

7754

2011-2012 Regular Sessions

I N A S S E M B L Y

May 16, 2011

Introduced by M. of A. TENNEY, BLANKENBUSH, CALHOUN -- Multi-Sponsored
by -- M. of A. McLAUGHLIN, PALMESANO -- read once and referred to the
Committee on Local Governments

AN ACT to amend the general municipal law, in relation to the creation
and funding of other post-employment benefit reserve funds, and
extending to boards of cooperative educational services the authority
to create and maintain workers' compensation reserve funds

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-a to read as follows:
3 S 6-A. OTHER POST-EMPLOYMENT BENEFIT RESERVE FUNDS. 1. AS USED IN THIS
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5 A. "MUNICIPAL CORPORATION" MEANS (I) A MUNICIPAL CORPORATION AS
6 DEFINED IN SECTION TWO OF THIS CHAPTER; (II) A SCHOOL DISTRICT (EXCEPT A
7 SCHOOL DISTRICT IN A CITY WITH A POPULATION OF ONE HUNDRED TWENTY-FIVE
8 THOUSAND OR MORE); (III) A BOARD OF COOPERATIVE EDUCATIONAL SERVICES;
9 (IV) FIRE DISTRICT; (V) DISTRICT CORPORATION; (VI) POLICE DISTRICT; AND
10 (VII) SPECIAL IMPROVEMENT DISTRICT GOVERNED BY A SEPARATE BOARD OF
11 COMMISSIONERS.
12 B. "OTHER POST-EMPLOYMENT BENEFIT" MEANS ANY BENEFIT OTHER THAN A
13 PENSION BENEFIT THAT A MUNICIPAL CORPORATION IS OBLIGATED BY CONTRACT,
14 LOCAL LAW, OR STATUTE TO PAY TO, OR ON BEHALF OF, AN INDIVIDUAL ON
15 ACCOUNT OF THAT INDIVIDUAL'S PRIOR EMPLOYMENT BY THE MUNICIPAL CORPO-
16 RATION, INCLUDING POST-EMPLOYMENT HEALTHCARE BENEFITS, REGARDLESS OF THE
17 TYPE OF PLAN THAT PROVIDES THEM, BUT EXCLUDING TERMINATION BENEFITS SUCH
18 AS THOSE DESCRIBED IN SECTION SIX-P OF THIS ARTICLE.
19 C. "PARTICIPATING EMPLOYER" MEANS A PARTICIPATING EMPLOYER AS DEFINED
20 IN EITHER SUBDIVISION TWENTY OF SECTION TWO OR IN SUBDIVISION TWENTY OF
21 SECTION THREE HUNDRED TWO OF THE RETIREMENT AND SOCIAL SECURITY LAW.

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

LBD10798-01-1

1 2. THE GOVERNING BOARD OF ANY MUNICIPAL CORPORATION WHICH IS ALSO A
2 PARTICIPATING EMPLOYER MAY ESTABLISH BY RESOLUTION A RESERVE FUND FOR
3 THE PURPOSE OF FINANCING OTHER POST-EMPLOYMENT BENEFITS.

4 3. THERE MAY BE PAID INTO AN OTHER POST-EMPLOYMENT BENEFIT RESERVE
5 FUND:

6 A. SUCH AMOUNTS AS MAY BE PROVIDED THEREFOR BY BUDGETARY APPROPRIATION
7 OR RAISED BY TAX THEREFOR;

8 B. SUCH REVENUES AS ARE NOT REQUIRED BY LAW TO BE PAID INTO ANY OTHER
9 FUND OR ACCOUNT;

10 C. SUCH OTHER FUNDS AS MAY BE LEGALLY APPROPRIATED; AND

11 D. NOTWITHSTANDING ANY LAW TO THE CONTRARY, SUCH AMOUNTS AS MAY BE
12 TRANSFERRED FROM A RESERVE FUND ESTABLISHED PURSUANT TO SECTION SIX-C,
13 SIX-D, SIX-E, SIX-F, SIX-G, SIX-J, SIX-M, SIX-N, OR SIX-P OF THIS ARTI-
14 CLE COMPRISED OF MONEYS RAISED FROM THE SAME TAX BASE AS THE MONEYS IN
15 THE OTHER POST-EMPLOYMENT BENEFIT RESERVE FUND, OR A RESERVE FUND ESTAB-
16 LISHED PURSUANT TO SECTION THIRTY-SIX HUNDRED FIFTY-ONE OF THE EDUCATION
17 LAW, PROVIDED, THAT ANY SUCH TRANSFER SHALL ONLY BE MADE BY RESOLUTION
18 OF THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION ADOPTED AFTER A
19 PUBLIC HEARING HELD ON AT LEAST FIFTEEN DAYS PRIOR PUBLISHED NOTICE IN
20 THE OFFICIAL NEWSPAPER OF THE MUNICIPAL CORPORATION OR, IF THE MUNICIPAL
21 CORPORATION DOES NOT HAVE AN OFFICIAL NEWSPAPER, IN AT LEAST ONE NEWSPA-
22 PER HAVING GENERAL CIRCULATION IN THE MUNICIPAL CORPORATION AREA.

