

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The general municipal law is amended by adding a new  
2 section 6-t to read as follows:

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

5 A. "LOCAL GOVERNMENT" SHALL MEAN A MUNICIPAL CORPORATION, SCHOOL  
6 DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, DISTRICT CORPO-  
7 RATION, SPECIAL IMPROVEMENT DISTRICT GOVERNED BY A SEPARATE BOARD OF  
8 COMMISSIONERS, COMMUNITY COLLEGE OR PUBLIC LIBRARY THAT PROVIDES OTHER  
9 POST EMPLOYMENT BENEFITS.

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

22 2. THE GOVERNING BODY OF A LOCAL GOVERNMENT, BY RESOLUTION, MAY ESTAB-  
23 LISH A TRUST IN THE CUSTODY OF THE CHIEF FISCAL OFFICER OF THE LOCAL  
24 GOVERNMENT, FOR THE PURPOSE OF ACCUMULATING ASSETS TO FUND THE COST TO  
25 THE LOCAL GOVERNMENT OF PROVIDING OTHER POST EMPLOYMENT BENEFITS.  
26 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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1 ETARY APPROPRIATION OR TRANSFER IN ACCORDANCE WITH THE PROVISIONS OF  
2 SUBDIVISION NINE OF SECTION SIX-P OF THIS ARTICLE.

3 3. THE GOVERNING BOARD OF THE LOCAL GOVERNMENT IS HEREBY DECLARED TO  
4 BE THE TRUSTEE OF ANY TRUST ESTABLISHED PURSUANT TO THIS SECTION,  
5 PROVIDED, HOWEVER, THAT THE GOVERNING BOARD, BY RESOLUTION, MAY DESIG-  
6 NATE THE CHIEF FISCAL OFFICER OF THE LOCAL GOVERNMENT AS TRUSTEE,  
7 SUBJECT TO ACCEPTANCE OF SUCH POSITION BY THE CHIEF FISCAL OFFICER AND,  
8 IN THE CASE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE, THE CITY  
9 COMPTROLLER SHALL BE THE TRUSTEE. THE TRUSTEE SHALL BE RESPONSIBLE FOR  
10 THE OPERATION AND MANAGEMENT OF THE TRUST, INCLUDING THE DEPOSIT AND  
11 SECURING OF TRUST ASSETS IN THE SAME MANNER AS PROVIDED IN SECTION TEN  
12 OF THIS ARTICLE AND THE INVESTMENT OF TRUST ASSETS, AND SHALL BE SUBJECT  
13 TO ALL THE DUTIES AND RESPONSIBILITIES IMPOSED BY LAW ON TRUSTEES,  
14 EXCEPT TO THE EXTENT INCONSISTENT WITH THIS SECTION.

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

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

47 6. THE TRUSTEE SHALL EXECUTE AND FILE WITH THE CLERK OF THE LOCAL  
48 GOVERNMENT AN APPROPRIATE UNDERTAKING, SEPARATE FROM AND IN ADDITION TO  
49 ANY OTHER UNDERTAKING REQUIRED OF THE TRUSTEE IN ANY OTHER CAPACITY, IN  
50 AN AMOUNT SUFFICIENT TO COVER TRUST ASSETS. IN LIEU THEREOF, SUCH COVER-  
51 AGE MAY BE INCLUDED IN A BLANKET UNDERTAKING IN ACCORDANCE WITH SECTION  
52 ELEVEN OF THE PUBLIC OFFICERS LAW. THE COST OF THE UNDERTAKING SHALL BE  
53 CONSIDERED TO BE A REASONABLE EXPENSE OF ADMINISTERING THE TRUST. THE  
54 TRUSTEE MAY CONTRACT TO OBTAIN SERVICES NECESSARY FOR THE MANAGEMENT AND  
55 OPERATION OF THE TRUST, INCLUDING THE PROFESSIONAL SERVICES NECESSARY TO  
56 CARRY OUT HIS OR HER RESPONSIBILITIES AS TRUSTEE, PROVIDED, HOWEVER,

