

**THE BUDGET CRISIS ASSOCIATED WITH
STATE AND LOCAL GOVERNMENT
EMPLOYEE HEALTH CARE COSTS**

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INTRODUCTION

State and local governments are facing an upcoming budgeting crisis associated with the health care costs they are required to provide for current and retired workers. As this paper illustrates, the State of New York and many of the larger localities in New York State have a large unfunded liability for health care costs for employees and retirees. The latest financial statements for the state of New York, as provided by the Office of the New York State Comptroller, illustrate that New York State has an unfunded health care liability of \$56.9 billion.¹ The liability includes \$46.3 billion for New York State governmental activities and approximately \$10.6 billion for university-related employees.² New York State has no funding in place for this liability.³ This paper illustrates that many local governments in New York State also have a significant health care liability that they must pay in the future.⁴ The situation is extremely complicated since the governmental budgeting process under which the local governments operate has no provision to allow them to collect funds to pay for the future health care liability.⁵

The issue concerning the lack of financing for health care costs for states and localities is national in scope. The Pew Center on the States issued a report in June 2012 entitled *The Widening GAP Update*, which illustrated that the fifty states, collectively, have an unfunded health care liability of \$627 billion.⁶ The financial impact issue is further complicated by additional data in the Pew Center's report which illustrated that the fifty states have an unfunded pension cost liability of approximately \$757 billion.⁷ These liabilities, which should be viewed in conjunction

¹ See THOMAS P. DINAPOLI, N.Y. ST. COMPTROLLER, STATE OF NEW YORK: COMPREHENSIVE ANNUAL REPORT FOR FISCAL YEAR ENDED MARCH 31, 2011, at 89–91, 106 (2011).

² *Id.* at 106.

³ *Id.*

⁴ ROBERT B. WARD, NEW YORK STATE GOVERNMENT 540 (2d ed. 2006).

⁵ *Local Government & School Accountability: GASB 45 & OPEB Frequently Asked Questions*, OFF. N.Y. ST. COMPTROLLER, <http://www.osc.state.ny.us/localgov/pubs/opeb45faqs.htm> (last visited Aug. 22, 2012) [hereinafter OFF. N.Y. ST. COMPTROLLER].

⁶ PEW CTR. ON THE STATES, THE WIDENING GAP UPDATE 1 (June 2012), http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Pensions_Update.pdf.

⁷ *Id.*

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with each other, aggregate to \$1.38 trillion.⁸ The Pew Research report indicated that the states have only set aside about five percent of their future health care liability.⁹ Sixteen states, including New York State, have set aside no funds to pay for the health care liability.¹⁰ Many of the larger states, such as California (funded at only 0.1%), Florida (0.0%), Illinois (0.1%), Massachusetts (2.0%), New Jersey (0.0%), Pennsylvania (1.0%), and Texas (1.0%), have little or no funds set aside to finance the liability.¹¹ Some states, such as Alaska (funded at 50%), Arizona (69%), North Dakota (30%), Ohio (32%), Oregon (31%), Utah (22%), Virginia (26%), and Wisconsin (38%), are doing a better job in funding the health care liability.¹²

This paper examines the health care liability question as it relates to local governments in New York State. The analysis of a sample of local governments shows that each has a large health care liability, and virtually none of it is funded. The paper shows that due to New York State law, local governments are currently prohibited from collecting costs for future health care amounts in their budgeting process.

The paper is organized into five sections, including this introduction. Section I describes how the health care liability arose for localities in New York State. Section II discusses budgeting issues associated with attempts to fund the health care liability. Section III outlines the history of some of the major concerns that local government interest groups, bond rating firms, and others have about the GASB 45 health care liability. Section IV presents data for a number of local governments in New York State, including the cities of New York, Albany, Buffalo, Binghamton, Syracuse, and Rochester. Additionally, data is presented for several county governments in New York State, including the counties of Erie, Monroe, Nassau, Onondaga, Rensselaer, Suffolk, and Westchester. These governments were selected to provide an overview of the health care budgeting problem for local governments throughout different geographical areas in New York State.¹³ Section V of the paper discusses a number of remedies which can help mitigate the budgeting

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² *Id.*

¹³ See WARD, *supra* note 4, at 540.

problem associated with financing health care costs.

I. THE HEALTH CARE COST LIABILITY

Many state and local governments have entered into arrangements to provide health care costs for current employees and for retirees. Many of these plans have a comprehensive array of costs, including health care premiums, dental and vision plans, life insurance, disability costs, and long-term care costs.¹⁴ Often these plans are referred to as Other Post Employment Benefit (OPEB) plans.¹⁵ During 2004, the Governmental Accounting Standards Board (GASB) issued two new accounting statements to provide guidance on accounting for the costs of OPEB plans.¹⁶ The statements include:

- Governmental Accounting Standards Board Statement No. 43, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*;¹⁷
- Governmental Accounting Standards Board Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*.¹⁸

GASB has also issued a series of technical bulletins since 2004 to clarify the technical details of accounting for the health care liability.¹⁹ From a budgeting perspective, it is important to

¹⁴ Elizabeth K. Keating & Eric S. Berman, *Unfunded Public Employee Health Care Benefits and GASB No. 45*, 21 ACCT. HORIZONS 245, 247 (2007).

¹⁵ *Id.* at 245.

¹⁶ *Pronouncements: Summary of Statement No. 43, Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, GOVERNMENTAL ACCT. STANDARDS BOARD, available at <http://www.gasb.org/st/summary/gstsm43.html> [hereinafter *Summary of Statement No. 43*]; *Pronouncements: Summary of Statement No. 45, Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*, GOVERNMENTAL ACCT. STANDARDS BOARD, available at <http://www.gasb.org/st/summary/gstsm45.html> [hereinafter *Summary of Statement No. 45*].

¹⁷ *Summary of Statement No. 43*, *supra* note 16 (providing accounting guidance for trust funds used to accumulate OPEB costs).

¹⁸ *Summary of Statement No. 45*, *supra* note 16.

¹⁹ *Pronouncements: Technical Bulletin No. 2008-1: Determining the Annual Required Contribution Adjustment for Postemployment Benefits*, GOVERNMENTAL ACCT. STANDARDS BOARD, available at http://www.gasb.org/cs/ContentServer?c=GASBContent_C&pagename=GASB/GASBContent_C/GASBNewsPage&cid=1176156721827; *Pronouncements: Technical Bulletin No. 2006-1: Accounting and Financial Reporting by Employers and OPEB Plans for Payments from the Federal Government Pursuant to the Retiree Drug Subsidy Provisions of Medicare Part D*, GOVERNMENTAL ACCT. STANDARDS BOARD, available at http://www.gasb.org/cs/ContentServer?c=GASBContent_C&page

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recognize that GASB's requirements concern financial disclosure, and do not require the actual funding of OPEB plans.²⁰ The GASB has no authority over budgeting and finance for governments, and cannot require a governmental entity to finance a cost such as OPEB.²¹ The accounting rules require state and local governments to begin reporting the OPEB liabilities. For larger governments, this begins in 2007.²² Most local governments should have begun to report the GASB 45 health care liability as of 2012. One group of authors shows that governments that are currently setting aside monies to pay for the future liability will be in better financial condition than they would be if they had simply ignored the liability.²³

Other researchers are concerned that the OPEB health care liability represents a significant budgeting issue for state and local governments since the liability is not funded today.²⁴ Governmental accounting provides a system where a trust fund can be used to accumulate funds to pay for the health care liability. Unfortunately, since the accounting rules do not require governments to fund the liability currently, many governments have chosen not to fund the OPEB obligation.²⁵ Furthermore, New York State law provides no authority for local governments to accumulate monies to finance the OPEB liability, according to the Office of the New York State Comptroller.²⁶

The issues of pension accounting and OPEB health care accounting are similar in nature, although the accounting rules are different, especially as they relate to the funding of the two liabilities.²⁷ In New York State, most public pension costs are

name=GASB%2FGASBContent_C%2FProjectPage&cid=1176156648097;
Pronouncements: Technical Bulletin No. 2004-2: Recognition of Pension and Other Postemployment Benefit Expenditures/Expense and Liabilities by Cost-Sharing Employers, GOVERNMENTAL ACCT. STANDARDS BOARD, available at <http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176160042391>.

