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

7535

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 Local Government

AN ACT to amend the general municipal law, in relation to authorizing certain local governments to establish other post employment benefits (OPEB) trusts

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

Section 1. 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 BUDG-

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

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ETARY 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.

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 NINE 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 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. THE TRUSTEE 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, PROVIDED, HOWEVER,

THAT THE CHARGES, FEES OR OTHER COMPENSATION FOR SUCH CONTRACTED SERVICES SHALL BE REASONABLE AND CLEARLY STATED IN WRITTEN AGREEMENTS. CONTRACTS FOR SUCH SERVICES SHALL BE LET 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 THREE YEARS. TWO OR MORE LOCAL GOVERNMENTS, IN ACCORDANCE WITH SECTION ONE HUNDRED NINETEEN-O OF THIS CHAPTER, MAY JOINTLY CONTRACT TO OBTAIN SUCH SERVICES.

7. A. THE TRUSTEE SHALL MANAGE AND INVEST THE ASSETS OF THE TRUST IN A CAREFUL AND PRUDENT MANNER. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, THE TRUSTEE MAY INVEST ASSETS OF THE TRUST ONLY IN SPECIAL TIME DEPOSIT ACCOUNTS IN, AND CERTIFICATES OF DEPOSIT ISSUED BY, A BANK OR TRUST COMPANY, AS DEFINED IN SECTION TEN OF THIS ARTICLE, LOCATED AND AUTHORIZED TO DO BUSINESS IN THIS STATE, SECURED IN THE SAME MANNER AS PROVIDED IN SECTION ELEVEN OF THIS ARTICLE, AND IN ELIGIBLE SECURITIES AS DEFINED IN PARAGRAPH F OF SUBDIVISION ONE OF SECTION TEN OF THIS ARTICLE. ALTERNATIVELY, THE TRUSTEE MAY INVEST ALL OR PART OF THE TRUST ASSETS IN ANY FUND OF THE STATE ESTABLISHED TO RECEIVE MONIES FROM ANY OTHER POST EMPLOYMENT BENEFIT TRUST CREATED PURSUANT TO THIS SECTION. 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.

B. WITH RESPECT TO A TRUST ESTABLISHED BY A CITY WITH A POPULATION OF ONE MILLION OR MORE, THE CITY COMPTROLLER MAY INVEST ASSETS OF THE TRUST AS FOLLOWS:

(I) THE CITY 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 FAMIL-IAR WITH SUCH MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A LIKE CHARACTER AND WITH LIKE AIMS; AND

(II) THE CITY 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 CIRCUMSTANCE IT IS CLEARLY PRUDENT NOT TO DO SO.

8. THE TRUSTEE SHALL DEVELOP A WRITTEN INVESTMENT POLICY WHICH, AT A MINIMUM, SHALL INCLUDE:

A. 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;

B. A STATEMENT OF THE INVESTMENT OPTIONS AUTHORIZED IN SUBDIVISION SEVEN OF THIS SECTION IN WHICH TRUST ASSETS MAY BE INVESTED;

C. STANDARDS FOR THE DIVERSIFICATION OF INVESTMENTS WHICH SHALL ADDRESS LIMITING INVESTMENTS BY TYPE TO AVOID OVER-CONCENTRATION IN ANY ONE PERMITTED TYPE OF INVESTMENT OR TRANSACTIONS WITH ANY ONE FIRM. EXCEPT AS OTHERWISE PROVIDED WITH RESPECT TO A CITY WITH A POPULATION OF ONE MILLION OR MORE AND EXCEPT INVESTMENTS MADE IN ANY FUND OF THE STATE ESTABLISHED TO RECEIVE MONIES FROM ANY OTHER POST EMPLOYMENT BENEFIT TRUST CREATED PURSUANT TO THIS SECTION, IN NO EVENT SHALL SUCH STANDARDS PERMIT AGGREGATE INVESTMENTS IN:

(I) ANY CATEGORY OF ELIGIBLE SECURITIES DESCRIBED IN SUBPARAGRAPHS (II), (V), (VI), (VII), (VIII), (IX) AND (X) OF PARAGRAPH F OF SUBDIVI-SION ONE OF SECTION TEN OF THIS ARTICLE TO EXCEED FIVE PER CENTUM OF THE TOTAL TRUST ASSETS HELD AT ANY TIME;