23 4. THE MONEYS IN AN OTHER POST-EMPLOYMENT BENEFIT RESERVE FUND SHALL
24 BE DEPOSITED AND SECURED IN THE MANNER PROVIDED BY SECTION TEN OF THIS
25 ARTICLE. THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION, OR THE CHIEF
26 FISCAL OFFICER THEREOF IF THE GOVERNING BOARD SHALL DELEGATE SUCH DUTY
27 TO HIM OR HER, MAY INVEST THE MONEYS IN SUCH FUND IN THE MANNER PROVIDED
28 BY SECTION ELEVEN OF THIS ARTICLE. ANY INTEREST EARNED OR CAPITAL GAIN
29 REALIZED ON THE MONEY SO DEPOSITED OR INVESTED SHALL ACCRUE TO AND
30 BECOME PART OF SUCH FUND.

31 5. THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION BY RESOLUTION MAY
32 AUTHORIZE EXPENDITURES FROM AN OTHER POST-EMPLOYMENT BENEFIT RESERVE
33 FUND. EXCEPT AS OTHERWISE PROVIDED BY LAW, MONEYS IN AN OTHER POST-EM-
34 PLOYMENT BENEFIT RESERVE FUND MAY ONLY BE EXPENDED TO FINANCE OTHER
35 POST-EMPLOYMENT BENEFITS.

36 6. THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION BY RESOLUTION MAY
37 AUTHORIZE THE TRANSFER OF A PORTION OF THE MONEYS IN AN OTHER POST-EM-
38 PLOYMENT BENEFIT RESERVE FUND TO A RESERVE FUND OF THE MUNICIPAL CORPO-
39 RATION ESTABLISHED PURSUANT TO SECTION SIX-C, SIX-D, SIX-E, SIX-F,
40 SIX-G, SIX-J, SIX-M, SIX-N, OR SIX-P OF THIS ARTICLE COMPRISED OF MONEYS
41 RAISED FROM THE SAME TAX BASE AS THE MONEYS IN THE RETIREMENT CONTRIB-
42 UTION RESERVE FUND, OR A RESERVE FUND ESTABLISHED PURSUANT TO SECTION
43 THIRTY-SIX HUNDRED FIFTY-ONE OF THE EDUCATION LAW, PROVIDED, THAT ANY
44 SUCH TRANSFER SHALL ONLY BE MADE BY RESOLUTION OF THE GOVERNING BOARD OF
45 SUCH MUNICIPAL CORPORATION ADOPTED AFTER A PUBLIC HEARING HELD ON AT
46 LEAST FIFTEEN DAYS PRIOR PUBLISHED NOTICE IN THE OFFICIAL NEWSPAPER OF
47 THE MUNICIPAL CORPORATION OR, IF THE MUNICIPAL CORPORATION DOES NOT HAVE
48 AN OFFICIAL NEWSPAPER, IN AT LEAST ONE NEWSPAPER HAVING GENERAL CIRCU-
49 LATION IN THE MUNICIPAL CORPORATION AREA.

50 7. THE CHIEF FISCAL OFFICER OF SUCH MUNICIPAL CORPORATION SHALL
51 ACCOUNT FOR AN OTHER POST-EMPLOYMENT BENEFIT RESERVE FUND SEPARATE AND
52 APART FROM ALL OTHER FUNDS OF THE MUNICIPAL CORPORATION. SUCH ACCOUNTING
53 SHALL SHOW: THE SOURCE, DATE AND AMOUNT OF EACH SUM PAID INTO THE FUND;
54 THE INTEREST EARNED BY SUCH FUND; CAPITAL GAINS OR LOSSES RESULTING FROM
55 THE SALE OF INVESTMENTS OF THIS FUND; THE ORDER, PURPOSE THEREOF, DATE
56 AND AMOUNT OF EACH PAYMENT FROM THIS FUND; THE ASSETS OF THE FUND, INDI-

1 CATING CASH BALANCE AND A SCHEDULE OF INVESTMENTS. THE CHIEF FISCAL
2 OFFICER, WITHIN SIXTY DAYS OF THE END OF EACH FISCAL YEAR, SHALL FURNISH
3 A DETAILED REPORT OF THE OPERATION AND CONDITION OF THIS FUND TO THE
4 GOVERNING BOARD.

5 8. NO MEMBER OF THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION
6 SHALL:

7 A. AUTHORIZE A WITHDRAWAL FROM AN OTHER POST-EMPLOYMENT BENEFIT
8 RESERVE FUND FOR ANY PURPOSE EXCEPT AS PROVIDED IN THIS SECTION; OR

9 B. EXPEND ANY MONEY WITHDRAWN FROM SUCH FUND FOR A PURPOSE OTHER THAN
10 AS PROVIDED IN THIS SECTION.

11 ANY MEMBER OF THE GOVERNING BOARD WHO VIOLATES THE PROVISIONS OF THIS
12 SUBDIVISION SHALL BE GUILTY OF A MISDEMEANOR.

