALL LIABILITIES
15 OF THE STATE GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN
16 SATISFIED AND SHALL BE SOLELY DEDICATED TO, AND USED SOLELY FOR, PROVID-
17 ING OTHER POST EMPLOYMENT BENEFITS AND PAYING APPROPRIATE AND REASONABLE
18 EXPENSES OF ADMINISTERING THE TRUST. NO ASSETS, INCOME, EARNINGS OR
19 DISTRIBUTIONS OF THE TRUST SHALL BE SUBJECT TO ANY CLAIM OF CREDITORS OF
20 THE STATE, OR TO ASSIGNMENT OR EXECUTION, ATTACHMENT OR ANY OTHER CLAIM
21 ENFORCEMENT PROCESS INITIATED BY OR ON BEHALF OF SUCH CREDITORS. EXCEPT
22 AS OTHERWISE PROVIDED IN SUBDIVISION NINE OF THIS SECTION, THE TRUSTEE
23 SHALL NOT BE RESPONSIBLE FOR THE ADEQUACY OF THE ASSETS OF THE TRUST TO
24 MEET ANY OTHER POST EMPLOYMENT BENEFIT. THE TRUSTEE SHALL NOT BE RESPON-
25 SIBLE FOR TAKING ANY ACTION TO ENFORCE THE PAYMENT OF ANY APPROPRIATION
26 INTO THE TRUST. THE TRUST MAY BE TERMINATED ONLY WHEN ALL LIABILITIES OF
27 THE STATE FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN SATISFIED AND
28 THERE IS NO PRESENT OR FUTURE OBLIGATION, CONTINGENT OR OTHERWISE, OF
29 THE STATE TO PROVIDE SUCH OTHER POST EMPLOYMENT BENEFITS. UPON SUCH
30 TERMINATION, ANY REMAINING TRUST ASSETS, AFTER ANY PROPER EXPENSES OF
31 THE TRUST HAVE BEEN PAID, SHALL REVERT TO THE STATE.

32 5. WITHDRAWALS FROM THE TRUST SHALL BE MADE FOR THE SOLE PURPOSE OF
33 PROVIDING FUNDS FOR THE COSTS OF OTHER POST EMPLOYMENT BENEFITS CURRENT-
34 LY DUE AND PAYABLE BY THE STATE.

35 6. THE TRUSTEE MAY CONTRACT TO OBTAIN SERVICES NECESSARY FOR THE
36 MANAGEMENT AND OPERATION OF THE TRUST, INCLUDING THE PROFESSIONAL
37 SERVICES NECESSARY TO CARRY OUT HIS OR HER RESPONSIBILITIES AS TRUSTEE.
38 CONTRACTS FOR SUCH SERVICES SHALL BE LET PURSUANT TO THE PROVISIONS OF
39 THE STATE FINANCE LAW APPLICABLE TO STATE CONTRACTS.

40 7. THE TRUSTEE SHALL MANAGE THE ASSETS OF THE TRUST IN A CAREFUL AND
41 PRUDENT MANNER. THE TRUSTEE MAY INVEST ASSETS OF THE TRUST ONLY BY
42 PAYMENT TO THE FUND IN ACCORDANCE WITH SECTION NINETY-SEVEN-1111 OF THE
43 STATE FINANCE LAW. ANY INTEREST OR OTHER INCOME OR EARNINGS RESULTING
44 FROM THE INVESTMENT OF ASSETS OF THE TRUST SHALL ACCRUE TO AND BECOME
45 PART OF THE ASSETS OF THE TRUST.