1 THAT THE CHARGES, FEES OR OTHER COMPENSATION FOR SUCH CONTRACTED  
2 SERVICES SHALL BE REASONABLE AND CLEARLY STATED IN WRITTEN AGREEMENTS.  
3 CONTRACTS FOR SUCH SERVICES SHALL BE LET IN A MANNER CONSISTENT WITH THE  
4 PROCUREMENT POLICIES AND PROCEDURES ADOPTED BY THE LOCAL GOVERNMENT  
5 PURSUANT TO SECTION ONE HUNDRED FOUR-B OF THIS CHAPTER AND SHALL BE  
6 SUBJECT TO A REQUEST FOR PROPOSALS PROCESS AT LEAST EVERY THREE YEARS.  
7 TWO OR MORE LOCAL GOVERNMENTS, IN ACCORDANCE WITH SECTION ONE HUNDRED  
8 NINETEEN-O OF THIS CHAPTER, MAY JOINTLY CONTRACT TO OBTAIN SUCH  
9 SERVICES.

10 7. A. THE TRUSTEE SHALL MANAGE AND INVEST THE ASSETS OF THE TRUST IN A  
11 CAREFUL AND PRUDENT MANNER. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS  
12 SUBDIVISION, THE TRUSTEE MAY INVEST ASSETS OF THE TRUST ONLY IN SPECIAL  
13 TIME DEPOSIT ACCOUNTS IN, AND CERTIFICATES OF DEPOSIT ISSUED BY, A BANK  
14 OR TRUST COMPANY, AS DEFINED IN SECTION TEN OF THIS ARTICLE, LOCATED AND  
15 AUTHORIZED TO DO BUSINESS IN THIS STATE, SECURED IN THE SAME MANNER AS  
16 PROVIDED IN SECTION ELEVEN OF THIS ARTICLE, AND IN ELIGIBLE SECURITIES  
17 AS DEFINED IN PARAGRAPH F OF SUBDIVISION ONE OF SECTION TEN OF THIS  
18 ARTICLE. ALTERNATIVELY, THE TRUSTEE MAY INVEST ALL OR PART OF THE TRUST  
19 ASSETS IN ANY FUND OF THE STATE ESTABLISHED TO RECEIVE MONIES FROM ANY  
20 OTHER POST EMPLOYMENT BENEFIT TRUST CREATED PURSUANT TO THIS SECTION.  
21 ANY INTEREST OR OTHER INCOME OR EARNINGS RESULTING FROM THE INVESTMENT  
22 OF ASSETS OF THE TRUST SHALL ACCRUE TO AND BECOME PART OF THE ASSETS OF  
23 THE TRUST.

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

27 (I) THE CITY COMPTROLLER SHALL EXERCISE SUCH JUDGMENT, CARE, SKILL,  
28 PRUDENCE AND DILIGENCE UNDER THE CIRCUMSTANCES THEN PREVAILING THAT A  
29 KNOWLEDGEABLE AND PRUDENT INVESTOR ACTING IN A LIKE CAPACITY AND FAMIL-  
30 IAR WITH SUCH MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A  
31 LIKE CHARACTER AND WITH LIKE AIMS; AND

32 (II) THE CITY COMPTROLLER SHALL PRUDENTLY DIVERSIFY THE INVESTMENT OF  
33 THE FUND'S PORTFOLIO AMONG INVESTMENT TYPES AND WITHIN INVESTMENT TYPES  
34 IN A MANNER CONSISTENT WITH THE FOREGOING UNLESS UNDER THE CIRCUMSTANCE  
35 IT IS CLEARLY PRUDENT NOT TO DO SO.

