# 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:**

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

**§ 6. Other post-employment benefit reserve funds. 1. As used in this section, the following terms shall have the following meanings:**

**a. "Municipal corporation" means (i) a municipal corporation as defined in section two of this chapter; (ii) a school district (except a school district in a city with a population of one hundred twenty-five thousand or more); (iii) a board of cooperative educational services; (iv) fire district; (v) district corporation; (vi) police district; and (vii) special improvement district governed by a separate board of commissioners.**

**b. "Other post-employment benefit" means any benefit other than a pension benefit that a municipal corporation is obligated by contract, local law, or statute to pay to, or on behalf of, an individual on account of that individual's prior employment by the municipal corporation, including post-employment healthcare benefits, regardless of the type of plan that provides them, but excluding termination benefits such as those described in section six-p of this article.**

**c. "Participating employer" means a participating employer as defined in either subdivision twenty of section two or in subdivision twenty of 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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2. The governing board of any municipal corporation which is also a participating employer may establish by resolution a reserve fund for the purpose of financing other post-employment benefits.

3. There may be paid into an other post-employment benefit reserve fund:

a. such amounts as may be provided therefor by budgetary appropriation or raised by tax therefor;

b. such revenues as are not required by law to be paid into any other fund or account;

c. such other funds as may be legally appropriated; and

d. notwithstanding any law to the contrary, such amounts as may be transferred from a reserve fund established pursuant to section six-c, six-d, six-e, six-f, six-g, six-j, six-m, six-n, or six-p of this article comprised of moneys raised from the same tax base as the moneys in the other post-employment benefit reserve fund, or a reserve fund established pursuant to section thirty-six hundred fifty-one of the education law, provided, that any such transfer shall only be made by resolution of the governing board of such municipal corporation adopted after a public hearing held on at least fifteen days prior published notice in the official newspaper of the municipal corporation or, if the municipal corporation does not have an official newspaper, in at least one newspaper having general circulation in the municipal corporation area.

4. The moneys in an other post-employment benefit reserve fund shall be deposited and secured in the manner provided by section ten of this article. The governing board of such municipal corporation, or the chief fiscal officer thereof if the governing board shall delegate such duty to him or her, may invest the moneys in such fund in the manner provided by section eleven of this article. Any interest earned or capital gain realized on the money so deposited or invested shall accrue to and become part of such fund.

5. The governing board of such municipal corporation by resolution may authorize expenditures from an other post-employment benefit reserve fund. Except as otherwise provided by law, moneys in an other post-employment benefit reserve fund may only be expended to finance other post-employment benefits.

6. The governing board of such municipal corporation by resolution may authorize the transfer of a portion of the moneys in an other post-employment benefit reserve fund to a reserve fund of the municipal corporation established pursuant to section six-c, six-d, six-e, six-f, six-g, six-j, six-m, six-n, or six-p of this article comprised of moneys raised from the same tax base as the moneys in the retirement contribution reserve fund, or a reserve fund established pursuant to section thirty-six hundred fifty-one of the education law, provided, that any such transfer shall only be made by resolution of the governing board of such municipal corporation adopted after a public hearing held on at least fifteen days prior published notice in the official newspaper of the municipal corporation or, if the municipal corporation does not have an official newspaper, in at least one newspaper having general circulation in the municipal corporation area.

7. The chief fiscal officer of such municipal corporation shall account for an other post-employment benefit reserve fund separate and apart from all other funds of the municipal corporation. Such accounting shall show: the source, date and amount of each sum paid into the fund; the interest earned by such fund; capital gains or losses resulting from the sale of investments of this fund; the order, purpose thereof, date and amount of each payment from this fund; the assets of the fund, indi-

cating cash balance and a schedule of investments. The chief fiscal officer, within sixty days of the end of each fiscal year, shall furnish a detailed report of the operation and condition of this fund to the governing board.

8. No member of the governing board of such municipal corporation shall:

a. authorize a withdrawal from an other post-employment benefit reserve fund for any purpose except as provided in this section; or

b. expend any money withdrawn from such fund for a purpose other than as provided in this section.

Any member of the governing board who violates the provisions of this subdivision shall be guilty of a misdemeanor.

9. The governing board of such municipal corporation by resolution may determine that an other post-employment benefit reserve fund is no longer needed and terminate the fund. Such resolution shall transfer any moneys remaining in such fund to one or more reserve funds of the municipal corporation established pursuant to section six-c, six-d, six-e, six-f, six-g, six-j, six-m, six-n, or six-p of this article comprised of moneys raised from the same tax base as the moneys in the other post-employment benefit reserve fund, or one or more reserve funds established pursuant to section thirty-six hundred fifty-one of the education law.

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

§ 6-j. [~~Workmen's~~] Workers' compensation reserve fund. 1. The governing board of any municipal corporation, school district, board of cooperative educational services, or fire district, which is, or shall hereafter become a self-insurer under the provisions of subdivision four of section fifty of the workers' compensation law or section thirty of the volunteer firefighters' benefit law may establish a reserve fund to be known as the workers' compensation reserve fund of such municipal corporation, school district, board of cooperative educational services, or fire district.

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

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

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

firefighters' benefit law and expenses of administering the self-insurance program for such municipal corporation, school district**, board of cooperative educational services,** or fire district.

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

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

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

§ 4. This act shall take effect immediately.