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**“OPEB (Other Post-Employment Benefits):
What Every District Needs to Know.”**

This document is based upon presentations to the South Middlesex Regional Vocational Technical School Committee by a sub-committee and by the District’s auditors introducing the need to provide a method of pre-funding and managing post-employment benefits not otherwise provided for through employer appropriations and employee contributions.

MEMORANDUM

Date: August 7, 2015 (Revised for MASC/MASS 2016 Conference presentation)
Re: OPEB Considerations
To: District School Committee
Superintendent/Director
Director of Finance & Business Management
Treasurer

At the Keefe Regional School Committee meeting on June 20, 2015 the committee voted to “establish an OPEB trust fund under Chapter 32(b) Section 20” and to transfer \$50,000 to the OPEB Trust Fund. A draft vote (including the text of the proposed trust document) was presented to the committee “To establish an “Other Post-Employment Benefits (OPEB) Trust Fund and to designate the Treasurer of South Middlesex Regional Vocational Technical School District as Custodian of the OPEB Trust Fund.”

The motion to establish the Trust and designate the treasurer as custodian was tabled to allow for further consideration of certain Trust provisions especially about the responsibilities and discretion delegated to the Treasurer in the management and investment of Trust assets and of the School Committee in the oversight of the trust. In particular, the District did not have a comprehensive documented job description for the position of District Treasurer or of the additional responsibilities as treasurer of the proposed OPEB trust. This memorandum (1) outlines the elements of the role of a District Treasurer that may relate to an OPEB treasurer’s responsibilities, and (2) describes the circumstances under GASBY statements 43 and 45 that prompt and warrant the creation of an OPEB trust.

REFERENCES TO THE ROLE OF DISTRICT TREASURER IN THE FOLLOWING SOURCES

The model MASC Policy Manual

Policy BDCB

The School Committee shall appoint a treasurer who may be the same person as the secretary but who need not be a member of the School Committee.... Duties of the treasurer will include:

1. The treasurer shall receive and take charge of money belonging to the School District and shall pay any bill of the District which shall have been approved by the School Committee.
2. The treasurer ... may by vote of the School Committee be compensated for [his] services.

3. The treasurer shall be subject to the provisions of sections thirty-five (35) and one hundred and nine A (109A) of Chapter forty-one and all other state laws to the extent applicable.

Policy BCB

The treasurer ... shall be subject to the provisions of the General Laws relating to the duties and responsibilities of said office.

The treasurer shall sign all orders and checks for the payment of money as authorized by vote of a majority of the full Committee. The treasurer ... shall give bond for the faithful performance of [his] duties in such amount as determined by the School Committee.

The Inter-municipal Agreement for the Establishment of the South Middlesex Regional Vocational Technical School District (as amended)

Section I The Regional District School Committee

(E) Organization

“... the Committee shall appoint a treasurer ... who need not be [a] member[s] of the Committee and prescribe the powers and duties of any of its officers...”

Professional Organizations

The Massachusetts Collectors and Treasurer’s Association and the Massachusetts Association of Business Officials both provide overview suggestions as to the duties and responsibilities of the office of municipal Treasurer and, by reference, to that of District Treasurer.

Mass General Laws

The main functions of the treasurer of Districts are prescribed in various chapters and sections of state law.

THE OPEB TRUST AND THE OPEB FUND

When discussing the following, keep in mind the distinction between the entity created by the trust document itself “the OPEB TRUST” and the assets (contributed cash and earnings, CDs, bank books, etc.) which represent the money from which the benefits will be paid as they become due. The TRUST describes the roles and responsibilities of the administrators, managers, and investment advisors to whose care the assets are entrusted. The TRUST is an important legal document and its terms can be amended only as to prescribed points and in prescribed ways.

The OPEB FUND, that is the investments and policies governing those investments, in contrast, may be changed, and are mandated to be kept abreast of economic and market conditions, by its investment managers and advisors. The managers are obligated by the terms of the TRUST to see that the assets, liabilities, securities, expenses, income, actuarially determined future

liabilities, etc., constantly reflect and respond to current events so that the FUND value will be sufficient to pay the retirees' other benefits as they become due.

