

## RESERVES AUTHORIZED BY THE GENERAL MUNICIPAL LAW (GML)

### Capital Reserve Fund (GML Sections 6-c, 6-g)

**Purpose:**

To finance all or part of the cost of construction, reconstruction, or acquisition of:

- A “specific” or “type” capital improvement
- The acquisition of a “specific” or a “type” item(s) of equipment.

The term “capital improvement” means: any physical improvement and any related preliminary studies and surveys; lands or rights in land; any furnishings, equipment, machinery, or apparatus for any physical improvement acquired at the time when such improvement is constructed, reconstructed, or acquired.

The term “equipment” includes any equipment, machinery, or apparatus not included in the definition of capital improvement and for which a period of probable usefulness has been provided by law.<sup>4</sup>

Some examples of specific and type capital reserves are as follows:

	Capital Improvements	Equipment
<b>Specific</b>	City Hall Town Garage County Jail Firehouse Sewage Disposal Plant Off-Street Parking Lot	Pumper Truck Sanitation Truck Bulldozer Snowplow Ambulance
<b>Type</b>	Land Buildings Building Alterations	Snow Removal Equipment Street Cleaning Equipment Highway Equipment Fire Apparatus

**Who May Create:**

Counties, cities, villages, towns, fire districts, and town or county sewer and water improvement districts may create both specific and type capital reserves.<sup>5</sup>

One exception is that capital reserve funds may not be established for capital improvements constructed, reconstructed, or acquired or equipment acquired as follows:

- On behalf of an improvement district or other similar district (other than a sewer and/or water district) located within a municipality
- Where all or part of the costs are borne by assessments for benefit or ad valorem taxes upon real property within the area of benefited in a municipality (other than a sewer and/or water district).<sup>6</sup>

<sup>4</sup> For periods of probable usefulness, see Local Finance Law, Section 11.00.

<sup>5</sup> School districts may create capital reserves as authorized by Education Law, Section 3651[1]. See page 23 of this publication for additional information on school district capital reserves.

<sup>6</sup> However, if a capital reserve fund is established for a specific improvement and it is later determined that part of the cost of the capital improvement is to be borne by assessments or ad valorem taxes on real property within the area benefited, then moneys in the fund may be used to pay all or part of the share of the costs to be borne by the municipality at large.

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**How to Create  
and Use:**

**Specific Capital Reserves**

A governing board's authorization (resolution) establishing a specific improvement or equipment capital reserve must state the estimated maximum cost of the item(s) of equipment or improvement. A sample resolution for establishing a specific capital reserve is included in Appendix C.

The action of a governing board establishing a specific capital reserve is subject to permissive referendum if an authorization to issue indebtedness for the same improvement or equipment is subject to either a permissive or mandatory referendum, except for fire districts. For fire districts, action of the board of fire commissioners establishing any capital reserve fund may not take effect until approved by a vote of qualified electors of the fire district (i.e., a mandatory referendum), effective January 1, 2007.

There are no referendum requirements for expenditures made from a specific capital reserve fund. However, expenditures from specific capital reserve funds can only be made upon authorization of the governing board.

**Type Capital Reserves**

The governing board should authorize (by resolution) the establishment of a type improvement or equipment reserve but, there is no requirement to state an estimated maximum cost of the equipment or improvement in the resolution. A sample resolution for establishing a type capital reserve is included in Appendix D.

A referendum is not required when establishing a type capital reserve fund, except in fire districts. For fire districts, action (resolution) of the board of fire commissioners establishing *any* capital reserve fund may not take effect until approved by vote of qualified electors of the fire district (i.e., a mandatory referendum), effective January 1, 2007.

For certain municipalities, expenditures made from a type capital reserve are subject to permissive referendum. If an authorization to issue indebtedness for the purchase of such improvement or equipment is subject to either permissive or mandatory referendum, then the expenditure of type capital reserve funds for the same purpose is generally subject to permissive referendum.

