



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF BOND FINANCE
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March 28, 2007

To: Tennessee Local Government Officials:

The General Assembly approved Chapter 771 of the Public Acts of 2006 in May 2006. This Act is known as the "Other Post Employment Benefit (OPEB) Investment Trust Act of 2006". This Act authorizes and sets conditions for political subdivisions of the State of Tennessee to establish an investment trust for the purpose of pre-funding OPEB obligations. One of the conditions of the Act is that the proposed trust agreement be submitted to and approved by the State Funding Board.

To assist local government units with the process of establishing an acceptable trust document the following model documents have been developed and are posted on the State Funding Board website, <http://comptroller.state.tn.us/bf/sfb.htm>

At that site you will find a:

- Model OPEB Trust Agreement
- Model OPEB Trust Investment Policy
- Model Governing Body Resolution

The State Attorney General has advised us that there is a reasonable basis for using this model agreement and a reasonable argument can be made that the investment of a local government's OPEB trust assets in equity stocks does not violate Article II, Section 29 of the Tennessee Constitution. The Attorney General did emphasize that there are three essential conditions to this conclusion.

1. The trust is irrevocable.
2. The trust grants beneficiaries, vested, ascertainable rights in trust assets if the local government terminates or substantially modifies its post-employment benefits plan.

3. Under the trust, assets may not be used for any purpose other than paying the cost of OPEB benefits.

However, at the same time, there are substantial arguments that such investments violate Article II, Section 29, of the Tennessee Constitution because local government tax funds are at risk if these investments decline in value. For this reason, we cannot predict how a Tennessee court would rule if presented with the issue.

We also strongly recommend that local government units consult with their legal counsel prior to submitting the trust document to the Funding Board for approval.

The State Funding Board meets periodically, but not at any regularly scheduled time. We will work with all local government units to meet their timelines for funding any OPEB trust. However, we will need sufficient time to review the trust agreement, resolve any outstanding issues with you and discuss the request with senior staff to the Funding Board. Also be aware that these meetings are public meetings and, as such, the notice of the meeting must be posted at least forty-eight (48) hours in advance of the scheduled meeting time.

Should you have any questions, please call me at 615-747-5370 or send your question by email to: mary.margaret.collier@state.tn.us.

Sincerely,



Mary-Margaret Collier
Assistant Secretary
State Funding Board

A RESOLUTION establishing an investment trust for the purpose of pre-funding other post-employment benefits as provided in Tennessee Code Annotated, Title 8, Chapter 50, Part 12.

WHEREAS, the Governmental Accounting Standards Board issued Statements 43 and 45, which set forth standards on accounting and reporting for post employment benefits (other than pensions) by governmental entities; and

WHEREAS, these new 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, which is codified in Tennessee Code Annotated, Title 8, Chapter 50, Part 12, that authorized a Tennessee political subdivision that offers other post employment benefits to establish an investment trust by resolution of its chief governing whereby the political subdivision may begin financing those benefits in advance.

NOW, THEREFORE, BE IT RESOLVED that the, _____, of
(Name of Governing Body)
the _____, Tennessee hereby establishes the attached investment
(Name of Political Subdivision)
trust in accordance with and subject to the terms and conditions set forth in Tennessee Code Annotated, Title 8, Chapter 50, Part 12. Said trust shall, by its terms, only come into existence upon the approval of the same by the Tennessee State Funding Board.

STATE OF TENNESSEE
COUNTY OF _____

I, _____, clerk of the _____ of
(Name of Governing Body)
the _____, Tennessee do hereby certify that this is a true and exact
(Name of Political Subdivision)
copy of the foregoing resolution that was approved and adopted at a meeting held on the _____ day of
_____, 200____, the original of which is on file in this office. I further certify that _____
members voted in favor of the resolution and that _____ members were present and voting.

IN WITNESS THEREOF, I have hereunto set my hand, and the seal of the _____,
(Name of Political Subdivision)
Tennessee.

SEAL

As Clerk of the Board, as aforesaid

NOTICE: This document has not been reviewed by the office of the Attorney General and Reporter

DECLARATION OF TRUST OF THE

[Insert Name of Political Subdivision]

INTEGRAL PART TRUST FOR OTHER POST-EMPLOYMENT BENEFITS

Declaration of Trust made as of the _____ day of _____, 20____, by

[Insert Name of Political Subdivision] (hereinafter referred to

as the "Employer"). This Trust shall come into existence when the Tennessee State Funding Board created pursuant to Tennessee Code Annotated, Section 9-9-101 has approved the same.

RECITALS

WHEREAS, the Governmental Accounting Standards Board issued Statements 43 and 45, which set forth standards on accounting and reporting for post employment benefits (other than pensions) by governmental entities; and

WHEREAS, these new 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 Employer is a political subdivision of the State of Tennessee that is 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 Employer, to be paid as they come due in accordance with the arrangements between the Employer, the Participants and their Beneficiaries, as such terms are defined in Section 1.1 below.