46 8. THE TRUSTEE SHALL DEVELOP, IN CONSULTATION WITH THE STATE HEALTH
47 INSURANCE COUNCIL, A WRITTEN INVESTMENT POLICY FOR SELECTING AMONG THE
48 INVESTMENT OPTIONS OFFERED BY THE STATE COMPTROLLER PURSUANT TO SECTION
49 NINETY-SEVEN-LLLL OF THE STATE FINANCE LAW SO THAT THE COMPTROLLER MAY
50 BE ABLE TO INVEST FUND MONIES IN ACCORDANCE WITH SUCH POLICY. SUCH POLI-
51 CY SHALL INCLUDE A STATEMENT OF INVESTMENT OBJECTIVES ADDRESSING, IN THE
52 FOLLOWING ORDER OF PRIORITY: THE ABILITY TO TIMELY MEET DISBURSEMENT
53 REQUESTS WITHOUT FORCED SALE OF ASSETS, SAFETY OF PRINCIPAL AND ATTAIN-
54 MENT OF MARKET RATES OF RETURN.

55 9. NEITHER THE STATE NOR THE TRUSTEE SHALL BE LIABLE FOR ANY LOSS OR
56 EXPENSE SUFFERED BY THE TRUST IN THE ABSENCE OF BAD FAITH, GROSS NEGLI-

GENCE, WILLFUL MISCONDUCT OR INTENTIONAL WRONGDOING. THE TRUSTEE SHALL BE CONSIDERED TO BE ACTING AS AN OFFICER OF THE STATE FOR PURPOSES OF SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW, PROVIDED, HOWEVER, THAT THE COSTS OF ANY DEFENSE OR INDEMNIFICATION OF THE TRUSTEE ARISING FROM THE EXERCISE OF THE FUNCTIONS OF TRUSTEE SHALL BE PAYABLE FROM THE ASSETS OF THE TRUST.

10. THE TRUSTEE SHALL PREPARE OR CAUSE TO BE PREPARED AN ANNUAL FINANCIAL REPORT OF ASSETS, LIABILITIES, REVENUES AND EXPENSES OF THE TRUST IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THE TRUSTEE SHALL CAUSE THE ACTIVITIES UNDERTAKEN IN CONNECTION WITH THE TRUST, INCLUDING THE ANNUAL FINANCIAL REPORT, TO BE AUDITED ANNUALLY, IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT ENGAGED IN A MANNER CONSISTENT WITH THE APPLICABLE PROVISIONS OF THE STATE FINANCE LAW. THE AUDIT SHALL BE COMPLETED WITHIN ONE HUNDRED TWENTY DAYS FROM THE CLOSE OF THE STATE'S FISCAL YEAR. A COPY OF THE ANNUAL FINANCIAL REPORT AND THE REPORT OF SUCH AUDIT SHALL BE PROVIDED TO THE GOVERNOR, THE STATE COMPTROLLER AND THE CHAIRS OF THE LEGISLATIVE FISCAL COMMITTEES.

11. NOTHING CONTAINED IN THIS SECTION SHALL BE INTERPRETED OR CONSTRUED TO:

(A) CREATE ANY OBLIGATION IN, IMPOSE ANY OBLIGATION ON, OR ALTER ANY OBLIGATION OF THE STATE TO PROVIDE OTHER POST EMPLOYMENT BENEFITS;

(B) LIMIT OR RESTRICT THE AUTHORITY OF THE STATE TO MODIFY OR ELIMINATE OTHER POST EMPLOYMENT BENEFITS;

(C) ASSURE OR DENY OTHER POST EMPLOYMENT BENEFITS; OR

(D) REQUIRE THE STATE TO FUND ITS LIABILITY FOR OTHER POST EMPLOYMENT BENEFITS.

S 3. The general municipal law is amended by adding a new section 6-t to read as follows:

S 6-T. OTHER POST EMPLOYMENT BENEFITS (OPEB) TRUST. 1. FOR PURPOSES OF THIS SECTION:

(A) "LOCAL GOVERNMENT" SHALL MEAN A MUNICIPAL CORPORATION, SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, DISTRICT CORPORATION, SPECIAL IMPROVEMENT DISTRICT GOVERNED BY A SEPARATE BOARD OF COMMISSIONERS, COMMUNITY COLLEGE OR PUBLIC LIBRARY THAT PROVIDES OTHER POST EMPLOYMENT BENEFITS.