## Permissive and Mandatory Referendum Requirements

There are two types of referendums that apply to the establishment of or the expenditure of capital reserve funds. In this guide, the terms permissive and mandatory referendums are defined as follows:

- Generally, an action subject to *permissive referendum* requires the municipality to publish and post a legal notice informing taxpayers of the board's planned action, for example, the establishment of a specific capital reserve. The legal notice also informs eligible voters of their right to file a petition to require the matter to be subjected to voter approval.
- For a *mandatory referendum*, no petition is filed and in all cases eligible voters of the municipality must approve the proposed action or question before the action can take place.

Permissive and mandatory referendum requirements for capital reserves are associated with the referendum requirements for bond issues. Referendum requirements vary depending on the type of municipality involved.

The following chart summarizes the referendum requirements for the establishment and expenditure of specific and type capital reserve funds.

Type of Locality	Referendum Requirements for Bond Issues	Referendum Requirements for Capital Reserves	
		Specific Reserves	Type Reserves
<b>Fire Districts</b>	Bond resolutions must be approved at a regular or special election of district voters.	<p><i>Establishment</i> is subject to a mandatory referendum.</p> <p><i>Expenditures</i> can only be made following the adoption of a resolution by the board of fire commissioners. These resolutions are not subject to referendum.</p>	<p><i>Establishment</i> is subject to a mandatory referendum.</p> <p><i>Expenditures</i> can only be made following the adoption of a resolution, subject to permissive referendum.</p>
<b>Villages</b>	Bond resolutions are subject to permissive referendum unless the proposed maturity of the bonds is five years or less, or unless the bonds are issued to finance judgments and claims, sewers and capital improvements financed by benefit assessments, certain street and highway improvements, and incinerators and refuse disposal facilities. Bond resolutions may also be submitted to referendum by motion of the board.	<p>With certain exceptions, generally a permissive referendum is required upon <i>establishment</i>, unless the period of probable usefulness of the specific capital improvement or equipment is less than five years.<sup>7</sup></p> <p>No referendum requirements for <i>expenditures</i>.</p>	<p>No referendum requirements for <i>establishment</i>.</p> <p>With certain exceptions, generally a permissive referendum is required prior to expenditure, unless the period of probable usefulness of the type capital improvement or equipment is less than five years.</p>

<sup>7</sup> See Local Finance Law Section 36.00(a) (1), which provides that bond resolutions in villages are not subject to referendum when bonds have a proposed maturity of not more than five years.

Type of Locality	Referendum Requirements for Bond Issues	Referendum Requirements for Capital Reserves	
		Specific Reserves	Type Reserves
<b>Town</b>	With certain exceptions, generally same as villages.	Same requirements as villages. <sup>8</sup>	Same requirements as villages.
<b>City</b>	Referendums are not required unless specified in the city charter or required by local law.	Generally not required.	Generally not required.
<b>County</b>	Bond resolutions are not subject to any referendum requirements, except for bond resolutions for appraisals for equalization purposes, which are subject to permissive referendum. <sup>9</sup>	Generally not required.	Generally not required.

**Source of Funds:** Capital reserve funds may generally be funded with:

- Budgetary appropriations<sup>10</sup>
- Revenues not required by law to be paid into any other fund or account (e.g., transfers from unexpended balances of existing appropriations and surplus moneys).

Highway fund moneys (in towns) may be used for the establishment of a capital reserve, so long as the moneys are expended for the purpose for which they were levied or received, and provided the town highway superintendent and town board consent and the county highway superintendent approves. Such moneys may be expended from the capital reserve only on order of the town highway superintendent, upon audit, and with the consent of the town board.

**Special Provisions:** If a town is located wholly or partly in the Adirondack Park (see Appendix B) and has State lands subject to taxation assessed (at more than 30 percent of total taxable assessed valuation of the town), the State Comptroller must consent to the establishment of, and expenditures or transfers from, a capital reserve fund in the town, or in a fire district located wholly or partly within such a town.

<sup>8</sup> See Local Finance Law Section 35.00 (b) (1), which provides that bond resolutions in towns are not subject to referendum when bonds have a proposed maturity of not more than five years.