²⁰ OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

²¹ STEPHEN J. GAUTHIER, EMPLOYER'S ACCOUNTING FOR PENSIONS AND OTHER POST-EMPLOYMENT BENEFITS (OPEB) 19 (2005).

²² STEVEN A. FINKLER ET AL., FINANCIAL MANAGEMENT FOR PUBLIC, HEALTH, AND NOT-FOR-PROFIT ORGANIZATIONS 577 (4th ed. 2013).

²³ *See id.* at 576.

²⁴ Charles K. Coe & William C. Rivenbark, *Implementing GASB 45: Recommended Best Practices in Local Government*, 30 PUB. BUDGETING & FIN., Winter 2010, at 71, 71.

²⁵ ROBERT J. FREEMAN ET AL., GOVERNMENTAL AND NONPROFIT ACCOUNTING: THEORY AND PRACTICE 227 (9th ed. 2009).

²⁶ OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

²⁷ WARREN RUPPEL, GOVERNMENTAL ACCOUNTING MADE EASY 226 (2d ed.

funded through pension trust fund arrangements.²⁸ There are important differences in pension plans and OPEB plans that should be considered. For instance, the OPEB liability is a new issue that was often not reported on the financial statements before 2007, while pension plan accounting rules have been in effect for many years.²⁹ Second, pension plans have been partially or totally funded, while there is little funding currently for OPEB plans.³⁰ According to the Pew Research report cited above, the major public pension plans in the state of New York have a combined liability of \$157 billion, with approximately ninety-four percent of the plans being funded.³¹ New York State has a health care liability of approximately \$57 billion, according to the Pew report, and there were no funds accumulated to pay for the liability.³²

A key element of GASB 45 is the requirement for governments to show the amount of health care costs that they have agreed to pay for current employees and for retired employees.³³ The computation produces a metric called the Unfunded Accrued Actuarial Liability (UAAL), which shows the level of the liability in dollar terms.³⁴ This liability is presented and reflects the results of a long-term actuarial study projected for numerous years into the future.³⁵

There is a vast difference in how costs for public pensions and

2010).

²⁸ See E.J. McMAHON & JOSH BARRO, *NEW YORK'S EXPLODING PENSION COSTS 1* (2010), <http://www.empirecenter.org/Documents/PDF/PensionExplosion.12.2010.pdf>.

²⁹ Josh Gonze, *Thornburg Targets Low OPEB Risk in Muni Bonds*, THORNBURG INVESTMENT MGMT. (Thornburg Sec. Corp., Santa Fe, N.M.), May 2007, at 1, http://www.thornburgadvisor.com/research/articles/pdfs/TH1418_OPEB.pdf.

³⁰ RUPPEL, *supra* note 27, at 226.

³¹ PEW CTR. ON THE STATES, *supra* note 6, at 5.

³² *Id.* at 7, 10.

³³ GOVERNMENTAL ACCOUNTING STANDARDS BD., STATEMENT NO. 45: ACCOUNTING AND FINANCIAL REPORTING BY EMPLOYERS FOR POSTEMPLOYMENT BENEFITS OTHER THAN PENSIONS 7 (2004), *available at* <http://www.gasb.org/cs/BlobServer?blobkey=id&blobwhere=1175824062850&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs> [hereinafter STATEMENT NO. 45].

³⁴ GOVERNMENTAL ACCOUNTING STANDARDS BD., OTHER POSTEMPLOYMENT BENEFITS: A PLAIN-LANGUAGE SUMMARY OF GASB STATEMENTS NO. 43 AND NO. 45, at 4 (2004), *available at* <http://gasb.org/cs/BlobServer?blobkey=id&blobwhere=1175820457538&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs> [hereinafter OTHER POSTEMPLOYMENT BENEFITS].

³⁵ *Id.*

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costs for the GASB 45 health care liability are considered in governmental budgets for localities in New York State. Pension costs are currently included in the state and local government budgets, and are funded in part today.³⁶ New York State law requires local governments to fund the future pension costs by making additions to local budgets yearly to fund their share of the pension costs, as determined by the New York State and Local Retirement System and the Teachers' Retirement System.³⁷

Future health care costs for employees and retirees are handled in a different manner. The accounting rules currently in place, as mandated by the GASB, only require local governments to report the liability in the footnotes to the financial statements³⁸ and in other required supplementary information.³⁹ These two sections of the financial statements are important, but they should be considered as explanatory notes. There is no requirement that local governments establish a funding mechanism to provide money to pay the health care costs.⁴⁰ New York State Law prohibits local governments from establishing a funding mechanism for the health care cost liability.⁴¹

The outcome of the current GASB reporting for local governments in New York State means that they must compute the value of the future health care liability and report it as material attached to the financial statements. The liability itself is not presented in the columns of numbers in the actual financial statements.⁴²

OPEB accounting requires that a substantive plan, representing the actual benefit plan in effect, be defined.⁴³ Generally, this is the plan that is illustrated in key documents such as labor agreements and other materials that establish the obligation to provide the OPEB benefits. The substantive plan contains the terms and conditions understood by the employer

³⁶ See NAT'L ASS'N OF STATE RET. ADM'RS, STATE AND LOCAL GOVERNMENT SPENDING ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS 1 (Aug. 27, 2012), <http://www.nasra.org/resources/NASRACostsBrief1202.pdf>.

³⁷ OFFICE OF THE N.Y. ST. COMPTROLLER, UNDERSTANDING THE BUDGET PROCESS 7 (2010), <http://www.osc.state.ny.us/localgov/pubs/lgmg/budgetprocess08.pdf>.

³⁸ See STATEMENT NO. 45, *supra* note 33, at 16–19.

³⁹ See *id.* at 19–20.

⁴⁰ See *id.* at 16–20.

⁴¹ OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

⁴² See STATEMENT NO. 45, *supra* note 33, at 143–48.

⁴³ *Id.* at 7.

and the plan members.⁴⁴ The GASB requirements change the focus of OPEB accounting from a current pay-as-you-go methodology to a long-term focus based on the requirement that actuarial studies be conducted.⁴⁵ Pay-as-you-go accounting is “[a] method of financing a pension plan under which the contributions to the plan are generally made at about the same time and in the same amount as benefit payments and expenses becoming due.”⁴⁶ The outcome of an actuarial-based analysis is the development of a long-term forecast of health care costs for the governmental unit, which is presented as a current unfunded actuarial accrued liability.⁴⁷ Accrual accounting is used as the basis of accounting for the OPEB liability calculation.⁴⁸ This is a big change from the current accounting for health care costs, which is essentially on a cash basis or modified accrual view of accounting.