(B) "OTHER POST EMPLOYMENT BENEFITS" SHALL MEAN BENEFITS, EXCEPT PENSIONS OR OTHER BENEFITS FUNDED THROUGH A PUBLIC RETIREMENT SYSTEM, PROVIDED OR TO BE PROVIDED AS COMPENSATION BY THE LOCAL GOVERNMENT, WHETHER PURSUANT TO STATE STATUTE, LOCAL ENACTMENT, CONTRACT OR OTHER LAWFUL AUTHORITY, TO ITS FORMER OR CURRENT OFFICERS OR EMPLOYEES, OR THEIR FAMILIES OR BENEFICIARIES, AFTER SERVICE TO THE LOCAL GOVERNMENT HAS ENDED, INCLUDING, BUT NOT LIMITED TO, HEALTH CARE BENEFITS. THE TERM "OTHER POST EMPLOYMENT BENEFITS" SHALL NOT INCLUDE CASH PAYMENTS FOR THE MONETARY VALUE OF SICK LEAVE, VACATION OR OTHER SIMILAR ACCRUALS, RETIREMENT INCENTIVE OR SEPARATION PAYMENTS, OR BENEFITS PROVIDED PURSUANT TO THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (PUBLIC LAW 99-272), AS AMENDED.

2. THE GOVERNING BODY OF A LOCAL GOVERNMENT, BY RESOLUTION, MAY ESTABLISH A TRUST IN THE CUSTODY OF THE CHIEF FISCAL OFFICER OF THE LOCAL GOVERNMENT, FOR THE PURPOSE OF ACCUMULATING ASSETS TO FUND THE COST TO THE LOCAL GOVERNMENT OF PROVIDING OTHER POST EMPLOYMENT BENEFITS. CONTRIBUTIONS TO SUCH TRUST MAY BE MADE BY THE LOCAL GOVERNMENT BY BUDGETARY APPROPRIATION OR TRANSFER IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION NINE OF SECTION SIX-P OF THIS ARTICLE.

1 3. THE GOVERNING BOARD OF THE LOCAL GOVERNMENT IS HEREBY DECLARED TO
2 BE THE TRUSTEE OF ANY TRUST ESTABLISHED PURSUANT TO THIS SECTION,
3 PROVIDED, HOWEVER, THAT THE GOVERNING BOARD, BY RESOLUTION, MAY DESIG-
4 NATE THE CHIEF FISCAL OFFICER OF THE LOCAL GOVERNMENT AS TRUSTEE,
5 SUBJECT TO ACCEPTANCE OF SUCH POSITION BY THE CHIEF FISCAL OFFICER AND,
6 IN THE CASE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE, THE CITY
7 COMPTROLLER SHALL BE THE TRUSTEE. THE TRUSTEE SHALL BE RESPONSIBLE FOR
8 THE OPERATION AND MANAGEMENT OF THE TRUST, INCLUDING THE DEPOSIT AND
9 SECURING OF TRUST ASSETS IN THE SAME MANNER AS PROVIDED IN SECTION TEN
10 OF THIS ARTICLE, AND THE INVESTMENT OF TRUST ASSETS, AND SHALL BE
11 SUBJECT TO ALL THE DUTIES AND RESPONSIBILITIES IMPOSED BY LAW ON TRUS-
12 TEES, EXCEPT TO THE EXTENT INCONSISTENT WITH THIS SECTION. THE TRUSTEE
13 SHALL EXECUTE AND FILE WITH THE CLERK OF THE LOCAL GOVERNMENT AN APPRO-
14 PRIATE UNDERTAKING, SEPARATE FROM AND IN ADDITION TO ANY OTHER UNDERTAK-
15 ING REQUIRED OF THE TRUSTEE IN ANY OTHER CAPACITY, IN AN AMOUNT SUFFI-
16 CIENT TO COVER TRUST ASSETS. IN LIEU THEREOF, SUCH COVERAGE MAY BE
17 INCLUDED IN A BLANKET UNDERTAKING IN ACCORDANCE WITH SECTION ELEVEN OF
18 THE PUBLIC OFFICERS LAW. THE COST OF THE UNDERTAKING SHALL BE CONSID-
19 ERED TO BE A REASONABLE EXPENSE OF ADMINISTERING THE TRUST.