<sup>9</sup> Certain bond resolutions in excess of \$10,000,000 are subject to mandatory referendum in Westchester County (Local Finance Law Section 33.10).

<sup>10</sup> In the case of a fire district, the board of fire commissioners may not add or increase an appropriation to a capital reserve fund after the public hearing of the fire district budget (Town Law Section 181[3][b]).

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**Use of Unexpended Balances:** Generally, unexpended balances in a capital reserve fund may be transferred to another capital reserve having the same tax base.

- a) *Capital Reserve Balances Remaining After Completion or Acquisition* If there is an unexpended (residual) balance remaining in a specific or type capital reserve after the capital improvement or item of equipment has been completed or acquired, the governing board may appropriate all or any part of such remaining balance *to another capital reserve fund without referendum*. An amount sufficient to satisfy all outstanding claims arising from the construction, reconstruction, or acquisition of the improvement or the acquisition of the equipment should remain designated for such claims until they are satisfied.

Additionally, in a municipality, all or part of the unexpended balance of a capital reserve established for a *specific improvement or item of equipment* that has been completed or acquired (less amounts required to satisfy all outstanding claims related to such improvement or equipment) may be appropriated for:

- An object or purpose for which bonds may be issued
  - The payment of interest on and principal of indebtedness (except indebtedness for assessable improvements and certain indebtedness excludable from constitutional debt limits) (Section 6-c [9-a]).
- b) *Capital Reserve Balances Never Utilized* Where a specific capital reserve has been established, and the improvement or item of equipment *has not been acquired or completed*, any transfer is subject to *permissive referendum* if the authorization for the creation of the reserve was subject to permissive referendum.<sup>11</sup> While subject to a public hearing with 15 days notice, unexpended balances may also be transferred to a Retirement Contribution Reserve Fund.<sup>12</sup>

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<sup>11</sup> GML Section 6-g(8)(b) contains the provisions relating to transfers of the unexpended balances of fire district capital reserve funds that are established for specific improvements that have not been completed or acquired, or specific item(s) of equipment that have not been acquired. It provides that such transfers are subject to permissive referendum requirements if the establishment of the fund was subject to permissive referendum. As noted, however, effective January 1, 2007, the establishment of all capital reserve funds in a fire district are subject to mandatory referendum. Legal counsel should be consulted regarding the application these two statutes to unexpended specific capital reserve balances.

<sup>12</sup> See GML Section 6-r (2) (d).

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## Repair Reserve Fund (GML Section 6-d)

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- Purpose:** To pay for certain repairs to capital improvements or equipment. The type of repairs must not recur annually or at shorter intervals.
- Who May Create:** Municipal corporations (towns, villages, cities, counties), district corporations (e.g., fire districts), school districts, and town or county improvement districts.
- How to Create and Use:** There are no referendum requirements for the establishment of a repair reserve fund or for expenditures from the fund.<sup>13</sup> A resolution appropriating moneys from a repair reserve fund is subject to a public hearing and at least five days must elapse between the publication of the notice of hearing and the date specified for the hearing. In an emergency, moneys in a repair reserve fund may be expended without giving notice and without holding a public hearing. To make such an emergency expenditure, the governing board must pass a resolution approved by at least a two-thirds vote. In addition, at least one-half of the expenditure must be repaid in the next fiscal year and the balance repaid by the end of the fiscal year after that.
- Source of Funds:** Budgetary appropriations, revenues that are not required by law to be paid into any other fund or account (e.g., transfers from unexpended balances of existing appropriations, surplus moneys).
- Special Provisions:** If a town is located wholly or partly in the Adirondack Park (see Appendix B) and has State lands subject to taxation assessed at more than 30 percent of the total taxable assessed valuation in a town, the State Comptroller's Office must consent to the establishment of, and appropriations from, a repair reserve fund in the town or in any district corporation or improvement district situated wholly or partially in such a town.
- Use of Unexpended Balances:** All or any part of a repair reserve fund may generally be transferred to a capital reserve fund or, in school districts, to a reserve fund established pursuant to Section 3651 of the Education Law, or to a contingency and tax stabilization reserve fund. Subject to a public hearing with 15 days notice, unexpended balances may also be transferred to a Retirement Contribution Reserve Fund, established pursuant to GML Section 6-r.