It is important to recognize that GASB has established two different methods to allow local governments to compute the OPEB health care liability. The actuarial method outlined above is used by local governments with one hundred or more employees.⁴⁹ For those smaller local governments with fewer than one hundred employees, an alternative method with simpler actuarial method assumptions has been adopted by GASB.⁵⁰

GASB 45 requires that detailed and specific information be presented in the notes to the financial statements.⁵¹ The notes to the financial statements should contain a section describing the OPEB plan. The plan description should include several items, such as the formal name of the plan, an identification of the public employee retirement system or other entity that administers the plan, a brief description of the types of OPEB benefits to be provided, and the legal authority for the OPEB plan. GASB 45 also requires the governmental unit to provide information concerning the funding policy of the OPEB plan.⁵²

GASB 45 discusses the information to be included in the required supplementary information for OPEB plans.⁵³ GASB 45

⁴⁴ *Id.* at 49.

⁴⁵ *Id.* at 1.

⁴⁶ *Id.* at 58.

⁴⁷ *Id.* at 9.

⁴⁸ *See id.* at 6–11.

⁴⁹ *See id.* at 22.

⁵⁰ *See id.* at 22–23.

⁵¹ *Id.* at 16–19.

⁵² *Id.* at 16–17.

⁵³ *See id.* at 19–20.

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mandates that employers present information for the most current actuarial valuation. The information should be provided for the current year and the two previous years. If three years of data are not available, then as many years of information as possible should be presented. The following types of information illustrate examples of the data that should be included in the required supplementary information presentation: the funding status of the plan as of the most recent valuation date, the actuarial study assumptions, the total unfunded actuarial accrued liability, and the ratio of the unfunded accrued liability to the annual covered payroll.⁵⁴

GASB 45 also requires that factors that significantly change the results of the OPEB accounting plan be highlighted. Examples of the significant factors include changes in benefit provisions, changes in the size or composition of the plan's membership, information about the actuarial method used, and the key actuarial assumptions.⁵⁵

As stated above, the dollar amount of the UAAL is not included in the columns of numbers that constitute the financial statements.⁵⁶ This is important because the net assets or accumulated equity of a governmental accounting financial statement will not be reduced for the dollar amount of the UAAL; rather, the UAAL will be discussed in a series of explanatory notes. Governmental accounting does have instances where it is required that a long-term liability which is not due today be presented in the financial statements. A good example of this type of accounting is GASB Statement No. 18 for post-closure costs for governments operating a landfill.⁵⁷ In this type of governmental accounting, a locality operating a landfill must show a liability on the balance sheet indicating the amount that the locality must pay to close the landfill in the future.⁵⁸ The liability must be computed when the local government is collecting solid waste. This time frame may be several years before the facility is actually closed and the funds are actually

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 16.

⁵⁷ GOVERNMENTAL ACCOUNTING STANDARDS BD., STATEMENT NO. 18: ACCOUNTING FOR MUNICIPAL SOLID WASTE LANDFILL CLOSURE AND POSTCLOSURE CARE COSTS (1993), *available at* <http://www.gasb.org/cs/BlobServer?blobkey=id&blobwhere=1175824062201&blobheader=application%2Fpdf&blobcol=urldata&lobtable=MungoBlobs>.

⁵⁸ *Id.* at 4.

needed. Furthermore, a locality can collect the cost of closing the landfill today and keep the funds to pay for the future liability when it needs to be paid.⁵⁹ This is an important distinction in governmental accounting since, as outlined in Section II, current budgeting practices in New York State do not allow local governments to collect costs today to pay for a future OPEB liability.⁶⁰

II. BUDGETING FOR LOCAL GOVERNMENT HEALTH CARE COSTS

Local governments in New York State develop annual budgets under the rules provided by various sections of New York State law. For instance, the annual budgets developed by county governments in New York State must be presented under procedures specified in the New York State County Law.⁶¹ Town governments develop budgets under the New York State Town Law.⁶²

It is important to recognize that governmental accounting has four basic ways to recognize any accounting transaction. The four methods are known as the basis of accounting.⁶³ This means that any transaction can be reflected in one of four ways, and the GASB has developed rules for how all transactions should be recorded. The four types of basis of accounting are:

- the cash method, or pay-as-you-go accounting, which assumes that a transaction occurs only when it is paid in cash;⁶⁴
- modified accrual accounting, which considers short-term modifications to cash accounting for items that have to be paid or recorded within that same accounting period;⁶⁵
- accrual accounting, which examines the economic basis of a transaction, and records it when an economic transaction occurs;⁶⁶
- the budgetary basis of accounting, which assumes that the transaction is placed in the budget using rules that may

⁵⁹ *Id.* at 6.

⁶⁰ N.Y. GEN. MUN. LAW § 6–p (McKinney Supp. 2012).

⁶¹ N.Y. COUNTY LAW § 350 (McKinney 2004).

⁶² N.Y. TOWN LAW § 100 (McKinney 2004).

⁶³ See FREEMAN ET AL., *supra* note 25, at 38–39.

⁶⁴ *Id.* at 37.

⁶⁵ *Id.* at 41.

⁶⁶ *Id.* at 39.

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differ from the three other accounting methods.⁶⁷

It is important to understand that the basis of accounting for governmental budgeting is different from the basis of accounting for recording transactions on the books and records of local governments. This distinction will be important as we explore the GASB 45 accounting issues. There is a large difference in governmental budgeting versus governmental accounting, and this is currently helping to develop the budgeting crisis related to health care costs.

A simple case study can be used to illustrate the difference in annual budgetary accounting versus the GASB 45 requirement that local governments recognize a long-term health care liability using accrual accounting. The health care costs developed by local governments in their annual budget are done using a cash, or pay-as-you-go basis.⁶⁸ This means that the only health care costs included in the budget are those that will actually be paid during the fiscal year. For instance, if a local government has to pay \$100,000 in health care premiums for its employees and retirees for a fiscal year ending December 2012, the only monies included in the budget will be for the actual payment of the premiums. This is cash, or pay-as-you-go accounting, and the transaction is reflected about the time it is paid.⁶⁹

The budgeting and accounting for OPEB health care costs is an entirely different entity in the budgeting and accounting records. The OPEB liability uses a different basis of accounting known as accrual accounting.⁷⁰ In accrual accounting, a transaction is recorded as an economic transaction when it occurs, and not when the money is actually paid.⁷¹ This means that since most of the OPEB liability does not have to be paid in the current fiscal year, there is no requirement to include the liability in the current annual budget. Only when the monies are to be paid will they be included in the annual budget.⁷²

⁶⁷ *Id.* at 37.

⁶⁸ See ROBERT J. FREEMAN ET AL., GOVERNMENTAL AND NONPROFIT ACCOUNTING: THEORY AND PRACTICE 93 (8th ed. 2006) [hereinafter GOVERNMENTAL AND NONPROFIT ACCOUNTING] (explaining that governmental agencies may choose the accounting basis on which they prepare their budgets and that some governments do use cash basis accounting for budgeting); Keating & Berman, *supra* note 14, at 254 (stating that most governments use the modified cash basis for budget preparation).

⁶⁹ *Summary of Statement No. 45, supra* note 16; RUPPEL, *supra* note 27, at 21.

⁷⁰ *Summary of Statement No. 45, supra* note 16.

⁷¹ RUPPEL, *supra* note 27, at 21.

