

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The state finance law is amended by adding a new section
2 97-jjjj to read as follows:
3 S 97-JJJJ. 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.
21 3. THE FUND SHALL CONSIST OF ALL MONEYS PAID TO THE COMPTROLLER BY THE
22 STATE PURSUANT TO SECTION ONE HUNDRED SIXTY-NINE OF THE CIVIL SERVICE
23 LAW, BY LOCAL GOVERNMENTS PURSUANT TO SECTION SIX-T OF THE GENERAL
24 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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1 OTHER POST EMPLOYMENT BENEFITS TRUST. THE MONEYS IN THE FUND SHALL NOT
2 BE WITHIN THE STATE TREASURY, AND SHALL NOT BE DEEMED TO BE STATE FUNDS
3 FOR ANY PURPOSE. NOTWITHSTANDING THE PROVISIONS OF SECTION FOUR OF THIS
4 CHAPTER, OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, MONEYS MAY BE
5 DISBURSED FROM THE FUND FOR ANY AUTHORIZED PURPOSE WITHOUT APPROPRI-
6 ATION.

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

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

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

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

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

28 7. THE COMPTROLLER MAY HIRE SUCH OFFICERS AND EMPLOYEES AND CONTRACT
29 WITH SUCH ADVISORS AND AGENTS AS THE COMPTROLLER DEEMS NECESSARY FOR THE
30 MANAGEMENT AND INVESTMENT OF MONEYS IN THE FUND. ANY OFFICERS AND
31 EMPLOYEES EMPLOYED BY THE COMPTROLLER FOR THE MANAGEMENT AND INVESTMENT
32 OF MONEYS IN THE FUND SHALL BE OFFICERS AND EMPLOYEES OF THE COMP-
33 TROLLER, PROVIDED, HOWEVER, THAT ANY COSTS ASSOCIATED WITH THE EMPLOY-
34 MENT OF SUCH OFFICERS AND EMPLOYEES AND ANY ADVISORS OR AGENTS SHALL BE
35 CHARGED AGAINST THE FUND. SUCH CHARGES SHALL BE INCLUDED IN THE ADMINIS-
36 TRATIVE FEE CHARGED TO PARTICIPATING TRUSTEES IN THE FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) "PRESIDENT" SHALL MEAN THE PRESIDENT OF THE CIVIL SERVICE COMMIS-
27 SION AS HEAD OF THE DEPARTMENT OF CIVIL SERVICE;

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

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

31 (D) "OTHER POST EMPLOYMENT BENEFITS" SHALL MEAN BENEFITS, EXCEPT
32 PENSIONS OR OTHER BENEFITS FUNDED THROUGH A PUBLIC RETIREMENT SYSTEM,
33 PROVIDED OR TO BE PROVIDED BY THE STATE AS COMPENSATION, WHETHER PURSU-
34 ANT TO STATUTE, CONTRACT OR OTHER LAWFUL AUTHORITY, TO ITS CURRENT OR
35 FORMER OFFICERS OR EMPLOYEES, OR THEIR FAMILIES OR BENEFICIARIES, AFTER
36 SERVICE TO THE STATE HAS ENDED, INCLUDING, BUT NOT LIMITED TO, HEALTH
37 CARE BENEFITS. THE TERM "OTHER POST EMPLOYMENT BENEFITS" SHALL NOT
38 INCLUDE CASH PAYMENTS FOR THE MONETARY VALUE OF SICK LEAVE, VACATION OR
39 OTHER SIMILAR ACCRUALS, RETIREMENT INCENTIVE OR SEPARATION PAYMENTS, OR
40 BENEFITS PROVIDED PURSUANT TO THE CONSOLIDATED OMNIBUS BUDGET RECONCIL-
41 IATION ACT OF 1985 (PUBLIC LAW 99-272), AS AMENDED.

42 2. THE PRESIDENT MAY ESTABLISH A TRUST IN HIS OR HER CUSTODY FOR THE
43 PURPOSE OF ACCUMULATING ASSETS TO FUND THE COST OF PROVIDING OTHER POST
44 EMPLOYMENT BENEFITS. CONTRIBUTIONS TO SUCH TRUST MAY BE MADE BY STATE
45 APPROPRIATION.

