S T A T E O F N E W Y O R K

7534

I N S E N A T E

April 19, 2010

Introduced by Sen. C. JOHNSON -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The state finance law is amended by adding a new section 97-jjjj to read as follows:

S 97-JJJJ. OTHER POST EMPLOYMENT BENEFITS ("OPEB") INVESTMENT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE SOLE CUSTODY OF THE STATE COMPTROLLER A SPECIAL INVESTMENT FUND TO BE KNOWN AS THE OTHER POST EMPLOYMENT BENEFITS INVESTMENT FUND.

2. FOR PURPOSES OF THIS SECTION:

(A) "FUND" SHALL MEAN THE OTHER POST EMPLOYMENT BENEFITS INVESTMENT FUND CREATED BY THIS SECTION;

(B) "COMPTROLLER" SHALL MEAN THE STATE COMPTROLLER;

(C) "STATE" SHALL MEAN THE STATE OF NEW YORK;

(D) "LOCAL GOVERNMENT" SHALL HAVE THE SAME MEANING AS SET FORTH IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION SIX-T OF THE GENERAL MUNICIPAL LAW;

(E) "OTHER PUBLIC CORPORATION" SHALL MEAN ANY PUBLIC CORPORATION OTHER THAN A LOCAL GOVERNMENT THAT IS AUTHORIZED TO ESTABLISH AN IRREVOCABLE TRUST; AND

(F) "PARTICIPATING TRUSTEE" SHALL MEAN THE TRUSTEE FOR THE STATE, AND THE TRUSTEE FOR ANY LOCAL GOVERNMENT OR ANY OTHER PUBLIC CORPORATION THAT INVESTS MONEYS IN THE FUND PURSUANT TO THIS SECTION.

3. THE FUND SHALL CONSIST OF ALL MONEYS PAID TO THE COMPTROLLER BY THE STATE PURSUANT TO SECTION ONE HUNDRED SIXTY-NINE OF THE CIVIL SERVICE LAW, BY LOCAL GOVERNMENTS PURSUANT TO SECTION SIX-T OF THE GENERAL MUNICIPAL LAW AND BY ANY OTHER PUBLIC CORPORATION THAT ESTABLISHES AN

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

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OTHER POST EMPLOYMENT BENEFITS TRUST. THE MONEYS IN THE FUND SHALL NOT BE WITHIN THE STATE TREASURY, AND SHALL NOT BE DEEMED TO BE STATE FUNDS FOR ANY PURPOSE. NOTWITHSTANDING THE PROVISIONS OF SECTION FOUR OF THIS CHAPTER, OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, MONEYS MAY BE DISBURSED FROM THE FUND FOR ANY AUTHORIZED PURPOSE WITHOUT APPROPRIATION.

4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE MONEYS IN THE FUND MAY BE INVESTED BY THE COMPTROLLER IN ANY INVESTMENTS IN COMPLIANCE WITH THE FOLLOWING STANDARDS:

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

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

5. THE COMPTROLLER SHALL MAINTAIN A SEPARATE ACCOUNT FOR EACH PARTICIPATING TRUSTEE. HOWEVER, MONEYS OF PARTICIPATING TRUSTEES MAY BE COMMINGLED FOR INVESTMENT PURPOSES, PROVIDED THAT THE MONEY OF EACH PARTICIPATING TRUSTEE SHALL BE SEPARATELY ACCOUNTED FOR.

6. THE COMPTROLLER SHALL ESTABLISH SUB-FUNDS AND INVEST SUCH SUB-FUNDS SEPARATELY TO PROVIDE PARTICIPATING TRUSTEES WITH A NUMBER OF OPTIONS TO MEET VARIOUS INVESTMENT OBJECTIVES. INVESTMENT EARNINGS SHALL BE PRORATED AMONG PARTICIPATING TRUSTEES IN EACH SUB-FUND IN PROPORTION TO THE AMOUNT OF INVESTMENTS HELD BY PARTICIPATING TRUSTEES.

