

# STATE OF NEW YORK

4807

2019-2020 Regular Sessions

## IN ASSEMBLY

February 5, 2019

Introduced by M. of A. SMULLEN -- 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 Assembly, do enact as follows:

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

3 § 6. 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.

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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 § 2. Section 6-j of the general municipal law, as amended by chapter  
23 704 of the laws of 1956, subdivisions 1 and 4 as amended by chapter 476  
24 of the laws of 2018, subdivisions 2 and 6 as amended by chapter 340 of  
25 the laws of 1973, subdivision 3 as amended by chapter 140 of the laws of  
26 1996, and subdivision 5 as added and subdivision 6 as renumbered by  
27 chapter 433 of the laws of 1987, is amended to read as follows:

28 § 6-j. [~~Workmen's~~ Workers' compensation reserve fund. 1. The govern-  
29 ing board of any municipal corporation, school district, board of coop-  
30 erative educational services, or fire district, which is, or shall here-  
31 after become a self-insurer under the provisions of subdivision four of  
32 section fifty of the workers' compensation law or section thirty of the  
33 volunteer firefighters' benefit law may establish a reserve fund to be  
34 known as the workers' compensation reserve fund of such municipal corpo-  
35 ration, school district, board of cooperative educational services, or  
36 fire district.

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

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

54 4. An expenditure shall be made from such fund only for the payment of  
55 compensation and benefits, medical, hospital or other expense authorized  
56 by article two of the workers' compensation law and by the volunteer

1 firefighters' benefit law and expenses of administering the self-insu-  
2 rance program for such municipal corporation, school district, board of  
3 cooperative educational services, or fire district.

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

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

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

31 § 4. This act shall take effect immediately.