⁷² See GOVERNMENTAL AND NONPROFIT ACCOUNTING, *supra* note 68, at 93.

The OPEB liability is an accrual-based calculation supported by a long term actuarial forecast which can present data for periods of time such as thirty to forty years, or even longer.⁷³ It does not, therefore, represent monies that have to be paid in the current fiscal year. The issue can be illustrated by examining the annual budget for a local government, and by also examining the financial statements for the same government.

The Town of Colonie in upstate New York, Albany County, has been chosen to present the comparison of the amount included in the annual budget versus the actual OPEB liability. The total Town of Colonie budget for 2012 is approximately \$82.4 million.⁷⁴ The budget is developed under procedures from the New York State Town Law.⁷⁵ The budget shows the following items related to health care costs, which amount to approximately \$4.6 million: health insurance costs of \$4,217,625, retiree's health insurance at \$59,000, and dental and vision insurance at \$339,250.⁷⁶ The amounts included in the budget represent health care cost premiums and related costs that must be paid in 2012. This is known as pay-as-you-go accounting.

The Town of Colonie financial statements from 2010 show an OPEB health care liability of approximately \$49 million, none of which is funded.⁷⁷ As outlined above, this amount does not have to be included in the actual financial statements, but is only presented in the notes to the financial statements and other required information. This long-term liability was computed using numerous assumptions, such as the future levels of employees, the mortality rate for the plan enrollees, and the cost trend for health care costs.⁷⁸ It is clear, therefore, that the OPEB health care liability of \$49 million, which is computed on an accrual basis, is different than the pay-as-you-go health care costs of \$4.6 million as included in the annual budget. This type of difference exists for most, if not all local governments in New York State.

If the Town of Colonie wanted to collect some of the \$49 million

⁷³ See *Summary of Statement No. 45*, *supra* note 16, at 176–77 (showing an illustration using a fifty-five year actuarial period).

⁷⁴ TOWN OF COLONIE ANNUAL BUDGET 1 (2012), <http://www.colonie.org/comptroller/2012%20Annual%20Budget.pdf>.

⁷⁵ See N.Y. TOWN LAW § 100 (McKinney 2004).

⁷⁶ TOWN OF COLONIE ANNUAL BUDGET, *supra* note 74, at 22.

⁷⁷ TOWN OF COLONIE, NEW YORK FINANCIAL REPORT 51 (2010), <http://www.colonie.org/comptroller/2012%20Annual%20Budget.pdf>.

⁷⁸ *Id.*

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long-term OPEB health care liability in its current budget, it is prohibited from doing so. The Office of the New York State Comptroller reports that local governments in New York State are prohibited from collecting monies to fund the long term GASB 45 OPEB liability.⁷⁹ From an accounting perspective, a trust fund could be established in the annual budget to collect monies to help the local governments raise the funds needed to pay for the OPEB liability in the future.⁸⁰ The monies would then be held in reserve and invested, and the trust fund could be used to pay for the premiums of the entire OPEB liability when it becomes payable.⁸¹

The Office of the New York State Comptroller indicates that it has been advised by the GASB that it is appropriate to use a trust fund to collect monies for the payment of the OPEB liability.⁸² This type of trust fund must be legally protected from creditors and the employer so the money can be used for no other purpose than for the payment of costs for the beneficiaries of the health care plan.⁸³ The Office of the New York State Comptroller notes, however, that there is no statute in New York State that allows local governments to create a trust fund for OPEB purposes.⁸⁴ “Is there any State statute that expressly authorizes a local government in New York to create a trust for OPEB purposes? No, and in the absence of such a statute, it is questionable whether local governments have the requisite authority for establishing an OPEB trust.”⁸⁵

In addition to the use of a trust fund, a local government could consider establishing a reserve to finance the OPEB liability.⁸⁶ The fund would officially be known as an “Employee Benefit Accrued Liability Reserve Fund.”⁸⁷ The Office of the New York State Comptroller advises that a reserve mechanism cannot be used by local governments to prefund the OPEB liability.⁸⁸ The Comptroller’s Office notes that according to New York State General Municipal Law Section 6–p, municipalities in New York

⁷⁹ OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

⁸⁰ See FREEMAN ET AL., *supra* note 25, at 479, 481–82.

⁸¹ *Id.*

⁸² OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ N.Y. GEN. MUN. LAW § 6-p (McKinney Supp. 2012).

⁸⁷ OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

⁸⁸ *Id.*

State can establish and maintain an Employee Benefit Accrued Liability Reserve Fund to help finance the cost of certain employee benefits. Such a trust is not appropriate, however, for funding the OPEB liability. According to the State Comptroller, “[t]ypically, moneys [sic] in this reserve are set aside to pay for accumulated, unused leave when an employee separates from service. Currently, moneys [sic] cannot be accumulated in this reserve for OPEB obligations.”⁸⁹

This situation is interesting, because, according to the Office of the New York State Comptroller, local government school districts in New York State have at least \$980 million of monies in these accounts.⁹⁰ Some of the funds were overstated and related to an employee leave liability for employees who were not actually subject to the benefit. For instance, the Auburn School District computed a \$655,895 liability related to unused sick leave accruals that did not have to be paid in that amount. The real amount of the liability was only \$281,845, or only 43% of the stated total.⁹¹ A study was conducted of 108 school districts by the Office of the New York State Comptroller, and the reported liability of \$293 million was reduced by \$191 million to \$105 million.⁹² The real liability was only 36% of the stated amount. If the same result exists for the total of \$980 million for all the school districts in New York State, about \$634 million in funds would be available to help finance the GASB 45 health care liability. Instead of allowing these local governments to use the excess money to help fund the GASB 45 health care liability, New York State changed General Municipal Law Section 6-p to allow the governments to use the excess funds for other purposes.⁹³

Another mechanism that could be used on a temporary basis to fund some of the OPEB costs would be to designate a portion of any unreserved fund balance as applicable to the OPEB liability. The Office of the State Comptroller states that this temporary mechanism is at odds with a GASB trust fund requirement.⁹⁴ Lastly, the State Comptroller states that local governments in New York State cannot issue OPEB bonds, which could be used to

⁸⁹ *Id.*

⁹⁰ THOMAS P. DiNAPOLI, OFFICE OF THE N.Y. STATE COMPTROLLER, EXCESS FUNDS IN EMPLOYEE BENEFIT ACCRUED LIABILITY RESERVES 2 (2012), <http://www.osc.state.ny.us/localgov/pubs/research/ebalr2012.pdf>.

⁹¹ *Id.* at 6.

⁹² *Id.* at 9–11.

⁹³ *Id.* at 2.

⁹⁴ OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

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help finance the liability, since there is no statutory authority to allow for the issuance of such bonds.⁹⁵

This review indicates that there is no valid or reliable mechanism to permit local governments in New York State to begin to collect monies today to finance the future OPEB liability. Potential remedies to solve this issue are discussed in Section V below.