(II) THE CATEGORY OF ELIGIBLE SECURITIES DESCRIBED IN SUBPARAGRAPH (IV) OF PARAGRAPH F OF SUBDIVISION ONE OF SECTION TEN OF THIS ARTICLE, EXCEPT OBLIGATIONS ISSUED OR FULLY GUARANTEED BY THIS STATE, TO EXCEED FIVE PER CENTUM OF THE TOTAL TRUST ASSETS HELD AT ANY TIME;

(III) THE OBLIGATIONS OF ANY ONE ISSUER IN ANY CATEGORY OF ELIGIBLE SECURITIES DESCRIBED IN SUBPARAGRAPHS (II), (V), (VI), (VII), (VIII), (IX) AND (X) OF PARAGRAPH F OF SUBDIVISION ONE OF SECTION TEN OF THIS ARTICLE TO EXCEED TWO PER CENTUM OF THE TOTAL TRUST ASSETS HELD AT ANY TIME OR FIVE PER CENTUM OF THE DIRECT LIABILITIES OF SUCH ISSUER; OR

(IV) THE OBLIGATIONS OF ANY ONE ISSUER IN THE CATEGORY OF ELIGIBLE SECURITIES DESCRIBED IN SUBPARAGRAPH (IV) OF PARAGRAPH F OF SUBDIVISION ONE OF SECTION TEN OF THIS ARTICLE, EXCEPT OBLIGATIONS ISSUED OR FULLY GUARANTEED BY THIS STATE, TO EXCEED TWO PER CENTUM OF THE TOTAL TRUST ASSETS HELD AT ANY TIME OR FIVE PER CENTUM OF THE DIRECT LIABILITIES OF SUCH ISSUER;

D. EXCEPT WITH RESPECT TO INVESTMENTS MADE IN ANY FUND OF THE STATE ESTABLISHED TO RECEIVE MONIES FROM ANY OTHER POST EMPLOYMENT BENEFIT TRUST CREATED PURSUANT TO THIS SECTION, A STATEMENT OF THE MAXIMUM TIME REMAINING TO MATURITY OF INDIVIDUAL INVESTMENTS AND THE MAXIMUM WEIGHTED AVERAGE MATURITY OF ALL INVESTMENTS, WHICH SHALL BE CONSISTENT WITH THE INVESTMENT OBJECTIVE TO TIMELY MEET DISBURSEMENT REQUESTS;

E. EXCEPT WITH RESPECT TO INVESTMENTS MADE IN ANY FUND OF THE STATE ESTABLISHED TO RECEIVE MONIES FROM ANY OTHER POST EMPLOYMENT BENEFIT TRUST CREATED PURSUANT TO THIS SECTION, A REQUIREMENT THAT THE MARKET VALUE OF INVESTMENTS SHALL BE DETERMINED AT LEAST MONTHLY, AND AT LEAST ANNUALLY BY A QUALIFIED OUTSIDE PROFESSIONAL, AND THAT AT LEAST ONCE EACH MONTH THE PORTFOLIO OF INVESTMENTS BE TESTED FOR SENSITIVITY TO CHANGES IN INTEREST RATES. THE TERM "MARKET VALUE" AS USED IN THIS SECTION SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION THREE OF SECTION FORTY-TWO OF THIS CHAPTER; AND

F. CRITERIA FOR THE SELECTION OF ANY PROFESSIONAL INVESTMENT SERVICES, INCLUDING, BUT NOT LIMITED TO, THE QUALIFICATION OF ANY INDIVIDUAL RETAINED FOR SUCH SERVICES AS A REGISTERED INVESTMENT ADVISOR AS DEFINED UNDER THE INVESTMENT ADVISORS ACT OF 1940, AS AMENDED (15 USC S 80B-1 ET SEQ.).

9. 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.

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, 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.

