



Informational Guideline Release

Bureau of Accounts
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OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND

(G.L. c. 32B, §§ 20 and 20A)

This Informational Guideline Release (IGR) informs local officials about changes made by the Municipal Modernization Act in the Other Post-employment Benefits (OPEB) Trust Fund. The IGR also explains the finance provisions of the fund, including the procedure required to create a fund.

Topical Index Key:

Accounting Policies and Procedures
Appropriations
Budgets
Financial Management
Special Funds

Distribution:

Accountants/Auditors
Treasurers
Mayors/Selectboards
Managers/Administrators/Exec. Secys.
Finance Directors
School Superintendents
City Solicitors/Town Counsels

OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND

(G.L. c. 32B, §§ 20 and 20A)

SUMMARY:

These guidelines explain the municipal finance provisions of the Other Post-employment Benefits Liability Trust Fund (OPEB Fund) under [G.L. c. 32B, § 20](#) and [20A](#), as amended by Sections 15 and 238 of the Municipal Modernization Act (Act), [Chapter 218 of the Acts of 2016](#).

The Act amended local acceptance G.L. c. 32B, § 20 to address a number of issues about the nature of the fund. These included whether the statute authorized local governmental units to create a trust fund for monies reserved for retiree health insurance and other post-employment benefits that complies with legal requirements for trusts and with Governmental Accounting Standards Board (GASB) standards. Under the amendments, the statute:

1. Establishes the OPEB Fund as a trust fund with a trustee and declaration of trust;
2. Requires that assets of the OPEB Fund be held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents;
3. Establishes procedures for the appointment of a trustee, adoption of a declaration of trust and appropriations of funds into and out of the OPEB Fund;
4. Defines housing authorities, redevelopment authorities, regional councils of government, regional school districts and educational collaboratives as political subdivisions and governmental entities able to establish OPEB trust funds; and
5. Allows a governmental unit to participate in the OPEB fund of another governmental unit.

These guidelines explain the method of acceptance of the statute, procedures to be followed to establish the OPEB Fund, custodial and trust requirements, investment standards, procedures for appropriating funds into and out of the OPEB Fund and accounting and reporting requirements.

An OPEB Fund established by a city, town, district or municipal light plant under a special act or [G.L. c. 32B, § 20](#) before the November 7, 2016 effective date of the Act continues to operate under the terms originally established unless the governmental unit accepts or reaccepts [G.L. c. 32B, § 20](#) after that date. Upon acceptance or reacceptance, the OPEB Fund will operate under the terms of [G.L. c. 32B, § 20](#), as amended by the Act.

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However, the actuarial reporting requirements found in [G.L. c. 32B, § 20A](#), which was added by the Act, apply to any OPEB Fund established under [G.L. c. 32B, § 20](#) regardless of the date of the governmental unit's acceptance of [G.L. c. 32B, § 20](#) and apply to an OPEB Fund established by a special act unless otherwise provided in the special act.

GUIDELINES:

I. LOCAL ACCEPTANCE

A. Acceptance Procedure

1. Eligible Governmental Units

A city, town, county, district, regional school district, municipal lighting plant, local housing or redevelopment authority, regional council of government established under [G.L. c. 34B, § 20](#) and educational collaborative as defined in [G.L. c. 40, § 4E](#), may accept [G.L. c. 32B, § 20](#) and establish an OPEB Fund. [G.L. c. 32B, § 20\(a\)](#). Governmental units considering acceptance of [G.L. c. 32B, § 20](#) should consult with their financial advisors and municipal counsel regarding the establishment and implementation of an OPEB Fund.