20 4. CONTRIBUTIONS TO THE TRUST, AND ANY INTEREST OR OTHER INCOME OR
21 EARNINGS ON CONTRIBUTIONS, SHALL BE IRREVOCABLE BEFORE ALL LIABILITIES
22 OF THE LOCAL GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN
23 SATISFIED, AND SHALL BE SOLELY DEDICATED TO, AND USED SOLELY FOR,
24 PROVIDING OTHER POST EMPLOYMENT BENEFITS AND PAYING APPROPRIATE AND
25 REASONABLE EXPENSES OF ADMINISTERING THE TRUST. NO ASSETS, INCOME, EARN-
26 INGS OR DISTRIBUTIONS OF THE TRUST SHALL BE SUBJECT TO ANY CLAIM OF
27 CREDITORS OF THE LOCAL GOVERNMENT OR OF ANY PERSON OR ENTITY ADMINISTER-
28 ING A PLAN FOR THE PROVISION OF OTHER POST EMPLOYMENT BENEFITS OR TO
29 ASSIGNMENT OR EXECUTION, ATTACHMENT OR ANY OTHER CLAIM ENFORCEMENT PROC-
30 ESS INITIATED BY OR ON BEHALF OF SUCH CREDITORS. EXCEPT AS OTHERWISE
31 PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, THE TRUSTEE SHALL NOT BE
32 RESPONSIBLE FOR THE ADEQUACY OF THE ASSETS OF THE TRUST TO MEET ANY
33 OTHER POST EMPLOYMENT BENEFIT. THE TRUSTEE SHALL NOT BE RESPONSIBLE FOR
34 TAKING ANY ACTION TO ENFORCE THE PAYMENT OF ANY APPROPRIATION INTO THE
35 TRUST. THE ASSETS OF THE TRUST, INCLUDING ALL INTEREST OR OTHER INCOME
36 OR EARNINGS ON CONTRIBUTIONS TO THE TRUST, SHALL BE EXEMPT FROM ALL
37 STATE AND LOCAL TAXES. THE TRUST MAY BE TERMINATED ONLY WHEN ALL
38 LIABILITIES OF THE LOCAL GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS
39 HAVE BEEN SATISFIED AND THERE IS NO PRESENT OR FUTURE OBLIGATION,
40 CONTINGENT OR OTHERWISE, OF THE LOCAL GOVERNMENT TO PROVIDE SUCH OTHER
41 POST EMPLOYMENT BENEFITS. UPON SUCH TERMINATION, ANY REMAINING TRUST
42 ASSETS, AFTER ANY PROPER EXPENSES OF THE TRUST HAVE BEEN PAID, SHALL
43 REVERT TO THE LOCAL GOVERNMENT TO BE PAID INTO ONE OR MORE RESERVE
44 FUNDS, DULY ESTABLISHED PURSUANT TO THIS ARTICLE OR OTHER STATE STATUTE,
45 IN SUCH AMOUNTS AS DETERMINED BY THE GOVERNING BOARD OF THE LOCAL
46 GOVERNMENT.