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<sup>13</sup> Note, however, that in the case of school districts, an appropriation to a repair reserve fund is not an "ordinary contingent expenses" and, therefore, voter approval is required to fund a repair reserve fund (New York State Education Department, Ed Management Services, *Budgeting Handbook*, School Business Management, Handbook No. 3, Revised and Reprinted February 1998, VII, "Reserves", 1981 Op St Comp No. 81-401, at 442).

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## Contingency and Tax Stabilization Reserve Fund (GML Section 6-e)

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<b>Purpose:</b>	<p>To finance certain unanticipated revenue losses or unanticipated expenditures chargeable to the “eligible portion of the annual budget,” and to lessen or prevent projected increases in excess of 2½ percent of the amount of the real property tax levy needed to finance the eligible portion of the annual budget.</p> <p>The law defines “unanticipated expenditure” as “an expenditure for a specific purpose for which there is no or insufficient appropriation or which will cause an appropriation to be insufficient that is necessitated by a change in federal or state laws, rules, or regulations, a court order, judgment or decree, a public emergency, or an industry-wide price, rate or premium increase, which takes effect or occurs after final adoption of the annual budget and which could not have been reasonably anticipated prior to final adoption of the annual budget.”</p> <p>An “unanticipated revenue loss” means “estimated revenue which is rendered not receivable because of a change in federal or state laws, rules or regulations, a court order, judgment or decree, or other circumstance, which takes effect or occurs after final adoption of the annual budget and which could not have been reasonably anticipated prior to final adoption of the annual budget.”</p> <p>The “eligible portion of the annual budget” means, in the case of a contingency and tax stabilization reserve fund established for: (1) a county, city, village, or fire district, the general fund portion of the annual budget; (2) a town, the town-wide general fund and highway fund portions of the annual budget; and (3) the part of a town outside any villages, the general and highway fund portions of the annual budget for such part of the town.</p>
<b>Who May Create:</b>	Counties, cities, villages, and fire districts and towns (for town-wide and part-town general funds and highway funds).
<b>How to Create and Use:</b>	Created by resolution of the governing board subject to permissive referendum. Generally, may be used only upon recommendation of the chief executive officer and resolution adopted by at least two-thirds of vote of the governing board.
<b>Source of Funds:</b>	Budgetary appropriations, unappropriated unreserved fund balance, and such revenues not required by law to be paid into any other fund or account. No amount may be appropriated for payment into a contingency and tax stabilization reserve fund that would cause the balance of the fund to exceed 10 percent of the eligible portion of the annual budget for the fiscal year for which the appropriation would be made.

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**Special Limitation  
on Maximum  
Amount in Fund:**

When preparing a tentative budget, if the current balance of the contingency and tax stabilization fund exceeds 10 percent of the eligible portion of the annual budget for the current fiscal year, any excess must be used to reduce the amount of real property taxes needed to finance the eligible portion of the annual budget for the next fiscal year.

There are three additional limitations on the use of moneys in the fund:

- The maximum that may be used to finance an unanticipated revenue loss shall equal either the amount of revenue actually received for the base year<sup>14</sup> or the amount of the estimated revenue for the current fiscal year, whichever is less, minus the amount of the revenue actually received for the current year. In addition, moneys in the fund may be used only to finance that portion of an unanticipated revenue loss which, as a matter of law, cannot be financed from moneys available in any other account or fund.
- The maximum that may be used to finance an unanticipated expenditure shall equal the sum of the amount of the unanticipated expenditure and the amount appropriated for that purpose for the current fiscal year minus either the amount appropriated for that purpose for the current fiscal year or the actual expenditure for the same purpose in the base year, whichever is greater. In addition, moneys in the fund may be used only to finance that portion of an unanticipated expenditure that, as a matter of law, cannot be financed from moneys available in any other account or fund.
- The maximum that may be used to lessen or prevent a projected increase in excess of 2½ percent of real property tax levy needed to finance the eligible portion of the annual budget shall equal the difference between the projected amount of the real property tax levy and 102½ percent of the amount of the real property tax levy needed to finance the eligible portion of the annual budget for the current fiscal year.