11. A. A TRUSTEE OF A TRUST ESTABLISHED PURSUANT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION MAY ENTER INTO AN AGREEMENT WITH THE TRUSTEES OF ONE OR MORE OTHER SUCH TRUSTS FOR THE COOPERATIVE INVESTMENT OF MONEYS CONSTITUTING ALL OR PART OF THE ASSETS OF THE TRUSTS IN SPECIAL TIME DEPOSIT ACCOUNTS IN, AND CERTIFICATES OF DEPOSIT ISSUED BY, A BANK OR TRUST COMPANY, AS DEFINED IN SECTION TEN OF THIS ARTICLE, LOCATED AND AUTHORIZED TO DO BUSINESS IN THIS STATE, SECURED IN THE SAME MANNER AS PROVIDED IN SECTION ELEVEN OF THIS ARTICLE, AND IN ELIGIBLE SECURITIES AS DEFINED IN PARAGRAPH F OF SUBDIVISION ONE OF SECTION TEN OF THIS ARTICLE. THE AGREEMENT SHALL BE SUBJECT TO THE APPROVAL OF THE GOVERNING BOARD OF EACH LOCAL GOVERNMENT IF THE GOVERNING BOARD DOES NOT SERVE AS TRUSTEE.

B. EVERY AGREEMENT FOR THE COOPERATIVE INVESTMENT OF TRUST ASSETS SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING:

(I) A DESCRIPTION OF THE CREATION, MEMBERSHIP, POWERS AND RESPONSIBILITIES OF THE BOARD ESTABLISHED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION;

(II) A STATEMENT DESIGNATING ONE OF THE PARTICIPATING TRUSTEES AS THE LEAD PARTICIPATING TRUSTEE WHO SHALL HAVE CUSTODY ON BEHALF OF THE PARTICIPATING TRUSTEES OF ALL MONEYS TO BE INVESTED PURSUANT TO THE COOPERATIVE INVESTMENT AGREEMENT AND THE INVESTMENTS MADE PURSUANT TO THE COOPERATIVE INVESTMENT AGREEMENT;

(III) A STATEMENT THAT THE MONEYS OF THE PARTICIPATING TRUSTEES MAY BE COMMINGLED FOR INVESTMENT PURPOSES, PROVIDED THAT THE MONEYS OF EACH PARTICIPATING TRUSTEE SHALL BE SEPARATELY ACCOUNTED FOR AND INVESTMENT EARNINGS SHALL BE PRORATED AMONG AND CREDITED TO PARTICIPATING TRUSTEES IN PROPORTION TO THE AMOUNT OF THE MONEYS OF EACH PARTICIPATING TRUSTEE HELD BY THE LEAD PARTICIPATING TRUSTEE;

(IV) A STATEMENT OF THE INVESTMENT POLICY APPLICABLE TO INVESTMENTS MADE PURSUANT TO THE AGREEMENT; THIS INVESTMENT POLICY SHALL CONFORM TO THE REQUIREMENTS OF SUBDIVISION EIGHT OF THIS SECTION;

(V) THE PARTICIPATING TRUSTEES' RIGHTS TO MAKE CONTRIBUTIONS AND RECEIVE DISTRIBUTIONS, THE FREQUENCY WITH WHICH EARNINGS WILL BE DISTRIBUTED TO THE PARTICIPATING TRUSTEES, AND THE CIRCUMSTANCES, IF ANY, UNDER WHICH A PARTICIPATING TRUSTEES' RIGHTS TO MAKE CONTRIBUTIONS OR RECEIVE DISTRIBUTIONS MAY BE LIMITED OR DEFERRED;

(VI) A DESCRIPTION OF THE MANNER IN WHICH EXPENSES INCURRED IN ADMINISTERING THE COOPERATIVE INVESTMENT AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE COST OF ACTUAL AND NECESSARY EXPENSES INCURRED BY THE BOARD ESTABLISHED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION, AND OTHER COSTS OF ADMINISTERING THE INVESTMENTS MADE PURSUANT TO THE AGREEMENT, ARE TO BE APPORTIONED AMONG THE PARTICIPATING TRUSTEES. SUCH APPORTIONED COSTS SHALL BE CONSIDERED EXPENSES OF ADMINISTERING THE TRUSTS;

(VII) A DESCRIPTION OF THE METHODOLOGY THAT SHALL BE UTILIZED TO ESTABLISH THE VALUE OF EACH PARTICIPATING TRUSTEE'S INTEREST IN INVESTMENTS MADE PURSUANT TO THE AGREEMENT, INCLUDING THE VALUE OF CONTRIBUTIONS AND DISTRIBUTIONS, AND THE CALCULATION OF YIELD THEREON;

