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

REGIONAL SCHOOL DISTRICT PROVISIONS

CH. 218, ACTS OF 2016 (Ch’s 15, 20A. 238)

(AN ACT MODERNIZING MUNICIPAL FINANCE AND GOVERNMENT)

Section 15. Amends Chapter 32B by striking out section 20 of the 2014 Official Edition, and replacing them with the following sections:

Section 20.

(a) The following words used with reference to regional school districts shall mean, the following unless the context clearly requires otherwise:

“Chief executive officer (“CEO”)”, the governing board, commission or committee in a regional school district.

“Commission” or “PERAC”, the public employee retirement administration commission established pursuant to section 49 of Chapter 7.

“GASB”, the Governmental Accounting Standards Board.

“Governing body”, the regional district school committee in a regional school district.

“Governmental unit” or “unit”, any political subdivision of the commonwealth

“State Retiree Benefits Trust Fund board of trustees”, the board of trustees established by section 24A of Chapter 32A.

“Other Post-Employment Benefits Liability Trust Fund” or “OPEB Fund”; a trust fund established by the school district pursuant to this section for the deposit of gifts, grants, appropriations and other funds for the: (1) benefit of retired employees and their dependents, (2) payment of required contributions by the district 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 district for such benefits.

“OPEB Fund board of trustees”; an independent board of trustees selected by the school district with investing authority for the OPEB Fund.

“OPEB investing authority” or “investing authority” is the trustee or board of trustees designated by the school district to invest and reinvest the OPEB Fund using the investment standard or investment vehicle established pursuant to this section.

(b) A school district that accepts this section shall establish on its books and accounts the Other Post-Employment Benefits Liability Trust Fund to which the following shall pertain:

(i) The assets shall be held solely to meet the current and future liabilities of the school district for group health insurance benefits for retirees and their dependents.

(ii) The school district may appropriate amounts to be credited to the fund and the treasurer of the school district may accept gifts, grants and other contributions to the fund.

(iii) The fund shall be an expendable trust subject to appropriation and shall be managed by a trustee or a board of trustees as provided in subsection (d).

(iv) Interest or other income generated by the fund shall be added to and become part of the fund. Amounts received as a sponsor of a qualified retiree prescription drug plan pursuant to 42 U.S.C. section 1395w-132 may be dedicated to and become part of the fund by vote of the governing body of the school district.

(v) Monies held in the fund shall be accounted for separately from other funds of the school district and shall not be subject to the claims of any general creditor of the district.

(c) The treasurer of the school district shall be the custodian of the OPEB Fund and shall be bonded in any additional amounts necessary to protect fund assets.

(d) The governing body of the school district shall designate a trustee or board of trustees, which shall have general supervision of the management, investment and reinvestment of the OPEB Fund. The governing body may designate as the trustee or board of trustees:

(i) the custodian;

(ii) the governmental unit's retirement board as the board of trustees; or

(iii) an OPEB Fund board of trustees established by the school district pursuant to subsection (e).

If no designation is made, the custodian of the fund shall be the trustee and shall manage and invest the fund.

The duties and obligations of the trustee or board of trustees with respect to the fund shall be set forth in a declaration of trust to be adopted by the trustee or board, but shall not be inconsistent with this section.

The declaration of trust and any amendments thereto shall be filed with the chief executive officer and the clerk of the governing body of the governmental unit and take effect 90 days after the date filed, unless the governing body votes to disapprove the declaration or amendment within that period.

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 fund, if authorized by the governing body of the school district.

The trustee or board of trustees may, with the approval of the State Retiree Benefits Trust Fund board of trustees, invest the OPEB Fund in the State Retiree Benefits Trust Fund established in section 24 of Chapter 32A.

(e) The governing body of the governmental unit may vote to establish a separate OPEB Fund board of trustees to be the investing authority.

(i) The board of trustees shall consist of 5 to 13 individuals, including:

(a) a person or persons with the investment experience desired by the governmental unit,

(b) a citizen or citizens of the governmental unit,

(c) an employee of the governmental unit,

(d) a retiree or retirees of the governmental unit, and

(e) a governmental unit officer or officers.

Selection or appointment and tenure of trustees:

The governmental unit employee trustee shall be selected by current employees of the unit by ballot, and the retiree trustee or trustees shall be selected by current retirees of the unit by ballot.