7. THE COMPTROLLER MAY HIRE SUCH OFFICERS AND EMPLOYEES AND CONTRACT WITH SUCH ADVISORS AND AGENTS AS THE COMPTROLLER DEEMS NECESSARY FOR THE MANAGEMENT AND INVESTMENT OF MONEYS IN THE FUND. ANY OFFICERS AND EMPLOYEES EMPLOYED BY THE COMPTROLLER FOR THE MANAGEMENT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE OFFICERS AND EMPLOYEES OF THE COMPTROLLER, PROVIDED, HOWEVER, THAT ANY COSTS ASSOCIATED WITH THE EMPLOYMENT OF SUCH OFFICERS AND EMPLOYEES AND ANY ADVISORS OR AGENTS SHALL BE CHARGED AGAINST THE FUND. SUCH CHARGES SHALL BE INCLUDED IN THE ADMINISTRATIVE FEE CHARGED TO PARTICIPATING TRUSTEES IN THE FUND.

8. THE COMPTROLLER SHALL ENTER INTO AN AGREEMENT WITH EACH PARTICIPATING TRUSTEE. EACH SUCH AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING TERMS:

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

(B) A PROVISION THAT THE PARTICIPATING TRUSTEE SHALL DETERMINE THE AMOUNTS OF MONEY TO BE CONTRIBUTED TO THE FUND AND DESIGNATE THE SUB-FUNDS IN WHICH THE MONEYS SHALL BE INVESTED. THE COMPTROLLER SHALL ACCEPT SUCH AMOUNTS AND HIS OR HER ONLY RESPONSIBILITY SHALL BE TO INVEST THE MONEYS IN THE SUB-FUNDS DIRECTED BY THE PARTICIPATING TRUSTEE AND TO REPORT THE CONTRIBUTIONS, WITHDRAWALS, BALANCES AND EARNINGS, TO THE PARTICIPATING TRUSTEE ON A REGULAR BASIS TO BE SET FORTH IN THE AGREEMENT, BUT NO LESS FREQUENTLY THAN ANNUALLY;

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

(D) A REQUIREMENT THAT THE PARTICIPATING TRUSTEE SHALL ANNUALLY, ON A DATE PROVIDED IN THE AGREEMENT, PROVIDE THE COMPTROLLER WITH A SCHEDULE

OR AMENDED SCHEDULE OF MONEYS EXPECTED TO BE CONTRIBUTED TO THE FUND AND WITHDRAWALS EXPECTED TO BE MADE FROM ITS ACCOUNT. SUCH SCHEDULE SHALL BE BINDING ON THE PARTICIPATING TRUSTEE;

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

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

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

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

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

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

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

(A) "PRESIDENT" SHALL MEAN THE PRESIDENT OF THE CIVIL SERVICE COMMISSION AS HEAD OF THE DEPARTMENT OF CIVIL SERVICE;

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

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

(D) "OTHER POST EMPLOYMENT BENEFITS" SHALL MEAN BENEFITS, EXCEPT PENSIONS OR OTHER BENEFITS FUNDED THROUGH A PUBLIC RETIREMENT SYSTEM, PROVIDED OR TO BE PROVIDED BY THE STATE AS COMPENSATION, WHETHER PURSUANT TO STATUTE, CONTRACT OR OTHER LAWFUL AUTHORITY, TO ITS CURRENT OR FORMER OFFICERS OR EMPLOYEES, OR THEIR FAMILIES OR BENEFICIARIES, AFTER SERVICE TO THE STATE 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 PRESIDENT MAY ESTABLISH A TRUST IN HIS OR HER CUSTODY FOR THE PURPOSE OF ACCUMULATING ASSETS TO FUND THE COST OF PROVIDING OTHER POST EMPLOYMENT BENEFITS. CONTRIBUTIONS TO SUCH TRUST MAY BE MADE BY STATE APPROPRIATION.

3. THE PRESIDENT IS HEREBY DECLARED TO BE THE TRUSTEE OF ANY TRUST ESTABLISHED PURSUANT TO THIS SECTION. AS TRUSTEE THE PRESIDENT SHALL BE RESPONSIBLE FOR THE OPERATION AND MANAGEMENT OF THE TRUST, INCLUDING THE INVESTMENT OF TRUST ASSETS, AND SHALL BE SUBJECT TO ALL THE DUTIES AND RESPONSIBILITIES IMPOSED BY LAW ON TRUSTEES, EXCEPT TO THE EXTENT INCONSISTENT WITH THIS SECTION.

