

DECLARATION OF TRUST OF THE
Claiborne County Board of Education
Hickman County Board of Education
Jackson-Madison County Board of Education
Johnson County Board of Education
Memphis City Board of Education
Shelby County Board of Education

INTEGRAL PART TRUST FOR OTHER POST-EMPLOYMENT BENEFITS

Declaration of Trust made as of the _____ day of _____, 20____, by the
above named Tennessee School Districts (hereinafter referred to as the “Members”)

RECITALS

WHEREAS, the Governmental Accounting Standards Board set forth standards on accounting and reporting for post-employment benefits (other than pensions) by governmental entities; and

WHEREAS, these standards will require political subdivisions of the State of Tennessee to report such post-employment benefits on an actuarial basis during an Employee’s career rather than on a pay-as-you-go basis during retirement; and

WHEREAS, the Tennessee General Assembly enacted Chapter 771 of the Tennessee Public Acts of 2006 that authorized Tennessee political subdivisions that offer other post-employment benefits to create an investment trust whereby the political subdivisions may begin financing those benefits in advance; and

WHEREAS, the Members are political subdivision of the State of Tennessee that are exempt from federal income tax under the Internal Revenue Code of 1986, as amended from time to time, and whose chief governing body has passed a resolution authorizing the

establishment of this investment trust for the exclusive purpose of funding other post-employment benefits accrued by Employees of the Member, to be paid as they come due in accordance with the arrangements between the Members, the Participants, and their Beneficiaries, as such terms are defined in Section 1.1 below; and

WHEREAS, Member participation in this Trust is for the purpose of enhancing investment opportunities;

NOW, THEREFORE, in consideration of the premises, the Members do hereby establish this Trust to be known as the TENNESSEE SCHOOL BOARDS ASSOCIATION OPEB TRUST.

ARTICLE I DEFINITIONS

1.1. Definitions. For purposes of this Declaration of Trust, the following terms shall have the respective meanings set forth below unless otherwise expressly provided.

(a) “Plan” means the investment pool established for the purpose of promoting and encouraging Members to invest funds to offset post-employment benefit liabilities.

(b) “Beneficiary” means the Spouse, Dependents, or the person or persons designated by a Participant pursuant to the terms of a post-employment benefits plan to receive any benefits payable under the Plan.

(c) “Board” means the board of trustees created pursuant to Section 5.1 of this Trust.

(d) “Dependent” means an individual who is a person described in Section 152(a) of the Internal Revenue Code of 1986, as may be amended from time to time.

(e) “Member” means any local school district or political subdivision of the State of Tennessee which indicates by Resolution its intent to participate in this Trust, executes an interlocal agreement, and is approved by the Board of Trustees.

(f) “Employee” means an individual who performs services for the Member and

who has been designated as eligible to participate in and receive benefits under a post-employment benefits plan.

(g) “Other post-employment benefits” or “post-employment benefits” means non-pension benefits paid on behalf of a former Employee or a former Employee’s Beneficiary after separation from service. Such 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.

(h) “Participant” means an Employee of the Member who satisfies the requirements for participation in a post-employment benefits plan sponsored by the Member.

(i) “Spouse” means the Participant’s lawful spouse as determined under the laws of the State of Tennessee.

(j) "State Funding Board" or “Funding Board” means the board created pursuant to Tennessee Code Annotated, Section 9-9-101.

ARTICLE II

PURPOSE AND SCOPE OF TRUST

2.1 This Trust Agreement is created by, and for the benefit of, the participating Members and is established exclusively for the purpose of funding other post-employment benefits accrued by Members, to be paid as they come due, in accordance with the terms of the Members’ respective post-employment benefits plan.

2.2 Nothing in this Trust shall be construed to define or otherwise grant any rights or privileges to post-employment benefits. Such rights and privileges, if any, shall be governed by the terms of the Member’s respective post-employment benefits plan.

2.3 Membership in the Trust shall be open to all members of the Tennessee School Boards Association. Non-members and other governmental entities will be considered for membership by the Board of Trustees on a case by case basis. A school

board may become a participating Member in the OPEB Trust by making application for participation as prescribed by the Trust, paying any contributions determined by said Member, and satisfying all requirements for participation. If accepted, the Member shall be notified in writing by the Trust.

2.4 Individual Members shall have no liability in regard to the post-employment benefits obligations accrued by any other Member.