A governmental unit with an OPEB Fund established by special act or with an OPEB Fund established under [G.L. c. 32B, § 20](#) before November 7, 2016 may accept or reaccept [G.L. c. 32B, § 20](#) after November 7, 2016. Upon acceptance or reacceptance, the unit's OPEB fund will operate under the amended [G.L. c. 32B, § 20](#). Otherwise, the OPEB Fund will continue under the terms the fund was originally established, not the amended [G.L. c. 32B, § 20](#). [G.L. c. 32B, § 20\(m\)](#). [Section 238 of Chapter 218 of the Acts of 2016](#). Governmental units with such OPEB Funds should consult with their financial and accounting advisors and municipal counsel regarding whether to accept or reaccept [G.L. c. 32B, § 20](#).

2. Acceptance Vote

A governmental unit accepts the amended [G.L. c. 32B, § 20](#) by:

- a. In a city or town, in the manner provided in [G.L. c. 4, § 4](#), vote of the legislative body, subject to the charter of the city or town;
- b. In a county, vote of the county commissioners;
- c. In a regional school district, vote of the regional school committee; or
- d. In a district or other governmental unit, vote of the district meeting or other appropriating body.

[G.L. c. 32B, § 20\(l\)](#). (See attached Sample Vote 1 - Acceptance.)

B. Effective Date

An OPEB Fund is established upon acceptance, unless the acceptance vote designates a later time.

C. Revocation of Acceptance

A governmental unit cannot revoke its acceptance. There is no revocation procedure in the statute. In addition, [G.L. c. 4, § 4B](#), which generally establishes a procedure for cities and towns to revoke their acceptance of local option statutes, does not apply to actions taken under [G.L. c. 32B, G.L. c. 4, § 4B\(c\)](#).

D. Notification of Acceptance

The clerk of the governmental unit must notify the Division of Local Services (DLS) Data Analytics and Resource Bureau if the unit accepts [G.L. c. 32B, § 20](#). (For notification form, please go to DLS [“Notification of Acceptance of Local Option Statutes” webpage](#).) The notification should be made as soon as possible after the votes.

II. OPEB FUND

A. Purpose

An OPEB Fund is a trust fund established by a governmental unit for the deposit of appropriations, gifts, grants and other funds for the:

1. Benefit of retired employees and their dependents;
2. Payment of required contributions by the governmental unit to the group health insurance benefits provided to employees and their dependents after retirement; and
3. Reduction and elimination of the unfunded liability of the governmental unit for those benefits.

Group health insurance benefits may include hospital, surgical, medical, dental and other health insurance benefits if the governmental unit offers that coverage to retirees.

B. Expendable Trust Fund

An OPEB Fund is an expendable trust fund, subject to appropriation, that is managed by a trustee or board of trustees. The assets of the trust are held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents.

All monies in the OPEB Fund must be accounted for separately from other funds of the governmental unit and are not subject to the claims of any general creditor of the governmental unit.

C. Custodian

The treasurer of the governmental unit is the custodian of the OPEB Fund and must be bonded in any additional amounts required to protect fund assets.

D. Governing Body

The governing body of a governmental unit is the:

1. Legislative body in a city or town;
2. County commissioners in a county;
3. Regional district school committee in a regional school district; or
4. District meeting or other appropriating body in any other governmental unit.

E. Chief Executive Officer

The chief executive officer of a governmental unit is the:

1. Mayor in a city or selectboard in a town, unless the charter designates another municipal officer as the chief executive officer;
2. County commissioners in a county;
3. Regional district school committee of a regional school district; or
4. Governing board, commission or committee in a district or other governmental unit.

F. Trustee

1. Designation of Trustee by Governing Body

The governing body of the governmental unit may by majority vote designate as trustee of the OPEB Fund:

- a. The treasurer of the governmental unit;
- b. The retirement board of the governmental unit; or
- c. An independent board of trustees it establishes as follows:

(1) Number of Trustees and Membership

The OPEB Fund board of trustees must have 5 to 13 members. The board must include (a) one or more individuals with investment experience as specified by the governing body, (b) one or more citizens of the governmental unit, (c) one employee of the governmental unit, (d) one or more retirees of the governmental unit, and (e) one or more officers of the governmental unit.