**Use of Unexpended  
Balances:**

Subject to a public hearing on 15 days notice, unexpended balances may also be transferred to a Retirement Contribution Reserve Fund.

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<sup>14</sup> Base year for this purpose means the most recent fiscal year for which an annual report has been filed with the State Comptroller pursuant to General Municipal Law Section 30.

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## Snow and Ice Removal and Road Repair Reserve (GML Section 6-f)

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- Purpose:** To pay for the cost of removal of snow and ice from public thoroughfares and public places of a municipal corporation, and the cost of repairing and maintaining roadways to the extent that such damage was caused by the removal of snow and ice, provided that such snow and ice removal or repairs and maintenance are of a type not likely to recur annually or at shorter intervals.
- Who May Create:** Municipal corporations (counties, cities, villages and towns).
- How to Create and Use:** A referendum is not required to establish this reserve. However, except with respect to emergencies as indicated below, a resolution appropriating moneys from this reserve fund is subject to a public hearing after prior public notice has been published. At least five days must elapse between the publication of the notice and the date specified for the hearing.  
In an emergency, moneys in this reserve may be expended without a public hearing, by resolution approved by at least a two-thirds vote of the governing board. At least one-half of the moneys expended must be repaid in the next fiscal year and the balance repaid by the end of the fiscal year after that.
- Sources of Funds:** Budgetary appropriation, revenues that are not required by law to be paid into any other fund or account (e.g., transfers from unexpended balances of existing appropriations, surplus moneys).
- Special Provisions:** If a town is located wholly or partly within the Adirondack Park (see Appendix B) and has State lands subject to taxation assessed at more than 30 percent of the total taxable assessed valuation of the town, the establishment of, and appropriations from, the snow and ice removal and road repair reserve fund in the town is subject to the consent of the State Comptroller.
- Use of Unexpended Balances:** In general, all or any part of a reserve fund for snow and ice removal and road repair may be transferred to a capital reserve fund, a repair reserve fund, or a tax stabilization reserve fund. In addition, subject to a public hearing on 15 days notice, unexpended balances may also be transferred to a Retirement Contribution Reserve Fund.

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## Reserve Fund for Payment of Bonded Indebtedness (GML Section 6-h)

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- Purpose:** To pay or purchase one or more issues of certain bonds of a town, village, city, county, or fire district; however, such a bonded indebtedness reserve fund may not be established for, or used to pay, obligations payable in the first instance from assessments or from taxes levied on an area smaller than the entire town, village, city, county, or fire district.
- Expenditures may be made only for the payment of the principal and interest on bonds issued by such municipality or fire district and forming a part of an issue having a maximum maturity of not less than five years or for the purchase of bonds issued by such municipality or fire district and forming a part of an issue having a maximum maturity of not less than five years, subject to certain additional restrictions as to purchase price and terms. If the current budget provides for payment of principal and interest on bonds or the purchase of them from sources other than a reserve fund, moneys of the bonded indebtedness reserve fund may not be used to pay debt service or purchase the bonds during the current fiscal year.
- Who May Create:** Municipal corporations (counties, towns, cities, villages) and fire districts.
- How to Create and Use:** Created by resolution of the governing board. Appropriation pursuant to resolution of the governing board to expend money on permitted uses. No referendum is required to establish or expend moneys from the bonded indebtedness reserve fund.
- Sources of Funds:** Budgetary appropriations, revenues not otherwise appropriated or required by law to be paid into any other fund or account (e.g., transfers from unexpended balances of existing appropriations, surplus moneys).
- Special Provisions:** In any town located wholly or partly within the Adirondack Park (see Appendix B) that has State lands subject to taxation assessed at more than 30 percent of the total taxable assessed valuation of the town, a bonded indebtedness reserve fund may not be established unless the State Comptroller consents, and no expenditure or transfer may be made unless the State Comptroller consents.
- Use of Unexpended Funds:** The governing board of a municipal corporation may, subject to a permissive referendum, authorize the transfer of all or a portion of a bonded indebtedness reserve fund to a capital reserve fund. In a fire district, subject to voter approval at a regular or special election, the board of fire commissioners may authorize a transfer of all or a portion of the fund to a capital reserve fund.