47 5. DISBURSEMENTS FROM THE TRUST SHALL BE MADE ONLY UPON A DULY AUTHOR-
48 IZED REQUEST PURSUANT TO RESOLUTION OF THE GOVERNING BOARD OF THE LOCAL
49 GOVERNMENT STATING THE AMOUNT OF THE REQUESTED DISBURSEMENT AND DETER-
50 MINING THAT THE DISBURSEMENT IS FOR THE SOLE PURPOSE OF PROVIDING FUNDS
51 FOR THE COSTS OF OTHER POST EMPLOYMENT BENEFITS CURRENTLY DUE AND PAYA-
52 BLE BY THE LOCAL GOVERNMENT.

53 6. THE TRUSTEE SHALL INVEST THE ASSETS OF THE TRUST IN THE OTHER POST
54 EMPLOYMENT BENEFITS INVESTMENT FUND IN THE CUSTODY OF THE STATE COMP-
55 TROLLER, IN ACCORDANCE WITH SECTION NINETY-SEVEN-LLLL OF THE STATE
56 FINANCE LAW. ANY INTEREST OR OTHER INCOME OR EARNINGS RESULTING FROM THE

1 INVESTMENT OF ASSETS OF THE TRUST SHALL ACCRUE TO AND BECOME PART OF THE
2 ASSETS OF THE TRUST. THE TRUSTEE SHALL DEVELOP A WRITTEN INVESTMENT
3 POLICY FOR SELECTING AMONG THE INVESTMENT OPTIONS OFFERED BY THE STATE
4 COMPTROLLER PURSUANT TO SECTION NINETY-SEVEN-LLLL OF THE STATE FINANCE
5 LAW WHICH, AT A MINIMUM, SHALL INCLUDE A STATEMENT OF INVESTMENT OBJEC-
6 TIVES ADDRESSING, IN THE FOLLOWING ORDER OF PRIORITY, COMPLIANCE WITH
7 ALL LEGAL REQUIREMENTS, THE ABILITY TO TIMELY MEET DISBURSEMENT REQUESTS
8 WITHOUT FORCED SALE OF ASSETS, SAFETY OF PRINCIPAL AND ATTAINMENT OF
9 MARKET RATES OF RETURN.

10 7. NEITHER THE LOCAL GOVERNMENT NOR THE TRUSTEE SHALL BE LIABLE FOR
11 ANY LOSS OR EXPENSE SUFFERED BY THE TRUST IN THE ABSENCE OF BAD FAITH,
12 WILLFUL MISCONDUCT OR INTENTIONAL WRONGDOING. THE TRUSTEE SHALL BE
13 CONSIDERED TO BE AN EMPLOYEE OF THE LOCAL GOVERNMENT FOR PURPOSES OF
14 SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW, PROVIDED, HOWEVER, THAT THE
15 COSTS OF ANY DEFENSE OR INDEMNIFICATION OF THE TRUSTEE ARISING FROM THE
16 EXERCISE OF THE FUNCTIONS OF TRUSTEE SHALL BE PAYABLE FROM THE ASSETS OF
17 THE TRUST.

18 8. THE TRUSTEE SHALL PREPARE OR CAUSE TO BE PREPARED AN ANNUAL FINAN-
19 CIAL REPORT OF ASSETS, LIABILITIES, REVENUES AND EXPENSES OF THE TRUST
20 IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THE TRUSTEE
21 SHALL CAUSE THE ACTIVITIES UNDERTAKEN IN CONNECTION WITH THE TRUST,
22 INCLUDING THE ANNUAL FINANCIAL REPORT, TO BE AUDITED ANNUALLY, EITHER
23 SEPARATELY OR AS PART OF THE OVERALL AUDIT OF THE REPORTING ENTITY, IN
24 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, BY AN INDEPENDENT
25 CERTIFIED PUBLIC ACCOUNTANT ENGAGED IN A MANNER CONSISTENT WITH THE
26 PROCUREMENT POLICIES AND PROCEDURES ADOPTED BY THE LOCAL GOVERNMENT
27 PURSUANT TO SECTION ONE HUNDRED FOUR-B OF THIS CHAPTER AND SHALL BE
28 SUBJECT TO A REQUEST FOR PROPOSALS PROCESS AT LEAST EVERY FIVE YEARS.
29 THE AUDIT SHALL BE COMPLETED WITHIN ONE HUNDRED TWENTY DAYS FROM THE
30 CLOSE OF THE FISCAL YEAR OF THE LOCAL GOVERNMENT. A COPY OF THE ANNUAL
31 FINANCIAL REPORT AND THE REPORT OF SUCH AUDIT SHALL BE PROVIDED TO THE
32 STATE COMPTROLLER, THE TRUSTEE AND THE GOVERNING BOARD OF THE LOCAL
33 GOVERNMENT AND SHALL BE PUBLICLY AVAILABLE AND POSTED ON THE WEBSITE OF
34 THE LOCAL GOVERNMENT, IF SUCH A WEBSITE IS MAINTAINED.