The following are the principal sources governing the operation of the TRUST and FUND:

Original (2014) Legislation

General Law Chapter 32B Section 20, (Chapter 218 of the Acts of 2016) supersedes former Chapter 32B of the Acts of 2014 which, when accepted by the governing board of the district, authorized the establishment of an OPEB trust . The 2014 legislation provided what may be described as a rudimentary structure for the OPEB program. That program consists of the trust document itself (the "TRUST" and the governance of the "FUND." The Fund is to receive appropriated contributions provided by the District in its annual budget along with interest and other income. The value of this asset pool will not be subject to the claims of any general creditors of the District.

The following were the main features of the original legislation:

1. The custodian of a district fund is the treasurer of the district or other custodian designated by the district in the same manner as the act is accepted by the district. The custodian may employ an outside custodial service to hold the monies in the fund.
2. Monies in the fund are to be invested and reinvested by the custodian consistent with the prudent investor rule established in Chapter 203C and may, with the approval of the Health Care Security Trust board of trustees, be invested in the State Retiree Benefits Trust Fund established in Section 24 of Chapter 32A.
3. The district shall annually submit to the Public Employee Retirement Administration Commission (PERAC), on or before December 31, a summary of its other post-employment benefits, costs and obligations and all related information required under Government Accounting Standards Board Standard 45, in the subsection called "GASB 45", covering the last fiscal or calendar year for which this information is available. On or before June 30 of the following year, the PERAC is to notify any entity submitting this summary of any concerns that the commission may have or any areas in which the summary does not conform to the requirements of GASB 45 or other standards that the commission may establish.
4. PERAC is to file a summary report of the information received under this subsection with the chairs of the house and senate committees on ways and means, the secretary of administration and finance and the board of trustees of the Health Care Security Trust.

The 2016 Amendments to Original Legislation

Several professional organizations in Massachusetts identified insufficiencies in the statutory scheme and recommended changes to be included in OPEB trusts. In January 2012 the Government Finance Officers Association (GFAO) had published a GFOA Best Practices statement which made the following recommendations that should be considered in adopting OPEB trusts.

1. Prefund the obligation for post-employment benefits other than pensions (OPEB) once the estimated substantial long-term liability has been determined. In most cases, employers can make long-term investments to cover these obligations through a

separate trust fund that should, over time, result in a lower total cost for providing post-employment benefits.

2. Create a qualified trust fund to prefund OPEB obligations. To ensure that the trust is established and administered properly, consult qualified legal counsel and fully understand the following issues:
 - The legal consequences of establishing a trust, including how to design trust documents that mitigate the risk of unintended liabilities and provide a way to dissolve or modify the trust, if that should become necessary.
 - The comparative advantages of creating a single-employer trust, which is controlled by the employer and administered by either the employer or an independent board of trustees, versus participating in a multi-employer trust.

Consistent with those recommendations and a critical analysis of the provisions of the 2014 legislation, the following considerations are relevant to single-employer OPEB trusts created by a regional school district.

The scope of the trust. The trust should provide for the prudent investment of plan assets and perform no other administrative functions, except for disbursements, which can be handled by the TRUST or by the district business office staff or by a third-party administrator?

The general supervision of the OPEB fund. The School Committee should designate a trustee or board of trustees to have general supervision and investing authority of the management, investment and reinvestment of the OPEB fund. If an OPEB Fund Board of Trustees is established, the authorizing legislation now specifies the representative and experience qualifications for appointment of individual trustees and their collective duties and responsibilities.

Trust personnel.

Trust administrator. This individual, who may be a District official, is typically responsible for authorizing disbursements, carrying out the directives of the governing body, and other oversight tasks. An external vendor could also be named trust administrator, but not as the disbursement official (unless the vendor is engaged as a fiduciary under a separate third-party administrative contract).

Custodian. The district may appoint its customary custodian (presumably the Treasurer) or a different entity selected expressly for the OPEB portfolio. If the trust is independent of Keefe, the trust governing body may be authorized to select the custodian. The custodian, typically a regulated bank or trust company, should be independent of the investment advisor, even if the trust holds mutual funds as its primary investment.

Investment Advisor. Most governing bodies outsource the investment management functions to an independent professional investment management organization. The TRUST document can specify that the

governing body or the delegated oversight body select an independent investment advisor through a separate contract. The governing body can retain either a discretionary advisor or a non-discretionary advisor. The former can make investment decisions within the parameters of the trust document's investment policy. The latter, similar to a pension plan consultant, would be required to obtain pre-approval of investment decisions. The existence and scope of fiduciary responsibilities should be stated in the TRUST document.