ARTICLE III TRUST ASSETS

3.1 This Trust shall consist of all contributions paid, or otherwise delivered to it, and all investment income and realized and unrealized gains and losses.

ARTICLE IV TRUST CONDITIONS

4.1 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 Declaration of Trust and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the Trust shall be expended solely to:

- (a) Make payments for other post-employment benefits pursuant to and in accordance with terms of the post-employment benefits plan; and
- (b) Pay the costs of administering this Trust.

4.2 All assets, income, and distributions of the Trust shall be protected against the claims of creditors of the Member, Employees, Former Employees, Participants, or their Beneficiaries 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.

4.3 Any participating Member may withdraw from the Trust and/or terminate participation in the Trust at the end of the program year in which the Member is

participating by giving at least thirty (30) days written notification to the Trust prior to the close of such program year. This requirement may be waived by the Trustees on a case by case basis in the event that the notice period works a hardship on a Member. Any participating Member who withdraws from the Trust and/or terminates participation shall, within thirty (30) days of the end of the fiscal year in which membership is terminated, provide documentation substantiating the funds necessary for the payment of the Member's current post-employment benefits obligations. All other contributions and earnings shall be transferred by this Trust into a similarly constituted trust or other irrevocable entity formed in a manner consistent with the purpose of this Trust, solely for the payment of the Member's future post-employment benefits obligations.

ARTICLE V

BOARD OF TRUSTEES

5.1 The general administration and responsibility for the proper operation of this Trust shall be governed by a board of trustees (hereinafter the "Board"). The Board of Trustees shall consist of seven (7) Trustees; five (5) appointed from the governing boards of the participating Members of the Trust. The term of these five (5) Trustees shall be three (3) years, and they may be reappointed. Additionally, the Executive Director and President of the Tennessee School Boards Association are ex-officio members of the Board of Trustees. All seven (7) Trustees shall be voting members.

5.2 The Board shall annually elect from its membership a chair and a vice chair and such other officers as are established from time to time by the Trustees. The Tennessee School Boards Association shall act as Administrator and Treasurer of the Trust. Written minutes covering all meetings and actions of the Board shall be prepared by the secretary and shall be kept on file, open to public inspection pursuant to the provisions of Tennessee Code Annotated, Title 10, Chapter 7.

5.3 Members of the Board shall serve without compensation but shall receive reasonable reimbursement for actual and necessary travel expenses in accordance with the Trust's travel regulations. Reimbursements for such expenses shall be in accordance with procedures and policies established by the Board consistent with the terms of this Agreement.

5.4 Regular meetings of the Board of Trustees shall be held at least biannually; an item of business may be considered at a regular meeting. The time, date, and location of meetings shall be determined by the Board.

5.5 A majority of the voting members of the Board serving shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the voting members present at the meeting of the Board. The Board shall meet at the call of the chair, or upon the call of a majority of the members, and as may be otherwise provided in any operating policies or procedures adopted by the Board.

5.6 The Trustees shall use ordinary care and reasonable diligence in the exercise of their power and in the performance of their duties. They shall not be liable for any mistake of judgment or other action made, taken, or omitted by them in good faith; nor for any action taken or omitted by any agent, employee, or attorney selected with reasonable care; nor for the loss incurred through investment of Trust money or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. They shall not be required to give a bond or other security to guarantee the faithful performance of their duties hereunder.

5.7 The Trust shall have the power and authority to indemnify and hold harmless to the full extent permitted by law any person who is or was a Trustee, officer, employee, or agent of the Trust when such actions are not in conflict with advice from the Trust's

attorneys. A Trustee may be held liable in cases of gross negligence, willful misconduct, or lack of good faith.

5.8 Any Trustee, other than the ex-officio members of the Board, may be removed at any time by a two-thirds majority vote of the other members of the Board of Trustees. In the event that the entity on whose governing board the Trustee serves ceases to participate in the Trust, the Trustee's membership on the Board shall terminate immediately. If a Trustee is not present at three (3) Trustee meetings during any term, the Trustee's membership on the Board shall terminate with the adjournment of the third meeting missed unless a two-thirds majority of the Trustees vote during the meeting to excuse the third absence. If such Trustee misses a fourth meeting during one term, the removal of the Trustee shall automatically become effective with the adjournment of the fourth meeting missed.

5.9 Any Trustee may resign upon giving notification in writing to the Trust Administrator.

5.10 Upon the death, resignation, or removal of a Trustee or upon the Trustee otherwise becoming ineligible to serve, the Trustees shall appoint a replacement to serve the remainder of the term.