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

38 A. A STATEMENT OF INVESTMENT OBJECTIVES ADDRESSING, IN THE FOLLOWING  
39 ORDER OF PRIORITY, COMPLIANCE WITH ALL LEGAL REQUIREMENTS, THE ABILITY  
40 TO TIMELY MEET DISBURSEMENT REQUESTS WITHOUT FORCED SALE OF ASSETS,  
41 SAFETY OF PRINCIPAL AND ATTAINMENT OF MARKET RATES OF RETURN;

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

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

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

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

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

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

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

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

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

36 9. NEITHER THE LOCAL GOVERNMENT NOR THE TRUSTEE SHALL BE LIABLE FOR  
37 ANY LOSS OR EXPENSE SUFFERED BY THE TRUST IN THE ABSENCE OF BAD FAITH,  
38 WILLFUL MISCONDUCT OR INTENTIONAL WRONGDOING. THE TRUSTEE SHALL BE  
39 CONSIDERED TO BE AN EMPLOYEE OF THE LOCAL GOVERNMENT FOR PURPOSES OF  
40 SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW, PROVIDED, HOWEVER, THAT THE  
41 COSTS OF ANY DEFENSE OR INDEMNIFICATION OF THE TRUSTEE ARISING FROM THE  
42 EXERCISE OF THE FUNCTIONS OF TRUSTEE SHALL BE PAYABLE FROM THE ASSETS OF  
43 THE TRUST.

44 10. THE TRUSTEE SHALL PREPARE OR CAUSE TO BE PREPARED AN ANNUAL FINAN-  
45 CIAL REPORT OF ASSETS, LIABILITIES, REVENUES AND EXPENSES OF THE TRUST  
46 IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THE TRUS-  
47 TEE SHALL CAUSE THE ACTIVITIES UNDERTAKEN IN CONNECTION WITH THE TRUST,  
48 INCLUDING THE ANNUAL FINANCIAL REPORT, TO BE AUDITED ANNUALLY, EITHER  
49 SEPARATELY OR AS PART OF THE OVERALL AUDIT OF THE REPORTING ENTITY, IN  
50 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, BY AN INDEPENDENT  
51 CERTIFIED PUBLIC ACCOUNTANT ENGAGED IN A MANNER CONSISTENT WITH THE  
52 PROCUREMENT POLICIES AND PROCEDURES ADOPTED BY THE LOCAL GOVERNMENT  
53 PURSUANT TO SECTION ONE HUNDRED FOUR-B OF THIS CHAPTER AND SHALL BE  
54 SUBJECT TO A REQUEST FOR PROPOSALS PROCESS AT LEAST EVERY FIVE YEARS.  
55 THE AUDIT SHALL BE COMPLETED WITHIN ONE HUNDRED TWENTY DAYS FROM THE  
56 CLOSE OF THE FISCAL YEAR OF THE LOCAL GOVERNMENT. A COPY OF THE ANNUAL

1 FINANCIAL REPORT AND THE REPORT OF SUCH AUDIT SHALL BE PROVIDED TO THE  
2 STATE COMPTROLLER, THE TRUSTEE AND THE GOVERNING BOARD OF THE LOCAL  
3 GOVERNMENT AND SHALL BE PUBLICLY AVAILABLE AND POSTED ON THE WEBSITE OF  
4 THE LOCAL GOVERNMENT, IF SUCH A WEBSITE IS MAINTAINED.

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

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

19 (I) A DESCRIPTION OF THE CREATION, MEMBERSHIP, POWERS AND RESPONSIBIL-  
20 ITIES OF THE BOARD ESTABLISHED IN ACCORDANCE WITH PARAGRAPH C OF THIS  
21 SUBDIVISION;

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

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

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

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

41 (VI) A DESCRIPTION OF THE MANNER IN WHICH EXPENSES INCURRED IN ADMIN-  
42 ISTERING THE COOPERATIVE INVESTMENT AGREEMENT, INCLUDING, BUT NOT LIMIT-  
43 ED TO, THE COST OF ACTUAL AND NECESSARY EXPENSES INCURRED BY THE BOARD  
44 ESTABLISHED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION, AND  
45 OTHER COSTS OF ADMINISTERING THE INVESTMENTS MADE PURSUANT TO THE AGREE-  
46 MENT, ARE TO BE APPORTIONED AMONG THE PARTICIPATING TRUSTEES. SUCH  
47 APPORTIONED COSTS SHALL BE CONSIDERED EXPENSES OF ADMINISTERING THE  
48 TRUSTS;