35 9. THE STATE COMPTROLLER MAY MAKE, AMEND AND REPEAL SUCH RULES AND
36 REGULATIONS AS THE STATE COMPTROLLER MAY DEEM APPROPRIATE FOR THE PROPER
37 OPERATION AND MANAGEMENT OF TRUSTS ESTABLISHED PURSUANT TO THIS SECTION.

38 10. NOTHING CONTAINED IN THIS SECTION SHALL BE INTERPRETED OR
39 CONSTRUED TO:

40 (A) CREATE ANY OBLIGATION IN, IMPOSE ANY OBLIGATION ON, OR ALTER ANY
41 OBLIGATION OF ANY LOCAL GOVERNMENT TO PROVIDE OTHER POST EMPLOYMENT
42 BENEFITS;

43 (B) LIMIT OR RESTRICT THE AUTHORITY OF A LOCAL GOVERNMENT TO MODIFY OR
44 ELIMINATE OTHER POST EMPLOYMENT BENEFITS;

45 (C) ASSURE OR DENY OTHER POST EMPLOYMENT BENEFITS; OR

46 (D) REQUIRE ANY LOCAL GOVERNMENT TO FUND ITS LIABILITY FOR OTHER POST
47 EMPLOYMENT BENEFITS.

48 S 4. Subdivision 9 of section 6-p of the general municipal law, as
49 added by chapter 518 of the laws of 1996, is amended to read as follows:

50 9. If, after the establishment of such fund, the municipality deter-
51 mines that such fund is no longer needed, the moneys remaining in such
52 fund may be transferred to any other reserve fund OR ANY OTHER POST
53 EMPLOYMENT BENEFITS TRUST of the municipal corporation authorized by
54 this chapter that is comprised of moneys which were raised on the same
55 tax base as the moneys in the reserve fund established under this
56 section or TO A RESERVE FUND ESTABLISHED PURSUANT TO section thirty-six

1 hundred fifty-one of the education law, only to the extent that the
2 moneys in this fund shall exceed the sum sufficient to pay all liabil-
3 ities incurred or accrued against it. Prior to the discontinuance of
4 such fund, the fiscal and legal officers of such municipal corporation
5 shall certify to the governing board thereof the amount that may be
6 necessary to retain in such fund to satisfy all liabilities incurred or
7 accrued against it and such sum shall be retained in the fund for
8 payment of such amounts or until later certified that such funds are no
9 longer needed.

10 S 5. The provisions of section 6-t of the general municipal law, as
11 added by section three of this act, shall not affect the validity of the
12 establishment or implementation of the New York City Retiree Health
13 Benefit Trust, established June 12, 2006 by the City of New York as
14 Grantor, and neither the operation nor any amendment of such trust shall
15 be subject to the provisions of such section. The establishment of such
16 trust and its operation in accordance with its terms is hereby ratified
17 and approved.

18 S 6. This act shall take effect on the one hundred eightieth day after
19 it shall have become a law; provided, however, that effective immediate-
20 ly the state comptroller is hereby authorized to take any action neces-
21 sary to implement the provisions of this act on or before such effective
22 date.