III. OPEB LIABILITY ISSUES

This section of the paper outlines the history of some of the major concerns that local government interest groups, bond rating firms, and others have about the GASB 45 health care liability. The GASB 45 reporting requirements apply to all governmental entities in the State of New York.⁹⁶ According to the Office of the New York State Comptroller, there are approximately 3,990 local governmental entities operating in the state of New York.⁹⁷ A summary of these governments shows the following major categories of local governments and the following amounts of each type of government: counties (n = 57), cities (n = 62), towns (n = 932), villages (n = 555), school districts (n = 697), fire districts (n = 882), and other governments (n = 805).⁹⁸

This paper has selected a group of city and county governments to illustrate the nature and size of the OPEB liability issue. These governments include the following cities: New York City, Albany, Buffalo, Binghamton, Syracuse, and Rochester. Additionally, data is presented for several county governments in New York State, including Erie, Monroe, Nassau, Onondaga, Rensselaer, Suffolk, and Westchester. These governments were selected to provide a geographically diverse profile from New York State. By examining the size of the OPEB liability issue for these relatively large governments, we can obtain an excellent perspective of how critical the OPEB issue is for local governments in the state of New York.

Many important groups and organizations concerned with local government finance have highlighted the immense risk facing

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ THOMAS P. DiNAPOLI, OFFICE OF THE N.Y. STATE COMPTROLLER, 2011 ANNUAL REPORT ON LOCAL GOVERNMENTS 31 (2011), <http://www.osc.state.ny.us/localgov/datanstat/annreport/11annreport.pdf>.

⁹⁸ *Id.*

local governments from the OPEB financing issue. Some examples of these concerns are included below.

The Office of the New York State Comptroller has stated that providing health insurance costs for employees (and retirees) is one of the most expensive programs faced by local governments.⁹⁹ These insurance costs have increased by nearly 8.5% annually for the past ten years, which is almost triple the rate of inflation during that period.¹⁰⁰ The Nelson A. Rockefeller Institute of Government at the University at Albany issued a fiscal brief on April 5, 2012 indicating that New York's local governments face a series of key risks, including those risks associated with financing the rising costs of employee benefits.¹⁰¹ Earlier, Robert B. Ward of the Rockefeller Institute cautioned that employee benefits such as health care costs are one of the key elements driving expenditures for local governments in New York State.¹⁰²

The National Association of State Budget Officers, in a budgeting paper dated January 20, 2012, cautioned about the problematic nature of OPEB plans.¹⁰³ The problem associated with OPEB funding plans for numerous states was also discussed in a Wall Street Journal opinion piece from April 2012.¹⁰⁴ The New York State Government Finance Officers' Association, in a July 2009 presentation before the GASB, cautioned the board about the uncertain nature of OPEB and pension actuarial studies.¹⁰⁵ During 2012, a group of organizations informed the GASB of the problematic nature of making financial forecasts where differences exist in the budgeting and financial reporting

⁹⁹ *Id.* at 16.

¹⁰⁰ *Id.*

¹⁰¹ See LUCY DADAYAN, TAX REVENUE REPORT NO. 87: TAX REVENUES SURPASS PREVIOUS PEAK BUT GROWTH SOFTENS ONCE AGAIN 1–2, 14 (2012), http://www.rockinst.org/pdf/government_finance/state_revenue_report/2012-04-19-SRR_87.pdf; *Recent Forums and Events: Local Fiscal Challenges and New York's Tax Cap*, NELSON ROCKEFELLER INST. GOV'T (March 1, 2012), <http://www.rockinst.org/forumsandevents>.

¹⁰² WARD, *supra* note 4, at 540.

¹⁰³ NAT'L ASS'N OF STATE BUDGET OFFICERS, A STATE BUDGETING PERSPECTIVE ON PUBLIC PENSIONS 1 (2012), <http://www.nasbo.org/sites/default/files/pdf/A%20State%20Budgeting%20Perspective%20on%20Public%20Pensions.pdf>.

¹⁰⁴ Steven Malanga, *How Retirement Benefits May Sink The States*, WALL ST. J., Apr. 28, 2012, at A13.

¹⁰⁵ See Letter from N.Y. State Gov't Fin. Officers Ass'n to Mr. David R. Bean, Dir. of Research and Technical Activities, Governmental Accounting Standards Bd. (Sept. 17, 2010), available at <http://www.gasb.org/cs/BlobServer?blobkey=id&blobwhere=1175821321575&blobheader=application%2Fpdf&blobcol=urldat a&blobtable=MungoBlobs>.

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of the entity.¹⁰⁶ These organizations included the Government Finance Officers Association, the International City/County Management Association, the National Association of Counties, the National League of Cities, and the United States Conference of Mayors. The letter submitted by these groups illustrated the point that governments are now required to make two sets of financial projections: one used in the budget process and one for the financial statements.¹⁰⁷

The New York State School Boards Association noted in a July 2009 fiscal brief that GASB 45 accounting presents significant financial risk for school districts, because “[a]uditors and bond-rating agencies will be looking for this information. Failure to adhere to GASB 45 will result in a qualified audit and a lower bond rating.”¹⁰⁸

The New York State School Boards Association also voiced concern that over the next ten years, their annual payments for retiree health care costs will double.¹⁰⁹ Other groups, such as the New York State Association of Counties and the New York State Conference of Mayors, have raised concerns about the lack of the ability of local governments to raise money through the budget process for a trust fund to help pay the GASB 45 future liability. In testimony before the New York State Standing Committee on Ways and Means, the New York State Conference of Mayors urged New York’s legislature to permit localities to begin to fund the GASB 45 liability currently.¹¹⁰ The Conference of Mayors testimony also raised the issue of having the state of New York establish a pooled trust fund, like the New York State pension systems, where local governments could become participants in a large investment pool.¹¹¹ The testimony also noted that if monies

¹⁰⁶ Letter from N.Y. State Gov’t Fin. Officers Ass’n to Mr. David R. Bean, Dir. of Research and Technical Activities, Governmental Accounting Standards Bd. (Mar. 16, 2012), available at <http://www.gasb.org/cs/BlobServer?blobcol=url data&blobtable=MungoBlobs&blobkey=id&blobwhere=1175823827783&blobheader=application%2Fpdf>.

¹⁰⁷ *Id.*

¹⁰⁸ Vicki Mazzie, *District Financial Statements to Contain New Information on Benefit Obligations*, N.Y. ST. SCH. BD. ASS’N (July 20, 2009), available at http://www.nyssba.org/index.php?src=news&submenu=on_board&srctype=detail &category=On%20Board%20Online%20July%2020%202009&refno=941.

¹⁰⁹ *Id.*

¹¹⁰ *Impact of Statement Number 45 of the Governmental Accounting Standards Board Before the Assembly Standing Committee on Ways & Means*, 2007 Leg. Sess. 2–3 (N.Y. 1997) (testimony of the New York State Conference of Mayors).

¹¹¹ *Id.* at 2.

were established in a trust fund to pay the GASB 45 health care liability in the future, they would earn a competitive rate of return, which would lower the overall cost of the liability.¹¹² The New York State Association of Counties held a presentation in 2007 also advocating that the New York State Legislature allow trust funds to be established to help finance the OPEB liability.¹¹³ The presentation also claimed that if the trust fund earned a market based rate of return, the GASB 45 liability could be reduced by upwards of twenty percent.¹¹⁴

As stated above, GASB 45 was finalized in June 2004. The major bond rating agencies have voiced concern for many years over the financial issues associated with the health care liability. The bond rating agencies continue to be concerned about the GASB 45 liability, and they consider it a type of debt that should be imputed into any financial evaluation of a state or local government with a significant liability. Fitch Ratings, in an evaluation dated April 4, 2012, shows that the debt level of a government is influenced by three items, including the current debt service coverage, future capital needs, and "Pension & OPEB [costs.]"¹¹⁵ Fitch also indicated that it withdrew the bond rating for the Town of Cicero, New York in 2011, partially because the entity did not comply with the GASB 45 accounting rules.¹¹⁶ Standard & Poor's Corporation also considers the GASB 45 liability as part of the debt for state governments.¹¹⁷ Moody's Investors' Service indicated in an October 2009 bond rating criteria analysis that the OPEB liability is a type of debt and is an important consideration in the bond rating process.¹¹⁸ A review of recent municipal bond ratings indicates that the management of the OPEB liability can be an important

¹¹² *Id.* at 3.