49 (VII) A DESCRIPTION OF THE METHODOLOGY THAT SHALL BE UTILIZED TO  
50 ESTABLISH THE VALUE OF EACH PARTICIPATING TRUSTEE'S INTEREST IN INVEST-  
51 MENTS MADE PURSUANT TO THE AGREEMENT, INCLUDING THE VALUE OF CONTRIB-  
52 UTIONS AND DISTRIBUTIONS, AND THE CALCULATION OF YIELD THEREON;

53 (VIII) A PROVISION REQUIRING THAT, AT LEAST ONCE A MONTH, THE PORTFO-  
54 LIO OF INVESTMENTS MADE PURSUANT TO THE AGREEMENT BE TESTED FOR SENSI-  
55 TIVITY TO CHANGES IN INTEREST RATES; THIS PROVISION SHALL REQUIRE THAT  
56 THE TESTING METHODOLOGY BE ADOPTED BY THE BOARD ESTABLISHED IN ACCORD-

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

4 (IX) A STATEMENT THAT THE BOARD ESTABLISHED IN ACCORDANCE WITH PARA-  
5 GRAPH C OF THIS SUBDIVISION MAY PROCURE THE SERVICES OF PROFESSIONALS  
6 AND ENTER INTO OTHER CONTRACTS IT DEEMS APPROPRIATE TO ASSIST IN  
7 FULFILLING RESPONSIBILITIES UNDER THE AGREEMENT, PROVIDED THAT: (A) THE  
8 PROFESSIONALS WHO SHALL RENDER SUCH SERVICES, INDIVIDUALLY AND COLLEC-  
9 TIVELY, SHALL MEET ALL QUALIFICATIONS DEEMED APPROPRIATE BY THE BOARD;  
10 (B) THE PROCUREMENT OF SUCH CONTRACTUAL SERVICES SHALL BE SUBJECT TO A  
11 REQUEST FOR PROPOSAL PROCESS AT LEAST EVERY THREE YEARS; (C) THE  
12 CONTRACTS FOR SUCH SERVICES SHALL ENSURE COMPLIANCE WITH THE REQUIRE-  
13 MENTS OF THIS SECTION; AND (D) THE CHARGES, FEES AND OTHER COMPENSATION  
14 FOR ANY CONTRACTED SERVICES SHALL BE REASONABLE AND CLEARLY STATED IN  
15 WRITTEN AGREEMENTS;

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

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

27 (XII) A PROVISION REQUIRING THAT EACH PARTICIPATING TRUSTEE AND THE  
28 STATE COMPTROLLER RECEIVE IMMEDIATE NOTIFICATION OF ANY EVENT OR CIRCUM-  
29 STANCE THAT MAY REQUIRE A DEFERRAL OF DISTRIBUTIONS OR MAY CAUSE INVEST-  
30 MENT LOSSES NOT ANTICIPATED BY THE INVESTMENT POLICY AND OF ANY OTHER  
31 MATERIAL ADVERSE EVENT RELATING TO THE INVESTMENTS MADE PURSUANT TO THE  
32 AGREEMENT;

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

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

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

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

10 (XVI) A PROVISION REQUIRING THAT, IF THE BOARD ESTABLISHED IN ACCORD-  
11 ANCE WITH PARAGRAPH C OF THIS SUBDIVISION OBTAINS A RATING FROM A  
12 NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION, SUCH RATING AND  
13 ANY SUBSEQUENT CHANGES THEREIN BE DISCLOSED TO EACH PARTICIPATING TRUS-  
14 TEE.