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### Airport Amortization Fund (GML Section 6-i)

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- Purpose:** To pay the cost of interest on and retirement of any outstanding indebtedness incurred for the acquisition and construction of an airport by a municipal corporation (county, city, town, village).
- Who Creates:** Municipal corporations that acquire or construct an airport after April 5, 1944, are required to establish such a reserve fund.
- Sources of Funds:** All revenues derived from such airport operations , except parking fees, sightseeing fees and rentals derived from leases of airport real property not used exclusively for air transportation operations, must be paid into the fund.
- Use of Unneeded Balances:** Any balance remaining beyond the amount required for the above purpose shall be paid into the general fund to be used for general municipal purposes.

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### Airport Development Fund (GML Section 6-i)

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- Purpose:** To pay the cost of acquisition, construction, or physical development of an airport acquired, constructed, or maintained by a municipal corporation (county, city, town, village).
- Who Creates:** Municipal corporations that acquire, construct, or maintain an airport and receive certain payments prior to construction or commencement of operation are required to establish such a reserve fund.
- Sources of Funds:** All payments for leases, permits, or other airport privileges received prior to the construction or the commencement of airport operations must be paid into the fund.
- Use of Unexpended Balances:** Must be used solely for the above-mentioned purposes.

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## Workers' Compensation Reserve Fund (GML Section 6-j)

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- Purpose:** To pay compensation and benefits, medical, hospital, or other expenses authorized by Article 2 of the Workers' Compensation Law and by the Volunteer Firefighters' Benefit Law and to pay the expenses of administering a self-insurance program.
- Who May Create:** Municipal corporations (counties, cities, towns, villages), school districts, or fire districts that are self-insurers under Section 50[4] of the Workers' Compensation Law or Section 30 of the Volunteer Firefighters' Benefit Law.
- How to Create and Use:** Created by resolution of the governing board. A referendum is not required either to create or expend moneys from the reserve.
- Sources of Funds:** Budgetary appropriations and other sums as may be legally appropriated (e.g., surplus moneys).
- Use of Unexpended Balances:** If at the end of any fiscal year, moneys in the fund exceed the amounts required to be paid for compensation, benefits and expenses, plus any additional amount required to pay all pending claims, the governing board, within 60 days of the close of such fiscal year, may elect to transfer all or part of the excess amount to certain other reserve funds, or may apply all or part of the excess to the budget appropriation of the next succeeding fiscal year. If the local government ceases to be a self-insurer, moneys remaining in the fund may be transferred to certain other reserve funds, but only to the extent moneys in the fund exceed an amount sufficient to pay all authorized expenditures, both accrued and contingent.

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## Electric Utility Depreciation Reserve Fund (GML Section 6-k)

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- Purpose:** To be used for the improvement, extension, or replacement of an electric public utility service or the payment of indebtedness related to the construction, improvement, extension, or replacement of such service, with certain exceptions.
- Who May Create:** Municipal corporations (counties, cities, towns, villages) operating an electric public utility service are required to establish such a reserve fund.
- How to Create and Use:** Created by resolution of the governing board and used only as stated above.
- Sources of Funds:** Funded solely by appropriations from revenues of the electric utility service. The governing board generally must require that, out of the revenues of the electric utility service, there will be deposited in the reserve fund, annually, quarterly, or monthly in its discretion, the amounts entered in the depreciation reserve account of the utility service as the depreciation accruals for such period. A depreciation reserve account is an account in which the original cost of the service is distributed to expenses in substantially equal annual, quarterly, or monthly amounts during the expected service life of the component parts of the service, by direction of the Public Service Commission.
- Use of Unexpended Balances:** Must be used solely for the established purpose.