¹¹³ Roscoe Haynes, *Managing the Impact of GASB Statement 45*, at 57 (Dec. 20, 2007), <http://www.nysac.org/documents/Powerpointpresentation.pdf>.

¹¹⁴ *Id.*

¹¹⁵ Jessalynn Moro, *Bond Credit Ratings & New York Economic Update 9* (Apr. 4, 2012), <http://www.nysgfoa.org>.

¹¹⁶ Press Release, Fitch Ratings, Fitch Withdraws Cicero, NY's Rating (July 27, 2011), *available at* <http://www.reuters.com/article/2011/07/27/idUS265499+27-Jul-2011+BW20110727>.

¹¹⁷ *U.S. Public Finance: U.S. State Ratings Methodology*, STANDARD & POOR'S 19 (Jan. 3, 2011), <http://www.nasra.org/resources/StateRatingsMethodology.pdf>.

¹¹⁸ *See General Obligation Bonds Issued by U.S. Local Governments*, MOODY'S INVESTORS SERV. 19 (Oct. 2009), <http://www.nesgfoa.org/sites/default/files/Moodys%20GO%20methodology%2010.09.pdf>.

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consideration in the bond rating process.¹¹⁹

IV. DATA FOR SELECTED LOCAL GOVERNMENTS IN NEW YORK STATE

The GASB 45 health care liability can be researched by examining the financial statements for local governments. The following analysis presents the UAAL for a number of large cities and county governments located in New York State. Table One shows the UAAL for a group of cities.

Table One: GASB Unfunded Accrued Actuarial Liability for Selected City Governments in New York State

City/Rank	UAAL (\$ in Millions)	Funded Ratio %	UAAL To Payroll %
New York (4)	\$79,041	3.7	401
Albany (n/a)	\$264	0	n/a
Buffalo (2)	\$1,637	0	884
Binghamton (3)	\$131	0	526
Syracuse (1)	\$911	0	902
Rochester (5)	\$564	0	277

The information in Table One shows the amount of the UAAL and the percentage of the liability that is currently funded.¹²⁰ The table also includes a metric mandated by the GASB which relates the liability to the amount of current payroll.¹²¹ This metric is designed to illustrate the magnitude of the liability. If, for instance, a locality has a \$10 million health care liability and current payroll of \$10 million, the relationship of the liability to current payroll is 100%. If a locality has a health care liability of \$50 million and a current payroll of \$10 million, the relationship of the liability to payroll is 500%. The latter situation is much

¹¹⁹ See *Moody's Assigns Aaa Rating to Alexandria's (VA) \$93.7 Million General Obligation Bonds*, MOODY'S INVESTORS SERV. (June 25, 2012), http://www.moody's.com/page/viewresearchdoc.aspx?docid=PR_249372&WT.mc_id=NLTITLE_YYYYMMDD_PR_249372; *Moody's Assigns Aaa Rating to Maryland's \$728 Million General Obligation State and Local Facilities Loan of 2012*, MOODY'S INVESTORS SERV. (July 18, 2012), http://www.treasurer.state.md.us/media/47255/moodys_2012_2nd.pdf.

¹²⁰ This study uses the latest available set of financial statements for each locality.

¹²¹ OTHER POSTEMPLOYMENT BENEFITS, *supra* note 34, at 17.

more severe than the initial situation.

The information shown in Table One illustrates that the five upstate New York cities have a combined UAAL of \$3.5 billion, and that there are no monies set aside to fund the liability. Each of the localities is discussed below.

The City of New York has a UAAL of \$79 billion as of June 30, 2010.¹²² Approximately 3.7% of the liability is funded. The UAAL as a percentage of covered payroll is 401%.¹²³ The City of Albany has a UAAL of \$264 million, and none of the liability is funded.¹²⁴ The City of Albany financial statements from December 31, 2010 did not include the ratio of the UAAL to current payroll.¹²⁵

The City of Buffalo has a UAAL of \$1.6 billion as of June 30, 2011.¹²⁶ The UAAL as a percentage of covered payroll was 884%.¹²⁷ This means that if the City of Buffalo were to collect the health care costs associated with GASB 45, the city would have to raise funds for almost nine times the amount of payroll in the current budget.

The City of Binghamton has a UAAL of \$131 million, none of which is funded as of the latest actuarial valuation date of January 1, 2008.¹²⁸ The UAAL, as a percentage of covered payroll, is 526%.¹²⁹

The City of Syracuse presents its GASB 45 information to include information for both the City of Syracuse and for the Syracuse School District.¹³⁰ The information is shown separately

¹²² CITY OF N.Y. OFFICE OF THE COMPTROLLER, THE CITY OF NEW YORK COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THE COMPTROLLER FOR THE FISCAL YEAR ENDED JUNE 30, 2011, at 117 (2011), <http://comptroller.nyc.gov/bureaus/acc/cafr-pdf/cafr2011.pdf>.

¹²³ *Id.*

¹²⁴ CITY OF ALBANY, N.Y., CITY OF ALBANY AUDITED FINANCIAL STATEMENTS AND SUPPLEMENTARY INFORMATION YEAR ENDED DECEMBER 31, 2010, at 49 (2011), http://www.albanyny.gov/_files/Final2010ShortForm.pdf.

¹²⁵ *Id.* at 48–51.

¹²⁶ CITY OF BUFFALO OFFICE OF THE COMPTROLLER, CITY OF BUFFALO COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2011, at 72 (2011), http://www.ci.buffalo.ny.us/files/1_2_1/Comptroller/CAFR/Bufalo_NY_CAFR_6-30-2011.pdf.

¹²⁷ *Id.*

¹²⁸ CITY OF BINGHAMTON DEP'T OF FIN., CITY OF BINGHAMTON ANNUAL FINANCIAL REPORT FISCAL YEAR ENDED DECEMBER 31, 2009, at 46, 53 (2010), <http://www.cityofbinghamton.com/%5Clibrary%5Cpages%5Cdept-finance%5C2009%20Annual%20Financial%20Report.pdf>.

¹²⁹ *Id.* at 53.

¹³⁰ CITY OF SYRACUSE DEP'T OF FIN., BASIC FINANCIAL STATEMENTS: CITY OF SYRACUSE, NEW YORK 65 (2011), [http://www.syracuse.ny.us/uploadedFiles/Departments/Finance/Content/Audited%2010-11%20Syracuse%20City%20Combined%](http://www.syracuse.ny.us/uploadedFiles/Departments/Finance/Content/Audited%2010-11%20Syracuse%20City%20Combined%20)

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and, for purposes of this analysis, the results for the City of Syracuse are used. As of July 1, 2010, Syracuse has a UAAL of \$911 million, which is 902% of the covered payroll of approximately \$101 million.¹³¹ None of the plan's liability was funded. The City of Rochester had a UAAL of \$564 million as of April 1, 2010.¹³² None of the liability was funded, and UAAL as a percentage of covered payroll was 277%.¹³³

Table Two shows the UAAL for a group of seven county governments located in New York State.