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

17 (I) THE NUMERICAL MEMBERSHIP OF THE BOARD SHALL BE NOT LESS THAN TEN  
18 PERCENT OF THE TOTAL NUMBER OF PARTICIPATING TRUSTEES IN THE AGREEMENT  
19 AS OF APRIL FIRST EACH YEAR; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL  
20 THE NUMERICAL MEMBERSHIP OF THE BOARD BE LESS THAN THREE, EXCEPT IN  
21 THOSE INSTANCES WHERE THE AGREEMENT OR THE COOPERATIVE INVESTMENT OF  
22 TRUST ASSETS HAS ONLY TWO PARTICIPATING TRUSTEES, IN WHICH EVENT THE  
23 NUMERICAL MEMBERSHIP OF THE BOARD SHALL BE TWO; AND PROVIDED FURTHER  
24 THAT IN NO EVENT SHALL THE NUMERICAL MEMBERSHIP OF THE BOARD BE MORE  
25 THAN FIFTEEN. ALL BOARD MEMBERS SHALL BE PARTICIPATING TRUSTEES. IF THE  
26 GOVERNING BOARD OF A LOCAL GOVERNMENT ACTS AS TRUSTEE, ANY MEMBER OF  
27 SUCH GOVERNING BOARD MAY BE DESIGNATED BY THE GOVERNING BOARD AS THE  
28 PARTICIPATING TRUSTEE FOR THIS PURPOSE. ANY PARTICIPATING TRUSTEE MAY  
29 OFFER TO SERVE ON THE BOARD. THE TERMS OF THE MEMBERS OF THE BOARD AND  
30 THE ELECTION OF BOARD MEMBERS SHALL BE THE SAME AS PROVIDED IN SUBDIVI-  
31 SION TWO OF SECTION FORTY-FOUR OF THIS CHAPTER. VACANCIES ON THE BOARD  
32 MAY BE FILLED BY THE REMAINING MEMBERS OF THE BOARD BY APPOINTMENT OF A  
33 PARTICIPATING TRUSTEE TO FILL THE VACANCY UNTIL THE NEXT ANNUAL ELECTION  
34 AT WHICH TIME THE UNEXPIRED TERM OF THE VACANCY SHALL BE FILLED IN THE  
35 SAME MANNER AS ALL BOARD MEMBER POSITIONS. THE MEMBERS OF THE BOARD  
36 SHALL SERVE WITHOUT COMPENSATION FOR SERVICE AS BOARD MEMBERS, BUT MAY  
37 BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORM-  
38 ANCE OF OFFICIAL DUTIES AS BOARD MEMBERS.

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

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

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

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

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

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

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

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

11 (V) MONITORING COMPLIANCE WITH THE REPORTING AND DISCLOSURE REQUIRE-  
12 MENTS ESTABLISHED UNDER THE AGREEMENT.

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

16 13. NOTHING CONTAINED IN THIS SECTION SHALL BE INTERPRETED OR  
17 CONSTRUED TO:

18 A. CREATE ANY OBLIGATION IN, IMPOSE ANY OBLIGATION ON, OR ALTER ANY  
19 OBLIGATION OF ANY LOCAL GOVERNMENT TO PROVIDE OTHER POST EMPLOYMENT  
20 BENEFITS;

21 B. LIMIT OR RESTRICT THE AUTHORITY OF A LOCAL GOVERNMENT TO MODIFY OR  
22 ELIMINATE OTHER POST EMPLOYMENT BENEFITS;

23 C. ASSURE OR DENY OTHER POST EMPLOYMENT BENEFITS; OR

24 D. REQUIRE ANY LOCAL GOVERNMENT TO FUND ITS LIABILITY FOR OTHER POST  
25 EMPLOYMENT BENEFITS.

26 S 2. Subdivision 9 of section 6-p of the general municipal law, as  
27 added by chapter 518 of the laws of 1996, is amended to read as follows:

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

44 S 3. Nothing in section 6-t of the general municipal law, as added by  
45 section one of this act, shall affect the validity of the establishment  
46 or implementation of the New York city retiree health benefit trust,  
47 established June 12, 2006 by the city of New York as grantor, and  
48 neither the operation nor any amendment of such trust shall be subject  
49 to such section 6-t. The establishment of such trust and its operation  
50 in accordance with its terms is hereby ratified and approved.

51 S 4. This act shall take effect immediately.