NOW, THEREFORE, in consideration of the premises, the Employer does hereby establish this Trust to be known as the _____
[Insert Name of Political Subdivision]
Post-Employment Benefits 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) "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.

(b) "Board" means the board of trustees created pursuant to Section 5.1 of this Trust.

(c) "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.

(d) "Employee" means an individual who performs services for the Employer, and who has been designated as eligible to participate in, and receive benefits under a post employment benefits plan.

(e) "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.

(f) "Participant" means an Employee of the Employer who satisfies the requirements for participation in a post employment benefits plan sponsored by the Employer.

(g) "Spouse" means the Participant's lawful spouse as determined under the laws of the State of Tennessee.

(h) "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 is established exclusively for the purpose of funding other post employment benefits accrued by Employees of the Employer, to be paid as they come due in accordance with the terms of the Employer's 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 Employer's respective post employment benefits plan.

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 The assets of this Trust shall be irrevocable, and 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 cost of administering this Trust.

4.2 All assets, income and distributions of the Trust shall be protected against the claims of creditors of the Employer, 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.

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 shall consist of _____ members as follows:
[Insert Number of Trustees]

- (a) [INSERT THE TITLE/POSITION OF THE INDIVIDUAL]
 - (b) [INSERT THE TITLE/POSITION OF THE INDIVIDUAL]
 - (c) [INSERT THE TITLE/POSITION OF THE INDIVIDUAL]
 - (d) [INSERT THE TITLE/POSITION OF THE INDIVIDUAL]
 - (e) [INSERT THE TITLE/POSITION OF THE INDIVIDUAL]
- [ADD ADDITIONAL SUBPARAGRAPHS AS NECESSARY]

5.2 The Board shall annually elect from its membership a chair and a vice chair and shall designate a secretary who need not be a member of the Board. 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 Employer's travel regulations.

5.4 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.

5.5 The business of the Board 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

6.1 In addition to the powers granted by any other provisions of this Trust, the Board 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) Invest any funds of the Trust in any instrument, obligation, security, or property that constitutes legal investments for assets of the Tennessee Consolidated Retirement System as described in Tennessee Code Annotated, Section 8-37-104 provided that any such investment is authorized in the investment policy adopted by the Employer's 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) At the Board's sole discretion, contract with an actuary or actuaries for the benefit of the Employer in determining the level of funding necessary by the Employer to fund the other post employment benefits offered by the post employment benefits plan;

(e) 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; and

(f) 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 within ninety (90) calendar days from the date of the request, unless the secretary extends such time in writing.

ARTICLE VII

INVESTMENTS

7.1 The Board 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 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 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; 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.

ARTICLE VIII

EMPLOYER CONTRIBUTIONS TO TRUST

8.1 Notwithstanding Section 6.1(d) above, it shall be the sole and exclusive responsibility of the Employer to determine the level of contributions the Employer 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 shall be responsible for collecting or otherwise determining the level of contributions needed by the Employer to finance any post employment benefits offered by the Employer.

ARTICLE IX

WITHDRAWALS FOR PAYMENT OF OTHER POST EMPLOYMENT BENEFITS

9.1 The Board shall upon the request of the Employer reimburse the Employer 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 quarterly basis.

9.2 Notwithstanding anything in this part to the contrary, the Board shall not honor a request for reimbursement made by the Employer 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 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 forms-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.

ARTICLE XI AMENDMENT

11.1 The Employer 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 the Employer, and by 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.

12.4 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 Employer, the Board, 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.

EMPLOYER:

[INSERT NAME OF POLITICAL SUBDIVISION]

By: _____

Name: _____

Title: Clerk of Chief Governing Body

TRUSTEES:

[ADD ADDITIONAL SIGNATURE LINES AS NECESSARY]

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.

OTHER POST EMPLOYMENT BENEFITS (OPEB) TRUST INVESTMENT POLICY
(Entity Name)

1.01 Policy

It is the policy of the (entity name) _____ to invest OPEB Trust funds in a manner which will provide sufficient investment return to meet the current and future OPEB benefit cash flow demands of the benefit plan while conforming to all state statutes governing the investment of such OPEB dedicated trust funds.

1.02 Scope

This policy covers all OPEB funds held in trust and invested for the purpose of meeting the obligations under its OPEB defined benefit programs.

Subject to plan provisions, any funds held in trust in the name of an employee or retiree as part of a defined contribution OPEB benefit plan are subject to the investment decisions of the individual employee or retiree, and are thus not subject to provisions of this investment policy.

1.03 Prudence

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital, as well as the probable income to be derived.

The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio.

1.04 Objective

The primary objective, in order of priority, shall be:

- Legality – conformance with federal, state and other legal requirements
- Liquidity – ability to meet obligation without forced sale of assets
- Safety – preservation of capital and protection of investment principal
- Yield - attainment of market rates of return

The portfolio should be reviewed periodically as to its effectiveness in meeting the employer's needs for safety, liquidity, rate of return, and its general performance.

