

Part 12

Other Post-Employment Benefit Investment Trust Act of 2006

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8-50-1201. Short title.

This part shall be known and may be cited as the “Other Post-Employment Benefit Investment Trust Act of 2006.”

Acts 2006, ch. 771, § 1.

Attorney General Opinions. Absent the existence of any conflicting authority, any OPEB trust created by a county school board must comply with the OPEB Act. OAG 12-75, 2012 Tenn. AG LEXIS 78 (7/19/12).

Administration of OPEB trusts; collective establishment of OPEB trusts; contracting with Tennessee School Boards Association to create and operate OPEB trust. OAG 12-75, 2012 Tenn. AG LEXIS 78 (7/19/12).

8-50-1202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) “Other post-employment benefits” or “post-employment benefits” means nonpension benefits paid on behalf of former employees or the former employees' beneficiaries after separation from service. The benefits may include, but shall not be limited to, medical, prescription drugs, dental, vision, hearing, medicare part B or part D premiums, life insurance, long-term care, and long-term disability;

(2) “Political subdivision” means any Tennessee local governmental entity, including, but not limited to, any municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of Tennessee, or any instrumentality of government created by any one (1) or more of the named local governmental entities or by an act of the general assembly; and

(3) “State funding board” or “funding board” means the board created pursuant to §

9-9-101.

Acts 2006, ch. 771, § 1.

8-50-1203. Establishment of trust.

A political subdivision may, by resolution legally adopted and approved by its chief governing body, establish an investment trust for the purpose of pre-funding other post-employment benefits accrued by employees of the political subdivision, to be paid as they come due in accordance with the arrangements between the employers, the plan members and their beneficiaries. This authorization shall be subject to the following conditions:

(1) The chief governing body must establish a written plan of the post-employment benefits provided;

(2) (A) The investment committee of the political subdivision must adopt, in writing, an investment policy authorizing how assets in the trust may be invested. The policy shall not authorize assets in the trust to be invested in any instrument, obligation, security, or property that would not constitute a legal investment for assets of Tennessee domestic life insurance companies;

(B) Notwithstanding subdivision (2)(A), the investment committee of a political subdivision may adopt, in writing, an investment policy authorizing assets in the trust to be invested and managed in accordance with the investment policy the political subdivision utilizes to manage pension assets; provided, however, that the pension fund management must conform to the Tennessee Uniform Prudent Investor Act of 2002, compiled in title 35, chapter 14;

(3) The trust must conform to all applicable laws, rules and regulations of the internal revenue service, if any. Notwithstanding subdivision (4) to the contrary, it shall be the sole responsibility of the political subdivision to ensure that the trust conforms to the laws, rules and regulations of the internal revenue service; and

(4) The trust document must be submitted to the state funding board for approval.

Acts 2006, ch. 771, § 1; 2007, ch. 184, § 18; 2008, ch. 742, § 1.

8-50-1204. Trust conditions.

(a) Any trust created under this part shall be irrevocable, and the assets thereof shall be preserved, invested and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the trust shall be expended solely to:

(1) Make payments for other post-employment benefits pursuant to and in accordance with terms of the political subdivision's respective post-employment benefit plan; and

(2) Pay the cost of administering the trust.

(b) Any investment trust so created shall have the powers, privileges and immunities of a corporation; and all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

(c) Notwithstanding any law to the contrary, all assets, income and distributions of the investment trust shall be protected against the claims of creditors of the political subdivisions, plan administrators, and plan participants, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

Acts 2006, ch. 771, § 1; 2013, ch. 140, § 1.

8-50-1205. Powers and duties.

In addition to the powers granted by any other provisions of this part, the chief governing body of a political subdivision that establishes an investment trust under this part shall have the powers necessary or convenient to carry out the purposes and provisions of this part and the purposes and objectives of the investment trust, including, but not limited to, the following express powers:

(1) To invest any funds of the trust in any instrument, obligation, security, or property that constitutes legal investments, as provided in the investment policy adopted pursuant to § 8-50-1203(2);

(2) To contract for the provision of all or any part of the services necessary for the management and operation of the investment trust;

(3) To contract with financial consultants, auditors, and other consultants as necessary to carry out its responsibilities under this part;

(4) To contract with an actuary or actuaries in determining the level of funding necessary by that political subdivision to fund the other post-employment benefits offered by the subdivision;

(5) To prepare annual financial reports, including financial statements, following the close of each fiscal year relative to the activities of the trust. The statements and reports shall contain the information that is prescribed by the board and shall be prepared in accordance with the governmental accounting standards board; and

(6) Upon the request of the state funding board, to file the annual report and financial statements with the chair of the funding board. The report and statements shall be filed with the chair of the board within ninety (90) calendar days from the date of the request, unless the chair extends the time in writing.

Acts 2006, ch. 771, § 1.

Attorney General Opinions. Absent the existence of any conflicting authority, any OPEB trust created by a county school board must comply with the OPEB Act. OAG 12-75, 2012 Tenn. AG LEXIS 78 (7/19/12).

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8-50-1206. Audit.

The annual report, including financial statements, all books, accounts and financial records of any trust created under this part shall be subject to audit by the comptroller of the treasury. Any political subdivision maintaining a trust under this part may, with the prior approval of the comptroller of the treasury, engage licensed independent public accountants to perform the audits. The audit contract between the political subdivision and the independent public accountant shall be on contract forms prescribed by the comptroller of the treasury. The political subdivision shall be responsible for reimbursement of the costs of audits prepared by the comptroller of the treasury and the payment of fees for audits prepared by licensed independent public accountants.

Acts 2006, ch. 771, § 1.

8-50-1207. Scope of part.

Nothing in this part shall be construed to define or otherwise grant any rights or privileges to other post-employment benefits. The rights and privileges, if any, shall be governed by the terms of the political subdivisions' respective post-employment benefit plans.

Acts 2006, ch. 771, § 1.