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

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

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

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

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

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

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

37 9. NEITHER THE STATE NOR THE PRESIDENT SHALL BE LIABLE FOR ANY LOSS OR
38 EXPENSE SUFFERED BY THE TRUST IN THE ABSENCE OF BAD FAITH, WILLFUL
39 MISCONDUCT OR INTENTIONAL WRONGDOING. THE PRESIDENT SHALL BE CONSIDERED
40 TO BE ACTING AS AN OFFICER OF THE STATE FOR PURPOSES OF SECTION SEVEN-
41 TEEN OF THE PUBLIC OFFICERS LAW, PROVIDED, HOWEVER, THAT THE COSTS OF
42 ANY DEFENSE OR INDEMNIFICATION OF THE PRESIDENT ARISING FROM THE EXER-
43 CISE OF THE FUNCTIONS OF TRUSTEE SHALL BE PAYABLE FROM THE ASSETS OF THE
44 TRUST.

45 10. THE PRESIDENT SHALL PREPARE OR CAUSE TO BE PREPARED AN ANNUAL
46 FINANCIAL REPORT OF ASSETS, LIABILITIES, REVENUES AND EXPENSES OF THE
47 TRUST IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THE
48 PRESIDENT SHALL CAUSE THE ACTIVITIES UNDERTAKEN IN CONNECTION WITH THE
49 TRUST, INCLUDING THE ANNUAL FINANCIAL REPORT, TO BE AUDITED ANNUALLY, IN
50 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, BY AN INDEPENDENT
51 CERTIFIED PUBLIC ACCOUNTANT ENGAGED IN A MANNER CONSISTENT WITH THE
52 APPLICABLE PROVISIONS OF THE STATE FINANCE LAW. THE AUDIT SHALL BE
53 COMPLETED WITHIN ONE HUNDRED TWENTY DAYS FROM THE CLOSE OF THE STATE'S
54 FISCAL YEAR. A COPY OF THE ANNUAL FINANCIAL REPORT AND THE REPORT OF
55 SUCH AUDIT SHALL BE PROVIDED TO THE GOVERNOR, THE STATE COMPTROLLER AND
56 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.

1 4. CONTRIBUTIONS TO THE TRUST, AND ANY INTEREST OR OTHER INCOME OR
2 EARNINGS ON CONTRIBUTIONS, SHALL BE IRREVOCABLE BEFORE ALL LIABILITIES
3 OF THE LOCAL GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS HAVE BEEN
4 SATISFIED, AND SHALL BE SOLELY DEDICATED TO, AND USED SOLELY FOR,
5 PROVIDING OTHER POST EMPLOYMENT BENEFITS AND PAYING APPROPRIATE AND
6 REASONABLE EXPENSES OF ADMINISTERING THE TRUST. NO ASSETS, INCOME, EARN-
7 INGS OR DISTRIBUTIONS OF THE TRUST SHALL BE SUBJECT TO ANY CLAIM OF
8 CREDITORS OF THE LOCAL GOVERNMENT OR OF ANY PERSON OR ENTITY ADMINISTER-
9 ING A PLAN FOR THE PROVISION OF OTHER POST EMPLOYMENT BENEFITS OR TO
10 ASSIGNMENT OR EXECUTION, ATTACHMENT OR ANY OTHER CLAIM ENFORCEMENT PROC-
11 ESS INITIATED BY OR ON BEHALF OF SUCH CREDITORS. EXCEPT AS OTHERWISE
12 PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, THE TRUSTEE SHALL NOT BE
13 RESPONSIBLE FOR THE ADEQUACY OF THE ASSETS OF THE TRUST TO MEET ANY
14 OTHER POST EMPLOYMENT BENEFIT. THE TRUSTEE SHALL NOT BE RESPONSIBLE FOR
15 TAKING ANY ACTION TO ENFORCE THE PAYMENT OF ANY APPROPRIATION INTO THE
16 TRUST. THE ASSETS OF THE TRUST, INCLUDING ALL INTEREST OR OTHER INCOME
17 OR EARNINGS ON CONTRIBUTIONS TO THE TRUST, SHALL BE EXEMPT FROM ALL
18 STATE AND LOCAL TAXES. THE TRUST MAY BE TERMINATED ONLY WHEN ALL
19 LIABILITIES OF THE LOCAL GOVERNMENT FOR OTHER POST EMPLOYMENT BENEFITS
20 HAVE BEEN SATISFIED AND THERE IS NO PRESENT OR FUTURE OBLIGATION,
21 CONTINGENT OR OTHERWISE, OF THE LOCAL GOVERNMENT TO PROVIDE SUCH OTHER
22 POST EMPLOYMENT BENEFITS. UPON SUCH TERMINATION, ANY REMAINING TRUST
23 ASSETS, AFTER ANY PROPER EXPENSES OF THE TRUST HAVE BEEN PAID, SHALL
24 REVERT TO THE LOCAL GOVERNMENT TO BE PAID INTO ONE OR MORE RESERVE
25 FUNDS, DULY ESTABLISHED PURSUANT TO THIS ARTICLE OR OTHER STATE STATUTE,
26 IN SUCH AMOUNTS AS DETERMINED BY THE GOVERNING BOARD OF THE LOCAL
27 GOVERNMENT.

