



MURPHY HESSE
TOOMEY & LEHANE LLP

Attorneys at Law

Establishing and Maintaining an OPEB Trust

MASC/MASS Annual Conference

Hyannis, MA

November 2, 2017

Presented by: Brian P. Fox

Introduction

- Brief Overview of OPEB
- Establishing an OPEB Trust
- Maintaining Compliance for your OPEB Trust

OPEB Overview

- Other Post Employment Benefits (“OPEB”)
 - Retiree benefits other than pensions
 - Retiree health care
 - Other benefits for retirees (life, dental, Rx, vision, etc.)

OPEB Overview

- As of 2015, Massachusetts state unfunded liability for OPEB was approximately \$15.6 billion.
- As of 2015, the estimated unfunded liability for Massachusetts municipalities (including regional school districts) was \$30 billion.

OPEB Overview

- According to guidance from Governmental Accounting Standards Board (“GASB”):
 - OPEB is “a part of the compensation that employees earn each year, even though the benefits are not received until after employment has ended. Therefore, the cost of these future benefits is a part of the cost of providing public services today.” (from “Other Postemployment Benefits: A Plain-Language Summary of GASB Statements No. 43 and No. 45”)

OPEB Overview

- Because employers and plan sponsors were not accurately calculating and disclosing the unfunded liability associated with providing OPEB benefits, GASB issued Statements 43 and 45 requiring disclosure of OPEB costs and liabilities.
- GASB replaced these Statements with Statements 74 and 75 to place additional reporting requirements on employers.

OPEB Overview

- Under GASB 74 and 75, employers will have to report net OPEB liability on the balance sheet of the plan and the employer. OPEB expense will be recognized in the income statement of the participating employer.
- Formerly, employers reported OPEB unfunded actuarial accrued liability in the notes section of the financial statement for the plan.

Establishing an OPEB Trust

- Municipalities, school districts and collaboratives are not required to provide OPEB benefits.
- Municipalities that choose to offer OPEB benefits are not required to establish a trust fund to reduce unfunded liability.
- If, however, a municipality chooses to establish such a trust fund, it must follow certain rules.

Establishing an OPEB Trust

- M.G.L. c. 32B, Sec. 20, provides a local option to establish an OPEB trust fund.
- Section 20 was amended effective November 7, 2016, incorporating major changes.
- The changes follow closely the GASB requirements and provide a more concrete outline for establishment of an OPEB trust.

Establishing an OPEB Trust

- It appears that governmental units that had previously adopted Section 20, under the old language, are not required to re-adopt the statute.
- The local option can be adopted by the legislative body in a municipality, by the school committee of a regional school district, or by the board of directors of a collaborative.

Establishing an OPEB Trust

- Educational collaboratives were not mentioned as an entity that could adopt Section 20, in the previous version of the statute, but they are specifically mentioned in the new language.

Establishing an OPEB Trust

- Vote accepting Section 20 should include:
 - Naming the unit's Treasurer as Custodian
 - Determination of who shall serve as Trustee(s)
 - Appropriation of an amount (if any) to be placed in the trust fund
 - Determination of the proper investment standard to be followed

Establishing an OPEB Trust

- Trustee(s):
 - The Custodian (default), or
 - The governmental unit's retirement board, or
 - Board of Trustees consisting of between 5 and 13 individuals

Establishing an OPEB Trust

- Board of Trustees Option:
 - 5-13 individuals including at least one of each of the following:
 - person with investment experience
 - citizen of the governmental unit
 - Employee of the governmental unit
 - Retiree of the governmental unit
 - Officer of the governmental unit

Establishing an OPEB Trust

- The trustees of the fund are fiduciaries, held to a fiduciary standard of care. The fiduciary standard of care will be discussed later in this presentation.
- Fiduciaries can be held personally liable for violation of fiduciary duties.

Establishing an OPEB Trust

- Choice of investment standard:
 - M.G.L. c. 44, § 54 (default) – state legal list
 - M.G.L. c. 203C – Prudent Investor Rule
 - M.G.L. c. 32, § 23 – if the retirement board serves as board of trustees
 - M.G.L. c. 32A, §§ 24 and 24A – if the assets are invested with the State Retiree Benefits Trust Fund

Establishing an OPEB Trust

- Trust Agreement
 - Written document that establishes the purposes for which trust assets may be used and how the trust will be governed
 - The Trustee(s) must adopt the agreement and file with the chief executive officer and clerk
 - Effective 90 days after filing unless vote to disapprove

Establishing an OPEB Trust

- GASB 74 and 75 require that an OPEB trust provide for:
 - Irrevocable employer contributions
 - Assets to be used for the exclusive purpose of providing OPEB benefits to retirees and to defray the reasonable costs of maintaining the trust
 - Protection of assets from creditors of the employer or plan administrator.

Establishing an OPEB Trust

- The new Section 20 mirrors these GASB requirements.
- If the trust does not contain these provisions, GASB will not accept the assets of the trust as reducing the employer's OPEB unfunded liability.

Funding the Trust

- Appropriations to the Trust must be approved by the legislative body
- Regional school districts may only make appropriations to the OPEB trust through the annual budget submitted to all member cities and towns.

Appropriations from the Trust

- Only for payment of retiree health insurance benefits
- Treasurer notifies the Trustee(s) of the amount to be appropriated from the fund
- Trustee(s) must certify the amount is available
- Governing body must vote by a 2/3 majority to make the appropriation from the fund

Maintaining Compliance – Standard of Care

- 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,

Maintaining Compliance – Standard of Care

- (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.

Maintaining Compliance – Standard of Care

- Basic fiduciary duties:
 - Act in the best interest of the beneficiaries of the trust
 - Use due diligence in selecting investments and other vendors
 - Use assets for allowed purposes only
 - Avoid conflicts of interest

Maintaining Compliance - Disclosure

- Net OPEB Liability reported on the balance sheet of the unit's financial statement.
- OPEB expenses disclosed on the income statement.
- GASB requires a new actuarial valuation at least every 2 years for OPEB plans.

Maintaining Compliance - Disclosure

- Governmental units must submit actuarial reports 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. The governmental unit shall file the report and additional information with PERAC and the division of local services in the department of revenue. M.G.L. c. 32B, § 20A.

Questions?





MURPHY HESSE TOOMEY & LEHANE LLP

Attorneys at Law

Quincy

Crown Colony Plaza
300 Crown Colony Drive
Quincy, MA 02169

Boston

75-101 Federal Street
Boston, MA 02210

Tel: (617) 479-5000
Tel: (888) 841-4850
Fax: (617) 479-6469

Springfield

One Monarch Place
1414 Main Street
Suite 1310R
Springfield, MA 01144