(2) Selection of Trustees

The governmental unit employee trustee is selected by current employees of the unit by ballot and the retiree trustees are selected by current retirees of the unit by ballot. All other trustees are appointed by the chief executive officer of the governmental unit.

(3) Term of Office

The trustees serve for terms of three or five years, as determined by the governing body. If a vacancy occurs, a trustee may be elected or selected in the same manner to serve for the remainder of the term. Trustees are eligible for reappointment.

(See attached Sample Vote 2 - Establishing Independent Board of Trustees.)

2. Trustee in Absence of Governing Body Designation

The treasurer of the governmental unit is the trustee of the OPEB Fund if the governing body does not designate a trustee.

3. Powers and Duties of Trustee or Board of Trustees

a. Trustee as Fiduciary

The trustee or board of trustees must:

- (1) Act in a fiduciary capacity for the primary purpose of enhancing the value of the OPEB Fund;
- (2) Act with the care, skill, prudence and diligence under the circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and with like aims at that time; and
- (3) Diversify the investments in the fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

b. Trustee as Investing Authority

The trustee or board of trustees is the investing authority and has general supervision of the management, investment and reinvestment of the OPEB Fund using the investment standard or investment vehicle described in Section II-I below.

c. Power to Employ Investment Consultants

The trustee or board of trustees may employ reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the OPEB Fund, if authorized by majority vote of the governing body. See Section II-J-1 below. (See attached Sample Vote 3 – To Authorize Trustee of OPEB Fund to Employ Investment Consultants.)

d. Other Duties and Obligations

Any other duties and obligations of the trustee or board of trustees must be set forth in a declaration of trust to be adopted by the trustee or board of trustees. All duties and obligations established by the declaration of trust must be consistent with [G.L. c. 32B, § 20](#). See Section II-G below.

4. Indemnification of Trustee

If a civil action is brought against a trustee or the board of trustees, acting within the scope of official duties, and legal counsel for the governmental unit defends or settles the action, the trustee or employee must be indemnified from the OPEB Fund for all expenses incurred in the defense of the action and damages to the same extent as provided for public employees generally. See [G.L. c. 258](#).

However, no trustee or employee may be indemnified for expenses incurred or damages awarded in a civil action in which there is: (a) a breach of fiduciary duty, (b) an act of willful dishonesty or (c) an intentional violation of law by the trustee or employee.

G. Declaration of Trust

1. Adoption

The trustee or board of trustees must adopt a declaration of trust stating the duties and obligations of the trustee or board of trustees. The declaration of trust and any later amendments must be filed with the chief executive officer and clerk of the governing body of the governmental unit. The declaration or amendment takes effect 90 days after the filing date unless the governing body votes to disapprove the declaration or amendment within that period of time.

As soon as possible after receipt of a declaration of trust or amendment, the clerk should post a notice that the declaration or an amendment has been filed under [G.L. c. 32B, § 20\(d\)](#). The posting should be made in the same manner as notices of meetings under the Open Meeting Law. [G.L. c. 30A, §§ 18 – 25](#). The notice should remain posted until the 90-day period has elapsed.

2. Terms

The duties and obligations of the trustee or board of trustees set forth in the declaration of trust cannot be inconsistent with [G.L. c. 32B, § 20](#).

H. Fund Monies

The following monies are credited to the OPEB Fund:

1. Appropriations to the OPEB Fund

The governing body may, by majority vote, appropriate monies to the OPEB Fund. (See attached Sample Vote 4 – Appropriations to OPEB Fund.)

In a regional school district, appropriations to the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval.

2. Gifts, Grants and Other Contributions

The treasurer of the governmental unit, as custodian of the OPEB Fund, may accept gifts, grants and other contributions to the fund.

3. Income

Any interest or other income generated by investment of the OPEB Fund becomes part of the OPEB Fund. See Section II-I-below.