Table Two: GASB Unfunded Accrued Actuarial Liability for Selected County Governments in New York State

County/Rank	UAAL (\$ in Millions)	Funded Ratio	UAAL To Payroll %
Nassau (2)	\$3,854	0	449
Suffolk (4)	\$3,944	0	416
Westchester (1)	\$2,617	0	606
Erie (5)	\$879	0	314
Monroe (6)	\$630	0	276
Onondaga (3)	\$795	0	438
Rensselaer (7)	\$52	0	73

The information included in Table Two illustrates that Nassau County on Long Island has a UAAL of \$3.9 billion as of January 1, 2010.¹³⁴ None of the liability is funded, and the UAAL as a percentage of covered payroll is 449%.¹³⁵ Suffolk County on Long Island has a UAAL of \$3.9 billion, and none of the liability is funded.¹³⁶ The County of Westchester is located just north of the

²⁰Basic%20Financial%20Statements.pdf [hereinafter CITY OF SYRACUSE].

¹³¹ See *id.* at 66.

¹³² CITY OF ROCHESTER DEP'T OF FIN., THE CITY OF ROCHESTER, NEW YORK COMPREHENSIVE ANNUAL FINANCIAL REPORT YEAR ENDED JUNE 30, 2011, at 66 (2011), <http://www.abo.ny.gov/annualreports/PARISAuditReports/FYE2011/Local/RochesterURA2010-11.pdf>.

¹³³ *Id.*

¹³⁴ NASSAU CNTY. OFFICE OF THE COMPTROLLER, NASSAU COUNTY COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THE COMPTROLLER FOR THE FISCAL YEAR ENDED DECEMBER 31, 2011, at 111 (2012), <http://www.nassaucountyny.gov/agencies/Comptroller/documents/FINAL2011CAFRSECURED.pdf>.

¹³⁵ *Id.*

¹³⁶ SUFFOLK CNTY. OFFICE OF THE COMPTROLLER, SUFFOLK COUNTY NEW YORK

City of New York. The county has a UAAL of \$2.6 billion as of December 31, 2010.¹³⁷ The UAAL as a percentage of covered payroll was 606%.¹³⁸ The County of Erie is located in the vicinity of Buffalo, New York. The county has a UAAL of \$879 million, none of which is funded as of the latest actuarial valuation date of January 1, 2010.¹³⁹ The UAAL as a percentage of covered payroll was 314%.¹⁴⁰

Monroe County is located in the area of Rochester, New York. As of January 1, 2011 the county had a UAAL of \$629 million.¹⁴¹ The liability is 276% of the covered payroll of approximately \$128 million.¹⁴² None of the plan's liability is funded.¹⁴³ Onondaga County is located in upstate New York, in the Syracuse area. The county has a UAAL of \$795 million as of January 1, 2010.¹⁴⁴ None of the liability was funded, and UAAL as a percentage of covered payroll was 438%.¹⁴⁵ Rensselaer County is located in upstate New York in the Albany/Schenectady/Troy area. The county has a UAAL of \$52 million as of January 1, 2009 for governmental and business activities combined.¹⁴⁶ None of the liability was funded,

COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THE COMPTROLLER FOR THE YEAR ENDED DECEMBER 31, 2010, at 89 (2011), <http://suffolkcountyny.gov/Portals/Comptroller/documents/2010%20CAFR.PDF>.

¹³⁷ WESTCHESTER CNTY. FIN. DEP'T, COMPREHENSIVE ANNUAL FINANCIAL REPORT, WESTCHESTER COUNTY, NEW YORK FOR YEAR ENDING DECEMBER 31, 2010, at 76 (2011), http://finance.westchestergov.com/images/stories/pdfs/CAFR/2010_westchester_county_cafr.pdf.

¹³⁸ *Id.*

¹³⁹ ERIE CNTY. OFFICE OF THE COMPTROLLER, COUNTY OF ERIE, NEW YORK COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED DECEMBER 31, 2010, at 62 (2011), <http://www2.erie.gov/comptroller/sites/www2.erie.gov.comptroller/files/uploads/CAFR%20PDF%20Final.pdf>.

¹⁴⁰ *Id.*

¹⁴¹ MONROE CNTY., 2011 COMPREHENSIVE ANNUAL FINANCIAL REPORT: COUNTY OF MONROE, NEW YORK FOR THE YEAR ENDED DECEMBER 30, 2011, at 72 (2011), <http://www2.monroecounty.gov/files/finance/2011%20CAFR.pdf>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ ONONDAGA CNTY. DEP'T OF AUDIT & CONTROL, 2011 COMPREHENSIVE ANNUAL FINANCIAL REPORT: COUNTY OF ONONDAGA COUNTY, NEW YORK FOR THE YEAR ENDED DECEMBER 30, 2010, at 44 (2011), <http://www.ongov.net/comptroller/documents/CAFR2010Final.pdf> [hereinafter ONONDAGA CNTY.].

¹⁴⁵ *Id.*

¹⁴⁶ Rensselaer County was included in this analysis to show a county in the area of Albany, New York. RENSSELAER CNTY., 2011 COMPREHENSIVE ANNUAL FINANCIAL REPORT COUNTY OF RENSSELAER, NEW YORK FOR THE YEAR ENDED DECEMBER 31, 2011, at 54 (2012), <http://www.rensco.com/pdfs/County%20of%20Rensselaer%20Master%20Statements%202011.pdf> [hereinafter RENSSELAER CNTY.].

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and UAAL as a percentage of covered payroll was 73%.¹⁴⁷

The data shows that many of the local governments in New York State will have a budget crisis if they do not begin to fund the UAAL in a reasonable period of time. Money will be needed to fund the liability, and it is unclear if the cities and counties have the fiscal capacity to raise the funds. The metric used by GASB to illustrate the problem is the amount of the UAAL divided by the percentage of covered payroll. The rankings for the city governments in the study using the relationship of the UAAL to covered payroll are as follows: Syracuse (902%), Buffalo (884%), Binghamton (526%), New York City (401%), and the City of Rochester (277%). The City of Albany did not present the payroll related metric.

The metrics for the county governments also show a troubling situation in all cases, with the possible exception of Rensselaer County.¹⁴⁸ The rankings for the county governments in the study using the relationship of the UAAL to covered payroll are as follows: Westchester County (606%), Nassau County (449%), Onondaga County (438%), Suffolk County (416%), Erie County (314%), Monroe County (276%), and Rensselaer County (73%).

The budgeting situation may be even worse than presented in this analysis. This occurs because some of the jurisdictions in the study have overlapping tax bases. For instance, residents in the City of Syracuse may have to pay property tax monies to fund the UAAL for the County of Onondaga, the City of Syracuse, and the City of Syracuse School District.¹⁴⁹ Other local governments may also be in the same tax base, such as special districts with a large UAAL. The data included in this study indicates that the overlapping tax base problem will affect other counties and cities also. Additionally, town and village governments most likely will have a GASB 45 UAAL unfunded liability also.¹⁵⁰

The issue of a large GASB 45 health care liability exists for local governments throughout the United States. For instance, Keating and Berman illustrated that many large cities such as Chicago, Detroit, Los Angeles, and others have large GASB 45

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See ONONDAGA CNTY., *supra* note 144, at 72; CITY OF SYRACUSE, *supra* note 130, at 18, 22.