4. CONTRIBUTIONS TO THE TRUST, AND ANY INTEREST OR OTHER INCOME OR EARNINGS ON CONTRIBUTIONS, SHALL BE IRREVOCABLE BEFORE ALL LIABILITIES OF THE STATE GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN SATISFIED AND SHALL BE SOLELY DEDICATED TO, AND USED SOLELY FOR, PROVIDING OTHER POST EMPLOYMENT BENEFITS AND PAYING APPROPRIATE AND REASONABLE

EXPENSES OF ADMINISTERING THE TRUST. NO ASSETS, INCOME, EARNINGS OR DISTRIBUTIONS OF THE TRUST SHALL BE SUBJECT TO ANY CLAIM OF CREDITORS OF THE STATE, OR TO ASSIGNMENT OR EXECUTION, ATTACHMENT OR ANY OTHER CLAIM ENFORCEMENT PROCESS INITIATED BY OR ON BEHALF OF SUCH CREDITORS. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION NINE OF THIS SECTION, THE PRESIDENT SHALL NOT BE RESPONSIBLE FOR THE ADEQUACY OF THE ASSETS OF THE TRUST TO MEET ANY OTHER POST EMPLOYMENT BENEFIT. THE PRESIDENT SHALL NOT BE RESPONSIBLE FOR TAKING ANY ACTION TO ENFORCE THE PAYMENT OF ANY APPROPRIATION INTO THE TRUST. THE TRUST MAY BE TERMINATED ONLY WHEN ALL LIABILITIES OF THE STATE FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN SATISFIED AND THERE IS NO PRESENT OR FUTURE OBLIGATION, CONTINGENT OR OTHERWISE, OF THE STATE TO PROVIDE SUCH OTHER POST EMPLOYMENT BENEFITS. UPON SUCH TERMINATION, ANY REMAINING TRUST ASSETS, AFTER ANY PROPER EXPENSES OF THE TRUST HAVE BEEN PAID, SHALL REVERT TO THE STATE.

5. WITHDRAWALS FROM THE TRUST SHALL BE MADE FOR THE SOLE PURPOSE OF PROVIDING FUNDS FOR THE COSTS OF OTHER POST EMPLOYMENT BENEFITS CURRENTLY DUE AND PAYABLE BY THE STATE.

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

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

8. THE PRESIDENT SHALL DEVELOP, IN CONSULTATION WITH THE STATE HEALTH INSURANCE COUNCIL, A WRITTEN INVESTMENT POLICY FOR SELECTING AMONG THE INVESTMENT OPTIONS OFFERED BY THE STATE COMPTROLLER PURSUANT TO SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW. SUCH POLICY SHALL INCLUDE A STATEMENT OF INVESTMENT OBJECTIVES ADDRESSING, IN THE FOLLOWING ORDER OF PRIORITY, THE ABILITY TO TIMELY MEET DISBURSEMENT REQUESTS WITHOUT FORCED SALE OF ASSETS, SAFETY OF PRINCIPAL AND ATTAINMENT OF MARKET RATES OF RETURN.

9. NEITHER THE STATE NOR THE PRESIDENT SHALL BE LIABLE FOR ANY LOSS OR EXPENSE SUFFERED BY THE TRUST IN THE ABSENCE OF BAD FAITH, WILLFUL MISCONDUCT OR INTENTIONAL WRONGDOING. THE PRESIDENT 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 PRESIDENT ARISING FROM THE EXERCISE OF THE FUNCTIONS OF TRUSTEE SHALL BE PAYABLE FROM THE ASSETS OF THE TRUST.

10. THE PRESIDENT 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 PRESIDENT 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.