(VIII) A PROVISION REQUIRING THAT, AT LEAST ONCE A MONTH, THE PORTFOLIO OF INVESTMENTS MADE PURSUANT TO THE AGREEMENT BE TESTED FOR SENSITIVITY TO CHANGES IN INTEREST RATES; THIS PROVISION SHALL REQUIRE THAT THE TESTING METHODOLOGY BE ADOPTED BY THE BOARD ESTABLISHED IN ACCORD-

ANCE WITH PARAGRAPH C OF THIS SUBDIVISION AND BE REASONABLY DESIGNED TO RELIABLY QUANTIFY THE EFFECT OF A CHANGE IN INTEREST RATES ON THE MARKET VALUE OF THE PORTFOLIO;

(IX) A STATEMENT THAT THE BOARD ESTABLISHED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION MAY PROCURE THE SERVICES OF PROFESSIONALS AND ENTER INTO OTHER CONTRACTS IT DEEMS APPROPRIATE TO ASSIST IN FULFILLING RESPONSIBILITIES UNDER THE AGREEMENT, PROVIDED THAT: (A) THE PROFESSIONALS WHO SHALL RENDER SUCH SERVICES, INDIVIDUALLY AND COLLECTIVELY, SHALL MEET ALL QUALIFICATIONS DEEMED APPROPRIATE BY THE BOARD; (B) THE PROCUREMENT OF SUCH CONTRACTUAL SERVICES SHALL BE SUBJECT TO A REQUEST FOR PROPOSAL PROCESS AT LEAST EVERY THREE YEARS; (C) THE CONTRACTS FOR SUCH SERVICES SHALL ENSURE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION; AND (D) THE CHARGES, FEES AND OTHER COMPENSATION FOR ANY CONTRACTED SERVICES SHALL BE REASONABLE AND CLEARLY STATED IN WRITTEN AGREEMENTS;

(X) A PROVISION REQUIRING THAT EACH PARTICIPATING TRUSTEE RECEIVE WRITTEN CONFIRMATION OF EACH CONTRIBUTION MADE BY OR DISTRIBUTION MADE TO THE PARTICIPATING TRUSTEE NO LATER THAN THE FOLLOWING BUSINESS DAY AFTER WHICH THE CONTRIBUTION OR DISTRIBUTION OCCURS;

(XI) A PROVISION REQUIRING THAT EACH PARTICIPATING TRUSTEE RECEIVE A MONTHLY STATEMENT THAT SETS FORTH THE FOLLOWING INFORMATION FOR THE PRECEDING MONTH: (A) ALL ACTIVITY BY THE PARTICIPATING TRUSTEE; (B) THE VALUE OF THE PARTICIPATING TRUSTEE'S INTEREST UNDER THE AGREEMENT AT THE BEGINNING AND END OF THE MONTH; AND (C) AN ITEMIZATION OF ALL INVESTMENTS HELD UNDER THE AGREEMENT AS OF THE END OF THE MONTH, INCLUDING THE MARKET VALUE OF EACH INVESTMENT AS OF THAT DATE;

(XII) A PROVISION REQUIRING THAT EACH PARTICIPATING TRUSTEE AND THE STATE COMPTROLLER RECEIVE IMMEDIATE NOTIFICATION OF ANY EVENT OR CIRCUMSTANCE THAT MAY REQUIRE A DEFERRAL OF DISTRIBUTIONS OR MAY CAUSE INVESTMENT LOSSES NOT ANTICIPATED BY THE INVESTMENT POLICY AND OF ANY OTHER MATERIAL ADVERSE EVENT RELATING TO THE INVESTMENTS MADE PURSUANT TO THE AGREEMENT;

(XIII) A PROVISION REQUIRING THAT A CERTIFIED PUBLIC ACCOUNTANT ANNUALLY CONDUCT AN AUDIT, IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, OF THE ACTIVITIES UNDERTAKEN PURSUANT TO THE AGREEMENT. A COPY OF THIS ANNUAL AUDIT SHALL BE DISTRIBUTED TO EACH PARTICIPATING TRUSTEE AND TO THE STATE COMPTROLLER WITHIN ONE HUNDRED TWENTY DAYS AFTER THE CLOSE OF THE FISCAL YEAR ESTABLISHED UNDER THE AGREEMENT;