1.05 Delegation of Authority

Management and administrative responsibility for the investment program is hereby delegated to an OPEB Investment committee consisting of the (List positions to make this the investment committee).

The Committee may contract with or employ technical and professional advice from a qualified firm(s) or individuals as may be needed to provide investment advice or execution of this policy provided such services are rendered to the trust on a fixed fee and non-commissioned basis and do not involve any direct investment with or through the firm providing such financial advice. Upon creation of the trust, this committee shall recommend an initial investment asset allocation to the chief governing body for their approval. Any subsequent changes to this allocation recommended by the Committee shall also be presented to such governing body for approval. (Should we require the allocation in policy?)

1.06 Ethics and Conflicts of Interest

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the trust.

1.07 Authorized and Suitable Investments

Investments may be made in any type of security instrument allowed for in the Tennessee statutes for the Tennessee Consolidated Retirement System regarding the investment of Trust funds. The following asset types are among those approved for investment (definitions included for less commonly known terms):

Fixed Income Investments

- **Certificates of Deposit** – Certificates of deposit and other evidence of deposit at financial institutions, bankers’ acceptances, and commercial paper, rated in the highest tier (e.g., A-1, P-1, F-1, or D-1 or higher) by a nationally recognized rating agency.
- **Money Market Mutual Funds** – Money market mutual funds regulated by the Securities and Exchange Commission and whose portfolios consist only of dollar-denominated securities.

- **Stable Value Funds** – Stable value funds maintain the value of the principal and all accumulated interest regardless of interest rate moves because of the investments held by the fund. A stable value fund generally holds a mix of high-quality, intermediate-term bonds and guaranteed-interest contracts (GICs) from insurance companies.

Government Securities Investments

- **U.S. Government Notes and Bonds** – U.S. government obligations, U.S. government agency obligations, and U.S. government instrumentality obligations, which have a liquid market with a readily determinable market value.

Variable Investments

- **Bond Funds** – A mutual fund which invests in bonds, typically with the objective of providing stable income with minimal capital risk.
- **Balanced Funds** – A mutual fund that buys instruments of or a combination of common stock, preferred stock, bonds, and short-term bonds, to provide both income and capital appreciation while avoiding excessive risk.
- **Domestic Equity Funds** – A broad category of mutual funds that invest primarily in instruments of or shares of stock of U. S. companies.
- **International Equity Funds** – A broad category of mutual funds that invest primarily in instruments of or shares of stock of companies from outside the U. S.
- **Equities** – Shares of domestic or international stock to include common and preferred.

All investment/allocation decisions shall reflect the current and future projected cash flow needs of the OPEB plan. The projected cash flow needs shall be determined in part from the data compiled for the OPEB actuarial study conducted at least every two (2) years as required by GASB and the employer's workforce analysis and retirement projections.

1.08 Diversification

The investments shall be diversified by:

- limiting investments to avoid overconcentration in securities from a specific issuer or business sector (excluding U. S. Treasury securities),
- limiting investment in securities that have higher credit risks,
- investing securities with varying maturities, and
- continuously investing a portion of the portfolio in readily available funds such as local government investment pools (LGIPs), money market funds or overnight repurchase agreements to ensure that appropriate liquidity is maintained in order to meet ongoing obligations.

1.09 Internal control

The Investment Manager shall insure that the assets of the OPEB Trust are protected from loss, theft or misuse through the implementation of appropriate internal controls.

An annual independent review by an external auditor to assure compliance with policies and procedures. The internal controls shall address the following points:

- Control of collusion
- Separation of transaction authority from accounting and record-keeping
- Custodial safekeeping
- Avoidance of physical delivery securities
- Clear delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers
- Development of a wire transfer agreement with the lead bank and third-party custodian as evidenced by safekeeping receipts.

1.10 Performance Standards

This investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a comparable rate of return during a market/economic environment of stable interest rates. Portfolio performance should be compared to benchmarks with similar investment options as the portfolio on a regular basis.

1.11 Reporting

The Investment Manager shall provide an investment report at least quarterly. The report should be provided to the chief governing body quarterly and it should be available at any other time by request. The report shall be in a format suitable for review by the general public. An annual report shall also be provided to such body.

1.12 Marketing to Market

A statement of the market value of the portfolio shall be issued to the chief governing body quarterly. Such statement shall be prepared consistent with the Government Finance Officer Association (GFOA) recommended practices. In defining market value, consideration should be given to the GASB Statement 31 pronouncement.

1.13 Investment Policy Adoption

Following adoption of the investment policy by the (entity name) _____, the policy shall be reviewed on an annual basis by the Investment Committee and any modifications made thereto must be approved by the Chief Governing Body.

Date: _____

Clerk of the Board

NOTICE: This document has not been reviewed by the office of the Attorney General and Reporter