3. THE GOVERNING BOARD OF THE LOCAL GOVERNMENT IS HEREBY DECLARED TO BE THE TRUSTEE OF ANY TRUST ESTABLISHED PURSUANT TO THIS SECTION, PROVIDED, HOWEVER, THAT THE GOVERNING BOARD, BY RESOLUTION, MAY DESIGNATE THE CHIEF FISCAL OFFICER OF THE LOCAL GOVERNMENT AS TRUSTEE, SUBJECT TO ACCEPTANCE OF SUCH POSITION BY THE CHIEF FISCAL OFFICER AND, IN THE CASE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE, THE CITY COMPTROLLER SHALL BE THE TRUSTEE. THE TRUSTEE SHALL BE RESPONSIBLE FOR THE OPERATION AND MANAGEMENT OF THE TRUST, INCLUDING THE DEPOSIT AND SECURING OF TRUST ASSETS IN THE SAME MANNER AS PROVIDED IN SECTION TEN OF THIS ARTICLE, AND THE INVESTMENT OF TRUST ASSETS, AND SHALL BE SUBJECT TO ALL THE DUTIES AND RESPONSIBILITIES IMPOSED BY LAW ON TRUSTEES, EXCEPT TO THE EXTENT INCONSISTENT WITH THIS SECTION. THE TRUSTEE SHALL EXECUTE AND FILE WITH THE CLERK OF THE LOCAL GOVERNMENT AN APPROPRIATE UNDERTAKING, SEPARATE FROM AND IN ADDITION TO ANY OTHER UNDERTAKING REQUIRED OF THE TRUSTEE IN ANY OTHER CAPACITY, IN AN AMOUNT SUFFICIENT TO COVER TRUST ASSETS. IN LIEU THEREOF, SUCH COVERAGE MAY BE INCLUDED IN A BLANKET UNDERTAKING IN ACCORDANCE WITH SECTION ELEVEN OF THE PUBLIC OFFICERS LAW. THE COST OF THE UNDERTAKING SHALL BE CONSIDERED TO BE A REASONABLE EXPENSE OF ADMINISTERING THE TRUST.

4. CONTRIBUTIONS TO THE TRUST, AND ANY INTEREST OR OTHER INCOME OR EARNINGS ON CONTRIBUTIONS, SHALL BE IRREVOCABLE BEFORE ALL LIABILITIES OF THE LOCAL GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN SATISFIED, AND SHALL BE SOLELY DEDICATED TO, AND USED SOLELY FOR, PROVIDING OTHER POST EMPLOYMENT BENEFITS AND PAYING APPROPRIATE AND REASONABLE EXPENSES OF ADMINISTERING THE TRUST. NO ASSETS, INCOME, EARNINGS OR DISTRIBUTIONS OF THE TRUST SHALL BE SUBJECT TO ANY CLAIM OF CREDITORS OF THE LOCAL GOVERNMENT OR OF ANY PERSON OR ENTITY ADMINISTERING A PLAN FOR THE PROVISION OF OTHER POST EMPLOYMENT BENEFITS OR TO ASSIGNMENT OR EXECUTION, ATTACHMENT OR ANY OTHER CLAIM ENFORCEMENT PROCESS INITIATED BY OR ON BEHALF OF SUCH CREDITORS. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, THE TRUSTEE SHALL NOT BE RESPONSIBLE FOR THE ADEQUACY OF THE ASSETS OF THE TRUST TO MEET ANY OTHER POST EMPLOYMENT BENEFIT. THE TRUSTEE SHALL NOT BE RESPONSIBLE FOR TAKING ANY ACTION TO ENFORCE THE PAYMENT OF ANY APPROPRIATION INTO THE TRUST. THE ASSETS OF THE TRUST, INCLUDING ALL INTEREST OR OTHER INCOME OR EARNINGS ON CONTRIBUTIONS TO THE TRUST, SHALL BE EXEMPT FROM ALL STATE AND LOCAL TAXES. THE TRUST MAY BE TERMINATED ONLY WHEN ALL LIABILITIES OF THE LOCAL GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN SATISFIED AND THERE IS NO PRESENT OR FUTURE OBLIGATION, CONTINGENT OR OTHERWISE, OF THE LOCAL GOVERNMENT TO PROVIDE SUCH OTHER POST EMPLOYMENT BENEFITS. UPON SUCH TERMINATION, ANY REMAINING TRUST ASSETS, AFTER ANY PROPER EXPENSES OF THE TRUST HAVE BEEN PAID, SHALL REVERT TO THE LOCAL GOVERNMENT TO BE PAID INTO ONE OR MORE RESERVE FUNDS, DULY ESTABLISHED PURSUANT TO THIS ARTICLE OR OTHER STATE STATUTE, IN SUCH AMOUNTS AS DETERMINED BY THE GOVERNING BOARD OF THE LOCAL GOVERNMENT.

5. DISBURSEMENTS FROM THE TRUST SHALL BE MADE ONLY UPON A DULY AUTHORIZED REQUEST PURSUANT TO RESOLUTION OF THE GOVERNING BOARD OF THE LOCAL GOVERNMENT STATING THE AMOUNT OF THE REQUESTED DISBURSEMENT AND DETERMINING THAT THE DISBURSEMENT IS FOR THE SOLE PURPOSE OF PROVIDING FUNDS FOR THE COSTS OF OTHER POST EMPLOYMENT BENEFITS CURRENTLY DUE AND PAYABLE BY THE LOCAL GOVERNMENT.