¹⁵⁰ OFFICE OF THE N.Y. STATE COMPTROLLER, GASB 45: REPORTING THE TRUE COST OF OTHER POST-EMPLOYMENT BENEFITS 8 (2008), http://www.osc.state.ny.us/localgov/pubs/research/opeb_policyreport.pdf [hereinafter REPORTING THE TRUE COST].

health care liabilities.¹⁵¹

V. POTENTIAL GASB 45 UAAL FUNDING REMEDIES

There are a number of actions that local government officials can take to try to reduce the UAAL. First, local government officials can consider actions to cut the benefits of the employees and retirees over time. For retirees, such a mechanism could include actions such as increasing health insurance premiums and deductible amounts for the persons using the health care plan. Other options include increasing co-insurance rates and co-payments for medical services. Other strategies exist, such as increasing the cap on out-of-pocket expenses to be incurred by the plan participants, or increasing the age at which retiree health care becomes available.¹⁵²

For current employees in the health care plan, the local governmental officials could consider options such as extending the number of years needed to vest into the plan, or requiring participants to enroll in the federal Medicare program when eligible. Other strategies include increasing the age at which health care benefits become available, eliminating portions of health care and/or prescription drug coverage, and changing the plan from a defined benefit plan.¹⁵³ Some of these options are available to local government officials as they try to cut the cost of the health care liability. To the extent that any of these concepts are implemented, the health care UAAL liability would be reduced. Of course, the magnitude of the UAAL reduction would depend on how much the plan enrollees' health care benefits are reduced.

The Keating and Berman paper, discussed above, also shows that the UAAL can be reduced if local governments take actions to fund the health care program.¹⁵⁴ The UAAL can be reduced if a trust fund is established to begin to fund the liability now.¹⁵⁵ Money could be collected from taxpayers or plan fee payers to help reduce the amount of the UAAL. Excess governmental assets could also be sold, and the money placed in the fund. The trust fund would work in a similar manner to a pension trust

¹⁵¹ Keating & Berman, *supra* note 14, at 250–51.

¹⁵² Coe & Rivenbark, *supra* note 24, at 79.

¹⁵³ *Id.*

¹⁵⁴ Keating & Berman, *supra* note 14, at 257.

¹⁵⁵ *Id.*

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fund where the fund assets are invested and earn a rate of return until the assets are spent. The earnings from the rate of return would help to reduce the UAAL. These types of items were supported by many of the interest groups in New York State, as discussed earlier.

As discussed above, under New York State law, local governments are prohibited from establishing a trust fund to accumulate costs for health care UAAL costs. During 2007 and 2008, the Office of the New York State Comptroller offered formal plans to change New York State law so that local governments could establish trust funds to currently accumulate the costs needed to fund the UAAL. During January 2007, First Deputy Comptroller Thomas Sanzillo presented testimony before the New York State Legislature calling for such a plan.¹⁵⁶ Also, during May 2008, New York State Comptroller Thomas P. DiNapoli announced a plan to authorize the creation of trust funds to help localities fund the UAAL program.¹⁵⁷ None of these efforts have been implemented to establish a trust fund mechanism to allow local governments in New York State to prefund the UAAL liability.

The Office of the New York State Comptroller has presented evidence to illustrate that a UAAL related to GASB 45 costs can be significantly reduced if a trust fund is established to prefund the costs.¹⁵⁸ Using New York State as an example, the State Comptroller illustrated that a large reduction in the UAAL occurs if it is prefunded using a trust fund. In an analysis conducted in 2008, the State Comptroller illustrated that the UAAL for New York State of \$50 billion could be reduced to \$28 billion over time if a trust fund were established.¹⁵⁹

If a trust fund were established for the OPEB liability, it is probable that the amount of the liability could be significantly reduced for local governments. New York State Comptroller, Thomas P. DiNapoli, indicated that for the New York State pension system, most of the payments from the fund are

¹⁵⁶ Press Release, Office of the N.Y. State Comptroller, Testimony From First Deputy Comptroller Thomas Sanzillo Regarding GASB 45 Accounting Change (Jan. 30, 2007), *available at* <http://www.osc.state.ny.us/press/releases/jan07/013007.htm>.

¹⁵⁷ Press Release, Office of the N.Y. State Comptroller, Funding Mechanism Could Help State & Local Governments Save Billions in Future Years (May 20, 2008), *available at* <http://www.osc.state.ny.us/press/releases/may08/052008.htm>.

¹⁵⁸ REPORTING THE TRUE COST, *supra* note 150, at 12–13.

¹⁵⁹ *Id.* at 1.

generated by the earnings of the entity rather than the individual contributions into the fund.¹⁶⁰ DiNapoli stated that for the past twenty years, approximately eighty-three percent of the funds paid to retirees were generated from the earnings of the New York State employees' pension fund.¹⁶¹ This indicates that if a trust fund with a market-based rate of return were established for the OPEB liability, the UAAL could be substantially reduced for state and local governments.

Keating and Berman discuss the concept of using OPEB bonds to help finance the UAAL for GASB 45 costs.¹⁶² These bonds could theoretically be used to finance the UAAL, but they are not allowed to be used in New York State, according to the Office of the New York State Comptroller.¹⁶³ Note the following language in the Comptroller's report: "Can local governments issue OPEB bonds? Currently, local governments in New York State do not have the statutory authority to issue OPEB bonds."¹⁶⁴

Some local governments have issued pension bonds to help finance a pension-related UAAL, and the same concept can be considered to finance the UAAL related to GASB 45 costs.¹⁶⁵ The City of Gainesville, Florida sold OPEB bonds in 2005.¹⁶⁶ There are numerous risks associated with OPEB bonds, and they should be used with caution. A provision must be included in any bond covenant to ensure that the proceeds from the bonds will be used to fund the UAAL.¹⁶⁷ Also, one of the key features in the bond concerns the long term health care cost trend rate.¹⁶⁸ Simply put, with all other considerations equal, the risk of OPEB bonds increases if there is a significant increase in the health care cost trend rate.

In summary, there are three basic actions that local governments can consider to help reduce or fund the UAAL. These include:

1. Reducing the future costs paid by the medical care plan.
2. Prefunding the UAAL costs through the use of trust fund

¹⁶⁰ Thomas P. DiNapoli, *Retirement Security for Americans and the Role of Defined-Benefit Pension Plans*, 72 PUB. ADMIN. REV. 483, 483 (2012).

¹⁶¹ *Id.*

¹⁶² Keating & Berman, *supra* note 14, at 257–58.

¹⁶³ OFF. N.Y. ST. COMPTROLLER, *supra* note 5.

¹⁶⁴ *Id.*

¹⁶⁵ Keating & Berman, *supra* note 14, at 258.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

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accounting with investments being made to earn a rate of return.

3. Issuing OPEB bonds to finance part or all of the UAAL.

An additional issue associated with the long term care liability concerns the requirement of the GASB reporting for the liability. Currently the liability is reported as a percentage of the payroll of the local government.¹⁶⁹ While this metric provides some information about the relative size of the liability, more information should be reported. Specifically, the GASB should include some information about the time period when the liability will most likely have to be paid. This schedule would be similar to a table the GASB requires governments to provide concerning the term structure of debt. This would show when the actual liability has to be paid and would improve financial reporting associated with the GASB 45 health care liability.

¹⁶⁹ See, e.g., ONONDAGA CNTY., *supra* note 144.