5.11 The business of the Board of Trustees shall be conducted at meetings of the Board held in compliance with Tennessee Code Annotated, Title 8, Chapter 44.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF TRUSTEES

6.1 In addition to the powers granted by any other provisions of this Trust, the Board of Trustees shall have the powers necessary or convenient to carry out the purposes and objectives of this Trust including, but not limited to, the following express powers:

(a) Investments may be made in any type of security instrument allowed for in Tennessee Code Annotated, Section 8-50-1203 as amended from time to time, provided that any such investment is authorized in the investment policy adopted and from time to time amended by the members' investment committee;

(b) Contract for the provision of all or any part of the services necessary for the management and operation of the Trust including, but not limited to, investment management services;

(c) Contract with financial consultants, auditors, and other consultants as necessary to carry out its responsibilities under the provisions of this Trust;

(d) Prepare annual financial reports, including audited financial statements, following the close of each fiscal year relative to the activities of the Trust. Such statements and reports shall contain such information as shall be prescribed by the Board and be prepared in accordance with the standards established by the Governmental Accounting Standards Board;

(e) Upon the request of the State Funding Board, file the annual report and financial statements with the secretary of the State Funding Board. The report and statements shall be filed with the secretary of the Board of Trustees within ninety (90) calendar days from the date of the request unless the secretary extends such time in writing;

(f) The Board shall adopt by-laws which shall govern and control the operation and administration of the Trust which shall not be in conflict with any terms and provisions of the Trust Agreement or the Interlocal Agreement;

(g) As required by Tennessee Code Annotated § 8-17-102(b), the Board adopts the code of ethics for the Trust, its officials, and employees which is patterned on the Model Code of Ethics as promulgated for school boards by the Tennessee School Boards

Association; and

(h) The TSBA Executive Director or designee shall be the Administrator of the Trust. Among the duties and authority of the Administrator shall be the following:

- 1) Sign, on behalf of the Trust, any instrument which the Trust has authorized to be executed, and in general, to perform duties incidental to the office of Administrator and such other duties as may be prescribed by the Board of Trustees consistent with this Agreement; and
- 2) At each regular meeting of the Board of Trustees and at such other times as requested to do so by the Board, to present a full report of activities and the fiscal condition of the Trust.

ARTICLE VII INVESTMENTS

7.1 The Board of Trustees shall be responsible for investing the assets of the Trust funds in accordance with Section 6.1(a) above.

7.2 Subject to the limitations in Section 6.1(a) above, the Board or its nominee has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities or investments in which the assets of the Trust have been invested as well as of the proceeds of such investments and any moneys belonging to the Trust.

7.3 All of the Board's business shall be transacted, all of the Trust funds invested, all warrants for money drawn, any payments made, and all of the cash and securities and other property of the Trust shall be held:

- (a) In the name of the Board of Trustees as title holder only or as Trustee;
- (b) In the name of its nominee; provided, that the nominee is authorized by Board resolution solely for the purpose of facilitating the transfer of securities and restricted to Members of the Board or a partnership composed of any such Members; or
- (c) For the account of the Board of Trustees or its nominee in such forms as are

standard in the investment community for the timely transaction of business or ownership identification such as book entry accounts.

7.4 Except as otherwise provided, no Board Member nor Employee of the Board shall have any personal interest in the gains or profits of any investment made by the Board of Trustees; nor shall any Board Member or Employee of the Board, directly or indirectly, for such Member or Employee or as an agent, in any manner for such Member or Employee or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the Board.

7.5 Each Member is severally liable only for said Member's post-employment benefits obligations and participation in the Trust creates no joint liability among the individual Members.

ARTICLE VIII

MEMBER CONTRIBUTIONS TO TRUST

8.1 Notwithstanding Section 6.1(d) above, it shall be the sole and exclusive responsibility of the Member to determine the level of contributions the Member will make to the Trust for the purpose of financing the post-employment benefits accrued by its respective Employees. Neither the Trust nor the Board of Trustees shall be responsible for collecting or otherwise determining the level of contributions needed by the Member to finance any post-employment benefits offered by the Member.

ARTICLE IX

WITHDRAWALS FOR PAYMENT OF OTHER POST-EMPLOYMENT BENEFITS

9.1 The Board of Trustees shall, upon the request of the Member, reimburse the Member for payments made for other post-employment benefits upon the Board's receipt of certified documentation evincing the payment. Such payments shall be made by the Board on no more than a monthly basis.