4. Medicare Part D Funds

The governing body may, by majority vote, dedicate to the OPEB Fund reimbursements that the governmental unit receives as a sponsor of a Medicare Part D qualified retiree prescription drug plan. 42 U.S.C. § 1395w-132. (See attached Sample Vote 5 – Dedication of Medicare Part D Drug Plan Reimbursements to OPEB Fund.)

I. Fund Investment

Monies in the OPEB Fund that are not needed for expenditures or anticipated expenditures within the investment period must be invested and reinvested by the treasurer as directed by the trustee or board of trustees from time to time. The treasurer may employ an outside custodial service to hold the monies in the OPEB Fund consistent with the procedures and standards described below.

1. State Retiree Benefits Trust Fund

The trustee or board of trustees may, with the approval of the State Retiree Benefits Trust Fund board of trustees, direct the treasurer to invest the OPEB Fund in the State Retiree Benefits Trust Fund established under [G.L. c. 32A, § 24](#). In that case, fund monies are invested under [G.L. c. 32A, §§ 24 and 24A](#).

2. Other Investments

Where the trustee or board of trustees does not direct the treasurer to invest the OPEB Fund in the State Retiree Benefits Trust Fund, investments must be made as follows:

a. Retirement Board as Board of Trustees

Where the retirement board is the board of trustees, investments are made under [G.L. c. 32, § 23](#).

b. Treasurer or OPEB Fund Board as Trustees

Where the treasurer is the trustee or an OPEB Fund board of trustees has been established by the governing body, investments are made in the same manner as municipal trust funds under [G.L. c. 44, § 54](#).

However, the governing body may, by majority vote, authorize investments under the prudent investor standard for private trusts under [G.L. c. 203C](#). (See attached Sample Vote 6 – Authorization to Invest OPEB Fund under Prudent Investor Rule.)

J. Appropriations from OPEB Fund

An appropriation by a two-thirds vote of the governing body is required to spend any monies in the OPEB Fund.

In a regional school district, appropriations from the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval.

Appropriations may be made from the OPEB Fund for:

1. OPEB Fund Expenses

The governing body may, by a two-thirds vote, approve an appropriation from the OPEB Fund for the payment of OPEB Fund expenses, including expenses incurred by the trustee or board of trustees for the employment of reputable and knowledgeable investment consultants to assist the trustee or board of trustees in determining appropriate investments. (See attached Sample Vote 7 - Appropriations from the OPEB Fund – OPEB Fund Expenses. See also Section

II-F-3-c above for more information on the power of the trustee or board of trustees to employ investment consultants.)

The appropriation may be spent by the trustee or board of trustees for the OPEB fund expenses.

2. Health Insurance Benefits of Retirees

a. Procedure Before Appropriation

The treasurer of the governmental unit after consulting with the chief executive officer must determine the amount to be appropriated from the OPEB Fund to the annual budget for retiree health insurance and notify the trustee or board of trustees of that amount at the earliest possible opportunity in the annual budget cycle. Upon notification, the trustee or board of trustees must take diligent steps to certify that those funds are available for appropriation by the governing body, or will be available by the time the appropriation would become effective. If funds are not available, the trustee or board of trustees must provide the treasurer with an explanation why the funds are or will not be available or should not be made available.

b. Appropriation

The governing body may, by a two-thirds vote, appropriate amounts in the OPEB Fund to pay the governmental unit's share of health insurance benefits for retirees and their dependents upon certification by the trustee or board of trustees that the amounts are available in the OPEB Fund. Upon appropriation, the funds must be transferred to the annual budget for retiree health insurance. (See attached Sample Vote 8 - Appropriations from the OPEB Fund for Retiree Health Insurance Costs.)

K. Municipal Lighting Plants

A municipal lighting plant that establishes an OPEB fund must pay the premiums and assume the liability for the municipal share of retiree healthcare benefits attributable to lighting plant employees and their dependents.