(XIV) A PROVISION REQUIRING THAT EACH PARTICIPATING TRUSTEE ANNUALLY RECEIVE, AND EACH PROSPECTIVE PARTICIPATING TRUSTEE RECEIVE PRIOR TO THEIR PARTICIPATION IN THE AGREEMENT, AN INFORMATION STATEMENT THAT INCLUDES, AT A MINIMUM, THE FOLLOWING: (A) A BRIEF HISTORY OF THE AGREEMENT; (B) A DESCRIPTION OF THE ORGANIZATION AND TERMS OF THE COOPERATIVE INVESTMENT AGREEMENT, INCLUDING THE POWERS AND RESPONSIBILITIES OF THE BOARD ESTABLISHED IN ACCORDANCE WITH SUBPARAGRAPH C OF THIS SUBDIVISION AND THE QUALIFICATIONS OF ANY PROFESSIONALS RETAINED IN ACCORDANCE WITH THE AGREEMENT; (C) A DESCRIPTION OF THE INVESTMENT OBJECTIVES, POLICIES AND PRACTICES CONTAINED IN THE AGREEMENT INCLUDING THOSE PERTAINING TO LIQUIDITY, METHODOLOGY FOR DETERMINING PARTICIPATING TRUSTEES' INTERESTS, DISTRIBUTION OF EARNINGS AND CALCULATION OF YIELD; (D) A DESCRIPTION OF THE CURRENT INVESTMENTS HELD UNDER THE AGREEMENT; (E) A LISTING OF THE CHARGES, FEES OR OTHER COMPENSATION FOR SERVICES PROVIDED UNDER THE AGREEMENT; AND (F) A DESCRIPTION OF THE REQUIRED PROCEDURES FOR INITIATION AND TERMINATION OF PARTICIPATION IN THE AGREEMENT;

(XV) A PROVISION REQUIRING THAT ALL PARTICIPATING TRUSTEES RECEIVE AT LEAST ONCE A YEAR A REPORT DETAILING THE FOLLOWING INFORMATION FOR THE

PRECEDING TWELVE MONTHS: (A) THE PORTFOLIO OF INVESTMENTS CURRENTLY HELD PURSUANT TO THE AGREEMENT, INCLUDING, FOR EACH INVESTMENT, THE MARKET VALUE, TIME REMAINING TO MATURITY, INTEREST EARNED AND REALIZED, AND UNREALIZED GAINS AND LOSSES; (B) THE OVERALL INVESTMENT RESULTS, YIELD AND WEIGHTED AVERAGE MATURITY; (C) A LIST OF THE FEES PAID FOR ALL PROFESSIONAL SERVICES PROCURED UNDER THE AGREEMENT; AND (D) A STATEMENT OF ALL OTHER EXPENSES INCURRED BY THE BOARD ESTABLISHED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION IN ADMINISTERING THE INVESTMENTS MADE PURSUANT TO THE AGREEMENT; AND

(XVI) A PROVISION REQUIRING THAT, IF THE BOARD ESTABLISHED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION OBTAINS A RATING FROM A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION, SUCH RATING AND ANY SUBSEQUENT CHANGES THEREIN BE DISCLOSED TO EACH PARTICIPATING TRUSTEE.

C. EVERY AGREEMENT FOR THE COOPERATIVE INVESTMENT OF TRUST ASSETS SHALL BE ADMINISTERED BY A BOARD SUBJECT TO THE FOLLOWING:

(I) THE NUMERICAL MEMBERSHIP OF THE BOARD SHALL BE NOT LESS THAN TEN PERCENT OF THE TOTAL NUMBER OF PARTICIPATING TRUSTEES IN THE AGREEMENT AS OF APRIL FIRST EACH YEAR; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE NUMERICAL MEMBERSHIP OF THE BOARD BE LESS THAN THREE, EXCEPT IN THOSE INSTANCES WHERE THE AGREEMENT OR THE COOPERATIVE INVESTMENT OF TRUST ASSETS HAS ONLY TWO PARTICIPATING TRUSTEES, IN WHICH EVENT THE NUMERICAL MEMBERSHIP OF THE BOARD SHALL BE TWO; AND PROVIDED FURTHER THAT IN NO EVENT SHALL THE NUMERICAL MEMBERSHIP OF THE BOARD BE MORE THAN FIFTEEN. ALL BOARD MEMBERS SHALL BE PARTICIPATING TRUSTEES. IF THE GOVERNING BOARD OF A LOCAL GOVERNMENT ACTS AS TRUSTEE, ANY MEMBER OF SUCH GOVERNING BOARD MAY BE DESIGNATED BY THE GOVERNING BOARD AS THE PARTICIPATING TRUSTEE FOR THIS PURPOSE. ANY PARTICIPATING TRUSTEE MAY OFFER TO SERVE ON THE BOARD. THE TERMS OF THE MEMBERS OF THE BOARD AND THE ELECTION OF BOARD MEMBERS SHALL BE THE SAME AS PROVIDED IN SUBDIVISION TWO OF SECTION FORTY-FOUR OF THIS CHAPTER. VACANCIES ON THE BOARD MAY BE FILLED BY THE REMAINING MEMBERS OF THE BOARD BY APPOINTMENT OF A PARTICIPATING TRUSTEE TO FILL THE VACANCY UNTIL THE NEXT ANNUAL ELECTION AT WHICH TIME THE UNEXPIRED TERM OF THE VACANCY SHALL BE FILLED IN THE SAME MANNER AS ALL BOARD MEMBER POSITIONS. THE MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION FOR SERVICE AS BOARD MEMBERS, BUT MAY BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF OFFICIAL DUTIES AS BOARD MEMBERS.