9.2 Notwithstanding anything in this part to the contrary, the Board shall not honor a request for reimbursement made by the Member under this Article if assets credited to the Trust are not equal to or greater than the amount requested. Retroactive payments shall be paid by the Board upon accumulation of sufficient assets.

ARTICLE X
BOOKS AND RECORDS

10.1 The books and records of the Trust shall be maintained in accordance with generally accepted accounting principles and shall be open to public inspection. The annual report, including financial statements, all books, accounts, and financial records of the Trust shall be subject to audit by the State Comptroller of the Treasury.

10.2 The Board of Trustees may, with the prior approval of the State Comptroller of the Treasury, engage a licensed certified public accountant to perform the audits. The audit contract between the Board and the certified public accountant shall be on a contract form prescribed by the State Comptroller of the Treasury. Reimbursement of the costs of audits prepared by the State Comptroller of the Treasury and the payment of fees for audits prepared by a licensed certified public accountant shall be the responsibility of the Board which may be paid from the assets of the Trust.

10.3 Contributions received by the Trust from individual Members as well as earnings from those contributions shall be separated into individual accounts and will be accounted for separately.

ARTICLE XI
AMENDMENT

11.1 The Members shall have the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of this Trust; however, no such amendment shall authorize or permit the assets of the Trust (other than such part as may be used to pay the expenses of administering the Trust) to be used for or diverted to

purposes other than those expressed in this Declaration of Trust. Any such amendment shall not be effective until approved by resolution of the chief governing body of each Member and the State Funding Board.

ARTICLE XII

PLAN TERMINATION OR MODIFICATION

12.1 In the event the other post-employment benefits plan is terminated or substantially modified rendering the assets of this Trust to be unnecessary to fund the Plan, the assets shall be distributed pursuant to Section 12.2 below.

12.2 (a) If the Plan is terminated, the Employees and former Employees who have met all the conditions for other post-employment benefits as set out in the Plan document in existence immediately preceding Plan termination (including any deceased Employee or former Employee's surviving Beneficiaries) shall be vested in a proportionate share of the accumulated assets based on the present value of the Plan benefit in existence immediately preceding Plan termination as determined by an independent consulting actuary.

(b) If a substantial Plan modification is adopted that because a reduction of benefits or eligibility results in the Plan moving from a funded status of less than seventy-five percent (75%) to an over-funded status of at least one hundred fifty percent (150%) and continues in such over-funded level for two (2) consecutive actuarial valuations, then such action shall be considered a Plan termination, and the excess assets shall be distributed in the same manner as in subsection (a) above.

12.3 Actuarial valuations contemplated by this Article shall be performed by the Plan's independent consulting actuary in accordance with actuarial methods recognized by the Governmental Accounting Standards Board for other post-employment benefits.

ARTICLE XIII

PARTICIPANT OR BENEFICIARY CONTRIBUTIONS TO TRUST

13.1 If Participant or Beneficiary contributions are required or permitted under the terms of the other post-employment benefits plan, such contributions shall be assets of this Trust and subject to all the provisions of this Trust. Provided, however, the Employer or its designee shall establish a record keeping account for each Participant or Beneficiary showing the amount of contributions made by such Participant or Beneficiary, and to the extent authorized under the Plan, any earnings or interest thereon. Notwithstanding Article XII or any other provision of this Trust to the contrary, a Participant or Beneficiary shall be vested in the amount recorded to that Participant's or Beneficiary's account.

**ARTICLE XIV
PROTECTIVE CLAUSE**

14.1 Neither the Member, the Board of Trustees, nor the Trust shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with the post-employment benefits plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any person which may delay payment or render a contract void or unenforceable in whole or in part.

**ARTICLE XV
CONSTRUCTION**

15.1 This Trust created herein shall be governed by and construed in accordance with the laws of the State of Tennessee.

15.2 If any terms and conditions of this Trust are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Trust shall not be affected thereby and shall be construed to effectuate the purpose of this Trust.

MEMBER:

[INSERT NAME OF POLITICAL SUBDIVISION]

By: _____

Name: _____

Title: Chairman, Board of Education

TRUSTEES:

APPROVED:

Chair of State Funding Board

Date

NOTE: This model document has not been reviewed by the Internal Revenue Service to determine whether the same conforms to all applicable laws, rules and regulations of the Internal Revenue Service, if any.