III. FUND ACCOUNTING AND REPORTING

A. Separate Fund

The accounting officer must establish and maintain the OPEB Fund as a separate accounting fund and record all activity in the OPEB Fund.

B. GASB Requirements

The governmental unit is responsible for completing an actuarial valuation of its liabilities for health care and other post-employment benefits for its retired employees and their dependents and funding schedule that conform to the Governmental Accounting Standards Board (GASB) requirements.

C. PERAC Reporting

When a governmental unit obtains an actuarial valuation report in accordance with GASB requirements containing statements of the liabilities of the unit for health care and other post-employment benefits for its retired employees and their dependents, it must submit a copy to the Public Employee Retirement Administration Commission (PERAC). The report must be submitted no later than 90 days after the governmental unit receives the report. PERAC may require that the governmental unit provide additional information related to its liabilities, normal cost and benefit payments, as specified by the Executive Office for Administration and Finance, in consultation with PERAC. In that case, the governmental unit must also submit the additional information to PERAC. A copy of such report and additional information, if any, must also be submitted to the Bureau of Accounts at the time of its submission to PERAC. [G.L. c. 32B, § 20A.](#)

These reporting requirements apply to all governmental units whether or not they have established an OPEB fund under the general laws or a special act.

D. Regional School Districts

The annual report a regional school district submits to its member cities and towns under [G.L. c. 71, § 16\(k\)](#) must include a statement of the balance in the OPEB Fund and all additions to and appropriations from the fund during the period covered by the report.

IV. PARTICIPATION IN OPEB FUND OF ANOTHER GOVERNMENTAL UNIT

A governmental unit that accepts [G.L. c. 32B, § 20](#) may participate in the OPEB Fund established by another governmental unit.

A. Authorization

1. OPEB Fund Procedures

Participation of one governmental unit in the OPEB Fund of another governmental unit must comply with the procedures and criteria established by the trustee or board of trustees of the OPEB Fund.

2. Approval of Both Governmental Units

A governmental unit that accepts [G.L. c. 32B, § 20](#) may participate in the OPEB Fund established by another governmental unit upon approval by majority vote of the governing bodies of:

- a. The governmental unit wishing to participate in the OPEB Fund of the other governmental unit; and
- b. The governmental unit that has established the OPEB Fund in which the other governmental unit wishes to participate.

B. Obligations of Each Governmental Unit

Each governmental unit participating in the OPEB Fund remains responsible for all costs attributable for the health care and other post-employment obligations for its retired employees and their dependents and for completing an actuarial valuation of its liabilities and funding schedule that conforms to GASB requirements.

C. Appropriations to the OPEB Fund

A participating governmental unit may appropriate or otherwise contribute amounts to the OPEB Fund as provided in Section II-H above.

D. Appropriations from the OPEB Fund

A participating governmental unit may appropriate amounts from the OPEB Fund as provided in Section II-J above. However, when a participating governmental unit is appropriating for its retiree health insurance expenses as described in Section II-J-2 above, at the time the treasurer of the governmental unit gives notice to the trustee or board of trustees of the OPEB Fund of the amount to be appropriated from the OPEB Fund to the annual budget of the participating governmental unit for retiree health insurance, notice must also be given to the treasurer of the governmental unit maintaining the OPEB Fund. The trustee or board of trustees of the OPEB Fund must take diligent steps to certify that those funds are available for appropriation by the participating governmental unit, or will be available by the time the appropriation would become effective. If funds are not available, the trustee or board of trustees of the OPEB Fund must provide the treasurer of the participating governmental unit with an explanation why the funds are or will not be available or should not be made available. Upon a certification of the funds available for appropriation, the treasurer of the governmental unit maintaining the fund must transfer the amount appropriated to the participating governmental unit for credit to its annual budget for retiree health insurance.

E. Accounting

A participating governmental unit is separately credited for its contributions to and appropriations from the OPEB Fund, and interest or other income generated by the fund, in the accounting of the relative liabilities of each governmental unit for its retirees and their dependents.