

CHAPTER 219
SB 83-FN – FINAL VERSION

01/18/12 0219s
11Apr2012... 1513h
17May2012... 2049h
06/06/12 2469EBA

2012 SESSION

11-0994
05/03

SENATE BILL ***83-FN***

AN ACT enabling municipalities and school districts to create other post-employment benefits (OPEB) trusts.

SPONSORS: Sen. Merrill, Dist 21; Rep. Watters, Straf 4; Rep. P. Schmidt, Straf 4; Rep. Pelletier, Straf 5; Rep. Andolina, Straf 6; Rep. D. Hooper, Straf 5

COMMITTEE: Public and Municipal Affairs

AMENDED ANALYSIS

This bill enables municipalities and school districts to create other post-employment benefits (OPEB) trusts provided that the actuarial liability for the benefit was created on or before January 1, 2012.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT enabling municipalities and school districts to create other post-employment benefits (OPEB) trusts.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 219:1 New Section; Other Post-Employment Benefits Trusts. Amend RSA 31 by inserting after
2 section 19-b the following new section:

3 31:19-c Authorization for Municipalities to Establish OPEB Trusts.

4 I. The legislative body of a municipality that created, on or before January 1, 2012, an
5 actuarial liability to pay other post-employment benefits (OPEB) to employees or officers after their
6 termination of service may establish an irrevocable trust to pay those benefits. In this section, the
7 term “other post-employment benefits” means employee benefits other than pensions that are
8 received after employment ends, and may include such medical, disability, or other health benefits,
9 as are covered by Statement No. 45 of the Governmental Accounting Standards Board (GASB). The
10 term “trust” means a trust qualified under GASB Statement No. 43.

11 II. Deposits to any fund under such a trust and any earnings on those deposits shall be
12 irrevocable and shall be held in trust for the exclusive benefit of retirees and their beneficiaries in
13 accordance with the terms of the plans or programs providing other post-employment benefits, except
14 that funds governed by the trust may be withdrawn for other purposes only when an employer’s liability
15 owed to former officers or employees for other post-employment benefits has been satisfied or otherwise
16 eliminated pursuant to subparagraph V(b). The assets of any trust created pursuant to this section or in
17 which a municipality participates pursuant to this section shall be exempt from taxation and execution,
18 attachment, garnishment, or any other process. No public officer, employee, or agency shall divert, use,
19 or authorize the use of such funds for any purpose other than as provided in law for other post-
20 employment benefits covered by the trust and administrative expenses.

21 III. The trustees of any trust created pursuant to this section shall have the full power to
22 invest, reinvest, and manage the assets of the trust. The trustees shall invest the assets of the trust
23 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent
24 person acting in a like capacity and familiar with such matters would use in the conduct of an
25 enterprise of a like character and with like aims. The trustees shall also diversify such investments
26 so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to

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1 do so. The board of trustees may engage a trust administrator, investment consultants, or other
2 qualified professionals to assist with management and investment of the funds of the trust and may
3 pay for these services out of the funds of the trust.

4 IV. Trusts created by a municipality pursuant to this section shall be administered by the
5 board of trustees established by the municipality pursuant to RSA 31:22. The accounts of the
6 trustees shall be subject to the auditing and reporting requirements of RSA 31:33. Other provisions
7 of RSA 31:19 through 31:38-a governing trusts shall also apply unless they are contrary to this
8 section.

9 V. The municipality may withdraw money from the funds of a trust created pursuant to this
10 section only:

11 (a) As needed to pay other post-employment benefits owed to former officers and
12 employees; or

13 (b) When all other post-employment benefits liability owed to former officers or
14 employees of the employing entity has been satisfied or otherwise defeased.

15 219:2 Trust Funds Created for the Purpose of Maintaining Health Insurance Funds; Reference
16 Added. Amend RSA 198:20-c, III to read as follows:

17 III. A trust fund created under the provisions of this section that is established for the
18 purpose of maintaining health insurance funds for the benefit of employees and retired employees of
19 any school district, ***including an OPEB trust established pursuant to paragraph VII***, shall be
20 exempt from the provisions of paragraph II, and when so established, the school district may name
21 its own trustees who may expend any funds in the trust for the payment of health claims or health
22 insurance premiums for the benefit of any employees or retired employees of the school district. An
23 annual accounting and report of the activities of the trust shall be presented to the school board of
24 the district and published in the annual report.

25 219:3 New Paragraph; School Money; Trust Funds Created for Specific Purposes; OPEB Trusts.
26 Amend RSA 198:20-c by inserting after paragraph VI the following new paragraph:

27 VII.(a) A school district that created, on or before January 1, 2012, an actuarial liability to
28 pay other post-employment benefits (OPEB) to employees or officers after their termination of
29 service may establish an irrevocable trust to pay those benefits. In this paragraph, the term “other
30 post-employment benefits” means employee benefits other than pensions that are received after
31 employment ends, and may include such medical, disability, or other health benefits, as are covered
32 by Statement No. 45 of the Governmental Accounting Standards Board (GASB). The term “trust”
33 means a trust qualified under GASB Statement No. 43.

34 (b) Deposits to any fund under such a trust and any earnings on those deposits shall be
35 irrevocable and shall be held in trust for the exclusive benefit of retirees and their beneficiaries in
36 accordance with the terms of the plans or programs providing other post-employment benefits, except

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1 that funds governed by the trust may be withdrawn for other purposes only when an employer's liability
2 owed to former officers or employees for other post-employment benefits has been satisfied or otherwise
3 eliminated pursuant to subparagraph (d)(2). The assets of any trust created pursuant to this paragraph
4 or in which a school district participates pursuant to this paragraph shall be exempt from taxation and
5 execution, attachment, garnishment, or any other process. No public officer, employee, or agency shall
6 divert, use, or authorize the use of such funds for any purpose other than as provided in law for other
7 post-employment benefits covered by the trust and administrative expenses.

8 (c) The trustees of any trust created pursuant to this paragraph shall have the full
9 power to invest, reinvest, and manage the assets of the trust. The trustees shall invest the assets of
10 the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a
11 prudent person acting in a like capacity and familiar with such matters would use in the conduct of
12 an enterprise of a like character and with like aims. The trustees shall also diversify such
13 investments so as to minimize the risk of large losses unless under the circumstances it is clearly
14 prudent not to do so. The trustees may engage a trust administrator, investment consultants, or
15 other qualified professionals to assist with management and investment of the funds of the trust and
16 may pay for these services out of the funds of the trust.

17 (d) The school district may withdraw money from the funds of a trust created pursuant
18 to this paragraph only:

19 (1) As needed to pay other post-employment benefits owed to former officers and
20 employees; or

21 (2) When all other post-employment benefits liability owed to former officers or
22 employees of the employing entity has been satisfied or otherwise defeased.

23 219:4 Effective Date. This act shall take effect July 1, 2012.

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25 Approved: June 13, 2012
26 Effective Date: July 1, 2012