13 9. THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION BY RESOLUTION MAY
14 DETERMINE THAT AN OTHER POST-EMPLOYMENT BENEFIT RESERVE FUND IS NO LONG-
15 ER NEEDED AND TERMINATE THE FUND. SUCH RESOLUTION SHALL TRANSFER ANY
16 MONEYS REMAINING IN SUCH FUND TO ONE OR MORE RESERVE FUNDS OF THE MUNIC-
17 IPAL CORPORATION ESTABLISHED PURSUANT TO SECTION SIX-C, SIX-D, SIX-E,
18 SIX-F, SIX-G, SIX-J, SIX-M, SIX-N, OR SIX-P OF THIS ARTICLE COMPRISED OF
19 MONEYS RAISED FROM THE SAME TAX BASE AS THE MONEYS IN THE OTHER POST-EM-
20 PLOYMENT BENEFIT RESERVE FUND, OR ONE OR MORE RESERVE FUNDS ESTABLISHED
21 PURSUANT TO SECTION THIRTY-SIX HUNDRED FIFTY-ONE OF THE EDUCATION LAW.

22 S 2. Section 6-j of the general municipal law, as amended by chapter
23 704 of the laws of 1956, subdivisions 1, 2, 4 and 6 as amended by chap-
24 ter 340 of the laws of 1973, subdivision 3 as amended by chapter 140 of
25 the laws of 1996, and subdivision 5 as added and subdivision 6 as renum-
26 bered by chapter 433 of the laws of 1987, is amended to read as follows:

27 S 6-j. [Workmen's] WORKERS' compensation reserve fund. 1. The govern-
28 ing board of any municipal corporation, school district, BOARD OF COOP-
29 ERATIVE EDUCATIONAL SERVICES, or fire district, which is, or shall here-
30 after become a self-insurer under the provisions of section fifty,
31 subdivision four of the [workmen's] WORKERS' compensation law or section
32 thirty of the volunteer firemen's benefit law may establish a reserve
33 fund to be known as the [workmen's] WORKERS' compensation reserve fund
34 of such municipal corporation, school district, BOARD OF COOPERATIVE
35 EDUCATIONAL SERVICES, or fire district.

36 2. There may be paid into any such fund (a) such amounts as may be
37 provided therefor by budgetary appropriations and (b) such other sums as
38 may be legally appropriated.

39 3. The moneys in such fund shall be deposited and secured in the
40 manner provided by section ten of this article. The money in such fund
41 so deposited shall be accounted for separate and apart from all other
42 funds of the municipality, school district, BOARD OF COOPERATIVE EDUCA-
43 TIONAL SERVICES, or fire district, in the same manner as provided in
44 subdivision ten of section six-c of this article. The governing board,
45 or the chief fiscal officer of such municipality, school district, BOARD
46 OF COOPERATIVE EDUCATIONAL SERVICES, or fire district, if the governing
47 board shall delegate such duty to him, may invest the moneys in such
48 fund in the manner provided in section eleven of this article. Any
49 interest earned or capital gain realized on the money so deposited or
50 invested shall accrue to and become part of such fund. The separate
51 identity of such fund shall be maintained whether its assets consist of
52 cash or investments or both.

53 4. An expenditure shall be made from such fund only for the payment of
54 compensation and benefits, medical, hospital or other expense authorized
55 by article two of the [workmen's] WORKERS' compensation law and by the
56 volunteer firemen's benefit law and expenses of administering the self-

1 insurance program for such municipal corporation, school district, BOARD
2 OF COOPERATIVE EDUCATIONAL SERVICES, or fire district.

3 5. If at the end of any fiscal year the moneys in such fund shall
4 exceed the amounts required to be paid pursuant to subdivision four of
5 this section plus any additional amount required to pay all pending
6 claims, the governing board of the municipal corporation, school
7 district, board of cooperative educational services or fire district
8 may, within sixty days of the close of such fiscal year, elect to: (a)
9 transfer said excess, or any part thereof, to any fund authorized by
10 this article or section thirty-six hundred fifty-one of the education
11 law; and/or (b) apply said excess, or any part thereof to the budget
12 appropriation of the next succeeding fiscal year.

13 6. If the municipal corporation, school district, BOARD OF COOPERATIVE
14 EDUCATIONAL SERVICES, or fire district shall, after the establishment of
15 such fund, cease to be a self-insurer, the moneys remaining in such fund
16 may be transferred to any other fund authorized by this chapter or
17 section thirty-six hundred fifty-one of the education law only to the
18 extent that the moneys in such fund shall exceed in amount the sum
19 sufficient to pay all expenditures authorized in paragraph numbered
20 four, both accrued and contingent.

21 S 3. Notwithstanding any other provision of law, within one hundred
22 eighty days of the effective date of this act, a municipal corporation
23 may be resolution transfer into an other post-employment benefits
24 reserve fund created in accordance with section 6-s of the general
25 municipal law any funds previously set aside by that municipal corpo-
26 ration and identified in the audited financial statements of that munic-
27 ipal corporation for the purpose of paying other post-employment bene-
28 fits as defined in section 6-s of the general municipal law, regardless
29 of how those funds have been designated.

30 S 4. This act shall take effect immediately.