

Other Post-Employment Benefits Trust Fund (FAQS)

FAQs on Other Post-Employment Benefits (OPEB) Trust Fund G.L. c. 32B, § 20

Frequently asked questions (FAQs) published by the Division of Local Services (DLS) within the Department of Revenue provide general information about Massachusetts municipal tax and finance laws and DLS policies and procedures in effect when published. They do not answer all questions or address complex issues about their topics. FAQs are not public written statements of the Department. They are informational only as described in 830 CMR 62C.3.1(10)(c), and do not supersede, alter or otherwise change any Massachusetts General Law, Department public written statement or other source of law.

Legislative History and Establishment FAQs

1. What changes did the <u>Municipal Modernization Act</u> make to the OPEB statute - <u>G.L. c.</u> 32B, § 20?

The Act addressed a number of issues about the nature of the fund under the "old" OPEB statute. Most importantly, it clarified that the statute authorized and required the creation of a trust fund for monies reserved for retiree health insurance and other post-employment benefits. This change was to comply with legal requirements for trusts and with Governmental Accounting Standards Board (GASB) standards. In particular, the amendments:

- A) Establish the OPEB Fund as a trust fund with a trustee and declaration of trust;
- B) Require 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;
- C) Establish procedures for the appointment of a trustee, adoption of a declaration of trust and appropriations of funds into and out of the OPEB Fund;
- D) Authorize housing authorities, redevelopment authorities, regional councils of government, regional school districts and educational collaboratives to establish OPEB trust funds; and
- E) Allow a governmental unit to participate in the OPEB fund of another governmental unit and establish procedures to do so.

2. What is an OPEB Trust Fund (OPEB Fund)?

An OPEB Fund is a trust fund established by a governmental unit for the deposit of appropriations, gifts, grants and other funds for the benefit of retired employees and their dependents; payment of required contributions by the governmental unit for the group health insurance benefits provided to employees and their dependents after retirement; and reduction and elimination of the unfunded liability of the governmental unit for those benefits. The 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.

3. What are group health insurance benefits?

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

4. Who can establish an OPEB Fund?

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

5. How does an eligible governmental unit establish an OPEB Fund under G.L. c. 32B, § 20?

G.L. c. 32B, § 20 is a local acceptance statute. Therefore, the governmental unit must vote to accept G.L. c. 32B, § 20 and establish an OPEB Fund. In a city or town, acceptance must be in the manner provided in G.L. c. 4, § 4, by vote of the legislative body, subject to the charter of the city or town. In a county, acceptance is by vote of the county commissioners. In a regional school district, acceptance is by vote of the regional school committee. In a district or other governmental unit, acceptance is by vote of the district meeting or other appropriating body.

6. What if a city or town had already accepted <u>G.L. c. 32B, § 20</u> and established an OPEB Fund before the <u>Municipal Modernization Act</u> changes?

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

7. Can acceptance be revoked?

No. There is no revocation procedure in the statute. In addition, <u>G.L. c. 4, § 4B</u>, which generally establishes a procedure for cities and towns to revoke their acceptance of local option statutes, does not apply to actions taken under <u>G.L. c. 32B</u>, <u>G.L. c. 4, § 4B(c)</u>.

8. Are there any notification requirements after acceptance of the OPEB Fund statute?

Yes. The clerk of the governmental unit must notify the Division of Local Services (DLS) Data Analytics and Resources Bureau if the unit accepts <u>G.L. c. 32B, § 20</u>. The notification should be made as soon as possible after the votes. Please send an email to the Municipal Databank at <u>databank@dor.state.ma.us</u>.

OPEB Trust Fund Formation FAQs

9. Who is the custodian of the OPEB Trust Fund (OPEB Fund)?

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.

10. Must an OPEB Fund have a trustee?

Yes. One of the purposes of the <u>Municipal Modernization Act's</u> amendments was to establish an OPEB Fund as a trust fund with a trustee.

11. Who designates the trustee of an OPEB Trust Fund?

The governing body of the governmental unit, by majority vote, designates the trustee of an OPEB Fund. It may choose (1) the treasurer of the governmental unit or (2) the retirement board of the governmental unit or (3) it may establish an OPEB Fund board of trustees described below. If the governing body does not designate a trustee, the treasurer of the governmental unit is trustee.