The remainder of the trustees shall be appointed by the chief executive officer of the school district. The trustees will serve for terms of 3 or 5 years, as determined by the governing body of the governmental unit, and if a vacancy occurs, a trustee may be elected or selected in the same manner to serve for the remainder of the term.

Trustees shall be eligible for reappointment.

(f) The trustee or board of trustees shall:

(i) act in a fiduciary capacity,

(ii) discharge its duties for the primary purpose of enhancing the value of the OPEB Fund ,

(iii) act with the care, skill, prudence and diligence under the circumstances then prevailing 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 and

(iv) 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.

Indemnification of trustees against liability:

(i) In any civil action brought against a trustee, the board of trustees, acting within the scope of official duties, the defense or settlement of which is made by legal counsel for the school committee, the trustee or employee shall be indemnified from the OPEB Fund for all expenses incurred in the defense thereof and for damages to the same extent as provided for public employees in Chapter 258.

(ii) No trustee or employee shall be indemnified for expenses in an action or damages awarded in such 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) Monies in the OPEB Fund not required for expenditures or anticipated expenditures within the investment period, shall be invested and reinvested by the custodian as directed by the investing authority from time to time; provided such investment or reinvestment is made in accordance with:

(i) section 54 of Chapter 44, if the treasurer or OPEB Fund board of trustees is the investing authority, unless the governing body of the governmental unit authorizes investment under the prudent investor rule established in Chapter 203C;

(ii) section 23 of Chapter 32, if the retirement board is the investing authority; or

(iii) sections 24 and 24A of Chapter 32A, if the OPEB Fund is invested in the State Retiree Benefits Trust Fund.

(h) Amounts in the OPEB Fund may be appropriated by a two-thirds vote of the regional district school committee to pay the unit's share of health insurance benefits for retirees and their dependents upon certification by the trustee or board of trustees that such amounts are available in the fund.

(i) In a regional school district, appropriations of amounts to the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval. The annual report submitted to the member cities and towns pursuant to clause (k) of section 16 of Chapter 71 shall include a statement of the balance in the fund and all additions to and appropriations from the fund during the period covered by such report.

(j) OPEB fund for Municipal Lighting Plants.

(k) A regional school district that accepts this section may participate in the OPEB Fund established by another governmental unit pursuant to this section upon authorization of the governing boards of both units and in accordance with the procedures and criteria established by the trustee or board of trustees of the fund. Each governmental unit shall remain 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.

The participating regional school district may appropriate or otherwise contribute amounts to the OPEB Fund as provided in subsection (b). Amounts from the fund may be appropriated by the participating unit for its retiree health insurance expenses in the manner authorized in subsection (h) upon a determination by the treasurer of the unit, after consulting with the chief executive officer of the unit, of the necessary amount and notification of the treasurer of the governmental unit maintaining the fund and the

trustee or board of trustees of that amount. The trustee or board of trustees shall certify those funds available for appropriation, as provided in subsection (h), and the treasurer of the governmental unit maintaining the fund shall transfer the amounts certified to the participating governmental unit.

The participating governmental unit shall be separately credited for any contributions made 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.

(l) This section may be accepted in a regional school district, by vote of the regional school committee.

(m) This section shall also apply to the OPEB Fund established by a governmental unit under a special law, notwithstanding any provision to the contrary, upon the acceptance of this section by the governmental unit.

Section 20A. When a governmental unit obtains an actuarial valuation report in accordance with GASB containing statements of the liabilities of the unit for health care and other post-employment benefits for its retired employees and their dependents, it shall submit a copy to PERAC no later than 90 days after receipt of such report. PERAC may require that the governmental unit provide additional information related to such liabilities, normal cost and benefit payments, as specified by the executive office for administration and finance, in consultation with PERAC. The governmental unit shall file the report and additional information with PERAC and the division of local services in the department of revenue. PERAC shall file a summary report of the information received pursuant to this section 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 State Retiree Benefits Trust Fund established pursuant to section 24A of Chapter 32A.

Section 238. Any district that established an OPEB Fund pursuant to section 20 of Chapter 32B of the General Laws before the effective date of this act shall continue said fund under the terms originally established unless such district reaccepts said section 20 of said Chapter 32 after the effective date of this act.