6. THE TRUSTEE SHALL INVEST THE ASSETS OF THE TRUST IN THE OTHER POST EMPLOYMENT BENEFITS INVESTMENT FUND IN THE CUSTODY OF THE STATE COMPTROLLER, IN ACCORDANCE WITH SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW. ANY INTEREST OR OTHER INCOME OR EARNINGS RESULTING FROM THE INVESTMENT OF ASSETS OF THE TRUST SHALL ACCRUE TO AND BECOME PART OF THE ASSETS OF THE TRUST. THE TRUSTEE SHALL DEVELOP A WRITTEN INVESTMENT POLICY FOR SELECTING AMONG THE INVESTMENT OPTIONS OFFERED BY THE STATE COMPTROLLER PURSUANT TO SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW WHICH, AT A MINIMUM, SHALL INCLUDE A STATEMENT OF INVESTMENT OBJECTIVES ADDRESSING, IN THE FOLLOWING ORDER OF PRIORITY, COMPLIANCE WITH ALL LEGAL REQUIREMENTS, THE ABILITY TO TIMELY MEET DISBURSEMENT REQUESTS WITHOUT FORCED SALE OF ASSETS, SAFETY OF PRINCIPAL AND ATTAINMENT OF MARKET RATES OF RETURN.

7. NEITHER THE LOCAL GOVERNMENT NOR THE TRUSTEE SHALL BE LIABLE FOR ANY LOSS OR EXPENSE SUFFERED BY THE TRUST IN THE ABSENCE OF BAD FAITH, WILLFUL MISCONDUCT OR INTENTIONAL WRONGDOING. THE TRUSTEE SHALL BE CONSIDERED TO BE AN EMPLOYEE OF THE LOCAL GOVERNMENT FOR PURPOSES OF SECTION EIGHTEEN 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.

8. 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, EITHER SEPARATELY OR AS PART OF THE OVERALL AUDIT OF THE REPORTING ENTITY, IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT ENGAGED IN A MANNER CONSISTENT WITH THE PROCUREMENT POLICIES AND PROCEDURES ADOPTED BY THE LOCAL GOVERNMENT PURSUANT TO SECTION ONE HUNDRED FOUR-B OF THIS CHAPTER AND SHALL BE SUBJECT TO A REQUEST FOR PROPOSALS PROCESS AT LEAST EVERY FIVE YEARS. THE AUDIT SHALL BE COMPLETED WITHIN ONE HUNDRED TWENTY DAYS FROM THE CLOSE OF THE FISCAL YEAR OF THE LOCAL GOVERNMENT. A COPY OF THE ANNUAL FINANCIAL REPORT AND THE REPORT OF SUCH AUDIT SHALL BE PROVIDED TO THE STATE COMPTROLLER, THE TRUSTEE AND THE GOVERNING BOARD OF THE LOCAL GOVERNMENT AND SHALL BE PUBLICLY AVAILABLE AND POSTED ON THE WEBSITE OF THE LOCAL GOVERNMENT, IF SUCH A WEBSITE IS MAINTAINED.

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

10. 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 ANY LOCAL GOVERNMENT TO PROVIDE OTHER POST EMPLOYMENT BENEFITS;

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

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

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

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

9. If, after the establishment of such fund, the municipality determines that such fund is no longer needed, the moneys remaining in such fund may be transferred to any other reserve fund OR ANY OTHER POST EMPLOYMENT BENEFITS TRUST of the municipal corporation authorized by this chapter that is comprised of moneys which were raised on the same tax base as the moneys in the reserve fund established under this section or TO A RESERVE FUND ESTABLISHED PURSUANT TO section thirty-six hundred fifty-one of the education law, only to the extent that the moneys in this fund shall exceed the sum sufficient to pay all liabilities incurred or accrued against it. Prior to the discontinuance of such fund, the fiscal and legal officers of such municipal corporation shall certify to the governing board thereof the amount that may be necessary to retain in such fund to satisfy all liabilities incurred or accrued against it and such sum shall be retained in the fund for payment of such amounts or until later certified that such funds are no longer needed.

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

S 6. This act shall take effect immediately.