Investment policy. Investment policies may be either stated in the TRUST document or established from time to time by TRUST authorities having discretion in such matters. Typically such policies cover permitted investments and targets and ranges for asset allocations.

IRS issues. The OPEB TRUST will not be required to apply for an IRS private letter ruling but might wish to do so if the cost is not prohibitive.

GASB issues. Trusts must conform to the Government Accounting Standard Board's definition of trust or equivalent arrangement in GASB Statement No. 43, Financial Reporting for Post-Employment Benefit Plans Other Than Pension Plans to be sure the assets held in trust can be recognized as offsetting plan liabilities.

Fees. Investment service providers are selected, ideally, through a comprehensive competitive selection process. The OPEB TRUST should evaluate full fee information and disclosures (i.e., of any potential conflicts or third-party compensation received from investment products or providers). Underlying investment costs such as mutual fund expenses should be included in this total cost evaluation. Service-provider costs, which are a legitimate trust expense, are usually lower if they are charged directly instead of through indirect compensation arrangements or retail investment products.

THE EXTENT AND NATURE OF THE DISTRICT'S OPEB LIABILITY

In its annual Management Letter a district's auditors present their findings regarding the district's Unfunded Other Post-Employment Benefits liability. A typical characterization of the position of a District which has not established an OPEB Trust and FUND might be:

"At present, the District funds its liability for other post-employment benefits on the pay-as-you-go method. This results in the maximum liability, computed under the guidance of GASB Statement No. 45 being recorded in the District's financial statements. At the most recent year end this liability caused the District's government wide financial statements to reflect a deficit in its net position (equity), Massachusetts General Laws Chapter 32B, Section 20 allows a District to establish a legally separate trust fund for this purpose. We understand that a number of governmental entities in Massachusetts have done this and are at least partially funding the actuarial liability."

Typical Auditor's OPEB Recommendations

"We suggest the District consider establishing this liability trust fund and begin to at least partially fund the actuarial liability on an annual basis. This will result in reducing

the liability recorded in the District's financial statements each year, as well as setting funds aside for this liability." (Note that no requirements are currently imposed by GASBY statements or the Mass Department of Revenue for pre-funding benefit obligations. Consideration should be given to the impact of existing unfunded liabilities upon the District's bond rating.)

Typically auditor's notes to the recent Financial Statements will show the following as to the nature and amount of the District's OPEB obligation as of that date:

Plan Description: The District provides health insurance benefits to current and future retirees, their dependents, and beneficiaries in accordance with MGL Chapter 32B under various contributory plans. Specific benefit provisions and contribution rates are established by collective bargaining. All benefits are provided through third party insurance carriers and health maintenance organizations that administer, assume, and pay all claims for the specific plans. The Plan does not issue a standalone financial report since there are no assets legally segregated for the sole purpose of paying benefits under the Plan. The number of participants as of year-end, the latest actuarial valuation, is as follows:

Active Employees	#	___
Retired Employees	#	___
Total	#	___

Funding Policy: The contribution requirements of Plan members and the District are established and may be amended by collective bargaining. Up to age sixty-five, individuals pay ___% of the total costs. After age sixty-five, individuals pay ___ % of the medical costs and all of the dental costs. The remainder of such cost is funded by the District. The District currently contributes enough money to the Plan to satisfy the current obligation on a pay- as-you-go basis. The costs of administering the Plan are paid by the District.

Annual OPEB Cost and Net OPEB Obligation: The District's annual other post-employment benefit (OPEB) cost (expense) is calculated based on the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year and amortize any unfunded actuarial liabilities (or funding excess) over a period not to exceed thirty years. The District's annual financial statements will show in tabular form the components of the District's annual OPEB cost for the year, the amount actually contributed to the Plan, and the District's net OPEB obligation as follows:

Annual Required Contribution	\$	_____
Interest on Net OPEB Obligation	\$	_____
Adjustment to Annual Required Contribution	\$(_____)
Annual OPEB Cost	\$	_____
Contribution Made during year (if any)	\$(_____)
Increase in Net OPEB Obligation	\$	_____
Net OPEB Obligation at Beginning of Year	\$	_____
Net OPEB Obligation at End of Year	\$	_____

Projecting Annual OPEB Cost and Net OPEB Obligation:

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funding status of the plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future.

Actuarial Methods and Assumptions: Projections of benefits for financial reporting purposes are based on the substantive benefits plan (The Plan as understood by the employer and plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and Plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.