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

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

47 7. NEITHER THE LOCAL GOVERNMENT NOR THE TRUSTEE SHALL BE LIABLE FOR
48 ANY LOSS OR EXPENSE SUFFERED BY THE TRUST IN THE ABSENCE OF BAD FAITH,
49 WILLFUL MISCONDUCT OR INTENTIONAL WRONGDOING. THE TRUSTEE SHALL BE
50 CONSIDERED TO BE AN EMPLOYEE OF THE LOCAL GOVERNMENT FOR PURPOSES OF
51 SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW, PROVIDED, HOWEVER, THAT THE
52 COSTS OF ANY DEFENSE OR INDEMNIFICATION OF THE TRUSTEE ARISING FROM THE
53 EXERCISE OF THE FUNCTIONS OF TRUSTEE SHALL BE PAYABLE FROM THE ASSETS OF
54 THE TRUST.

55 8. THE TRUSTEE SHALL PREPARE OR CAUSE TO BE PREPARED AN ANNUAL FINAN-
56 CIAL REPORT OF ASSETS, LIABILITIES, REVENUES AND EXPENSES OF THE TRUST

1 IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THE TRUSTEE
2 SHALL CAUSE THE ACTIVITIES UNDERTAKEN IN CONNECTION WITH THE TRUST,
3 INCLUDING THE ANNUAL FINANCIAL REPORT, TO BE AUDITED ANNUALLY, EITHER
4 SEPARATELY OR AS PART OF THE OVERALL AUDIT OF THE REPORTING ENTITY, IN
5 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, BY AN INDEPENDENT
6 CERTIFIED PUBLIC ACCOUNTANT ENGAGED IN A MANNER CONSISTENT WITH THE
7 PROCUREMENT POLICIES AND PROCEDURES ADOPTED BY THE LOCAL GOVERNMENT
8 PURSUANT TO SECTION ONE HUNDRED FOUR-B OF THIS CHAPTER AND SHALL BE
9 SUBJECT TO A REQUEST FOR PROPOSALS PROCESS AT LEAST EVERY FIVE YEARS.
10 THE AUDIT SHALL BE COMPLETED WITHIN ONE HUNDRED TWENTY DAYS FROM THE
11 CLOSE OF THE FISCAL YEAR OF THE LOCAL GOVERNMENT. A COPY OF THE ANNUAL
12 FINANCIAL REPORT AND THE REPORT OF SUCH AUDIT SHALL BE PROVIDED TO THE
13 STATE COMPTROLLER, THE TRUSTEE AND THE GOVERNING BOARD OF THE LOCAL
14 GOVERNMENT AND SHALL BE PUBLICLY AVAILABLE AND POSTED ON THE WEBSITE OF
15 THE LOCAL GOVERNMENT, IF SUCH A WEBSITE IS MAINTAINED.

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

19 10. NOTHING CONTAINED IN THIS SECTION SHALL BE INTERPRETED OR
20 CONSTRUED TO:

21 (A) CREATE ANY OBLIGATION IN, IMPOSE ANY OBLIGATION ON, OR ALTER ANY
22 OBLIGATION OF ANY LOCAL GOVERNMENT TO PROVIDE OTHER POST EMPLOYMENT
23 BENEFITS;

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

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

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

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

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

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

55 S 6. This act shall take effect immediately.