12. What is the governing body of a governmental unit?

The governing body of the governmental unit is the legislative body in a city or town, the county commissioners in a county, the regional district school committee in a regional school district, and the district meeting or other appropriating body in any other governmental unit.

13. Are there any requirements for an OPEB Fund board of trustees?

Yes. An 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, and (d) one or more retirees of the governmental unit, and (e) one or more officers of the governmental unit.

14. Who selects the members of an OPEB Fund board of trustees and how long do the members serve?

The governmental unit employee trustee is selected by current employees of the unit by ballot. 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. The chief executive officer is a mayor in a city or select board in a town, unless the charter designates another municipal officer as the chief executive officer; county commissioners in a county; the regional district school committee of a regional school district; and the governing board, commission or committee in a district or other governmental unit.

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.

15. What are the powers and duties of the trustee/board of trustees of the OPEB Fund?

The trustee/board of trustees of the OPEB Fund acts in a fiduciary capacity for the primary purpose of enhancing the value of the OPEB Fund. The trustee acts with the care, skill, prudence and diligence that a prudent person acting in a similar capacity and familiar with such matters would use in the conduct of

an enterprise of similar character and similar aims at that time. The trustee is required to 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.

The trustee/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 that applies to the particular trustee/board of trustees. (See FAQ No. 18 below.)

The trustee/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 so authorized by majority vote of the governing body.

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 the provisions of the OPEB law, G.L. c. 32B, § 20.

16. Is the trustee/board of trustees required to adopt a declaration of trust?

Yes. 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 <u>G.L. c. 32B, § 20(d)</u>. The posting should be made in the same manner as notices of meetings under the Open Meeting Law. <u>G.L. c. 30A, §§ 18 – 25</u>. The notice should remain posted until the 90-day period has elapsed.

Appropriation, Accounting and Investment FAQs

17. What monies are credited to the OPEB Trust Fund?

- A) <u>Appropriations to the OPEB Fund</u> The governing body may, by majority vote, appropriate monies to the 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. As we stated above, the governing body is the legislative body in a city or town, the county commissioners in a county, the regional district school committee in a regional school district, and the district meeting or other appropriating body in any other governmental unit.
- B) <u>Gifts, Grants and Other Contributions</u> The treasurer of the governmental unit, as custodian of the OPEB Fund, may accept gifts, grants and other contributions to the fund.
- C) <u>Income</u> Any interest or other income generated by investment of the OPEB Fund becomes part of the OPEB Fund.
- D) <u>Medicare Part D Funds</u> 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.

18. Where can OPEB Trust Fund monies be invested?

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.

- (A) 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 <u>G.L. c. 32A, § 24</u>. In that case, fund monies are invested under <u>G.L. c. 32A, §§ 24 and 24A</u>.
- (B) 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:
 - 1. Retirement Board as Board of Trustees Where the retirement board is the board of trustees, investments are made under <u>G.L. c. 32, § 23</u>.
 - 2. 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 <u>G.L. c. 44, § 54</u>. However, the governing body may, by majority vote, authorize investments under the prudent investor standard for private trusts under <u>G.L. c. 203C</u>.

19. Is an appropriation needed to spend OPEB monies?

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

20. What are the accounting obligations associated with OPEB Trust Funds?

The accounting officer must establish and maintain the OPEB Fund as a separate fund and record all activity in the OPEB Fund. The governmental unit (city, town, or district, etc.) 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.

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.

The annual report a regional school district submits to its member cities and towns under <u>G.L. c. 71, §</u> <u>16(k)</u> 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.

21. What is the process to participate in the OPEB Fund of another governmental unit?

A governmental unit that accepts <u>G.L. c. 32B</u>, § <u>20</u> may participate in the OPEB Fund established by another governmental unit under <u>G.L. c. 32B</u>, § <u>20</u>. 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 it wishes to join.

A governmental unit that accepts <u>G.L. c. 32B</u>, § 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.

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. 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.

For more information, see Informational Guideline Release IGR 19-10.