(II) THE BOARD SHALL MEET AT LEAST QUARTERLY AT DATES AND TIMES TO BE ESTABLISHED BY THE MEMBERS OF THE BOARD. A QUORUM OF THE MEMBERS MUST BE PRESENT TO TRANSACT ANY BOARD BUSINESS. TWO-THIRDS OF THE MEMBERSHIP OF THE BOARD SHALL CONSTITUTE A QUORUM. TO TRANSACT ANY BUSINESS OR EXERCISE ANY POWER, THE BOARD SHALL ACT BY A MAJORITY VOTE OF THE MEMBERS PRESENT AT ANY MEETING AT WHICH A QUORUM IS IN ATTENDANCE.

(III) THE PROVISIONS OF ARTICLE EIGHTEEN OF THIS CHAPTER SHALL APPLY TO THE BOARD AS IF THE BOARD WERE A MUNICIPALITY. NO MEMBER OF THE BOARD SHALL HAVE AN INTEREST IN A CONTRACT ENTERED INTO BY THE BOARD PROHIBITED BY SECTION EIGHT HUNDRED ONE OF THIS CHAPTER.

D. THE BOARD OF A COOPERATIVE INVESTMENT AGREEMENT SHALL HAVE THE FOLLOWING POWERS AND RESPONSIBILITIES:

(I) ADMINISTERING ALL ASPECTS OF THE AGREEMENT FOR THE COOPERATIVE INVESTMENT OF TRUST ASSETS;

(II) ENTERING INTO THOSE CONTRACTS DEEMED APPROPRIATE, TO ASSIST IN THE MANAGEMENT OF THE AGREEMENT;

(III) WHERE AUTHORIZED UNDER THE AGREEMENT: (A) DELEGATING THE DAILY RESPONSIBILITIES OF MAKING INVESTMENT DECISIONS PURSUANT TO THE AGREE-

MENT TO THE LEAD PARTICIPATING TRUSTEE, PROVIDED THAT SUCH DELEGATION SHALL IN NO WAY RELIEVE THE BOARD OF ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER THAT SUCH LEAD PARTICIPATING TRUSTEE HAS SECURED AN ADDITIONAL UNDERTAKING, OR SECURED ADDITIONAL COVERAGE UNDER A BLANKET UNDERTAKING IN ACCORDANCE WITH SECTION ELEVEN OF THE PUBLIC OFFICERS LAW, IN AN AMOUNT TO BE DETERMINED BY THE BOARD, THE COST OF WHICH SHALL BE DEEMED TO BE AN EXPENSE INCURRED BY THE BOARD IN ADMINISTERING THE INVESTMENTS MADE PURSUANT TO THE AGREEMENT;

(IV) MONITORING COMPLIANCE WITH THE INVESTMENT POLICY ESTABLISHED UNDER THE AGREEMENT; AND

(V) MONITORING COMPLIANCE WITH THE REPORTING AND DISCLOSURE REQUIREMENTS ESTABLISHED UNDER THE AGREEMENT.

12. 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.

13. 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 2. 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 3. Nothing in section 6-t of the general municipal law, as added by section one of this act, shall 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 such section 6-t. The establishment of such trust and its operation in accordance with its terms is hereby ratified and approved.

S 4. This act shall take effect immediately.