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## Mandatory Reserve Fund (GML Section 6-l)

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<b>Purpose:</b>	To generally restrict the use of (1) the proceeds of the cash sale of a capital improvement and (2) State and federal aid received for a capital improvement, generally to the retirement of outstanding obligations issued to finance such improvement.
<b>Who Creates:</b>	Required generally for municipal corporations (counties, cities, towns, villages), town and county improvement districts, fire districts and school districts, upon the cash sale of a capital improvement, financed by obligations that remain outstanding at the time of the sale. <sup>15</sup> Also required when municipal corporations (counties, cities, towns, villages), town and county improvement districts, fire districts and school districts have outstanding indebtedness incurred to finance a capital improvement and federal or State aid is received for this improvement, to the extent the aid is not applied directly to the payment of a part of the cost of the improvement or to retire indebtedness issued in anticipation of such aid (i.e., revenue anticipation notes).
<b>How to Create and Use:</b>	Creation is mandatory as outlined above. A referendum is not required either to authorize or expend moneys from the fund. Moneys in the fund may be used only to retire the obligations issued to finance the capital improvement sold or for which federal or State aid is received or other obligations of at least equal weighted average life.
<b>Sources of Funds:</b>	Proceeds from the cash sale of a capital improvement that was financed by obligations that remain outstanding at the time of the sale; State and federal aid received for a capital improvement financed by obligations that are outstanding at the time the aid is received.
<b>Use of Unexpended Balances:</b>	If the aggregate amount exceeds the principal of the outstanding indebtedness due, or to become due, any excess may be used for any lawful municipal or district purpose. Also, if there are any remaining unexpended moneys in the fund when all of the outstanding obligations have been retired, the excess may be used for any lawful municipal or district purpose.

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<sup>15</sup> The requirement to establish a mandatory reserve does not apply when any other law requires the proceeds of the sale of a capital improvement to be deposited in a reserve fund established for the purpose of retiring outstanding obligations (see, e.g., County Law Section 275, General City Law Section 20[7-a], Village Law Section 11-1128, relating to the sale of water systems; see also Town Law Section 198[12]). In addition, the fund need not be established if, subject to a statutory cap, the proceeds of the cash sale are used or set aside to be used (i) to pay or provide for the construction, reconstruction, acquisition or installation of certain capital improvements or equipment (a report must be filed by the State Comptroller) or (ii) for the payment of principal of, or redemption premiums in connection with, any outstanding obligations issued to finance such capital improvements or equipment, in an amount not less than the lesser of the proceeds or the principal amount of the indebtedness outstanding on the capital improvement sold.

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## Unemployment Insurance Payment Reserve Fund (GML Section 6-m)

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- Purpose:** To reimburse the State Unemployment Insurance Fund for payments made to claimants where the municipality has elected to use the “benefit reimbursement” method.
- Who May Create:** Municipal corporations (counties, cities, towns, villages), school and fire districts, and boards of cooperative educational services (BOCES) that have elected to become liable for payments in lieu of contributions under Article 18 of the Labor Law.
- How to Create and Use:** Created by resolution of the governing board. A referendum is not required either to create or expend the reserve. Expenditures may be made only as required by law to pay into the Unemployment Insurance Fund an amount equivalent to the amount of benefits paid to claimants and charged to the account of the municipal corporation, district or BOCES in accordance with Labor Law Section 581(1)(e).
- Source of Funds:** Budgetary appropriations, amounts from certain other reserve funds, subject to permissive referendum; other funds that may be legally appropriated.
- Use of Unexpended Balances:** If at the end of any fiscal year, the moneys in the fund exceed amounts required to be paid into the Unemployment Insurance Fund as described above, plus any additional amounts required to pay all pending claims, the governing board, within 60 days of the close of the fiscal year, may elect to transfer all or part of the excess amounts to certain other reserve funds, or apply all or part of the excess to the budget appropriation of the next succeeding fiscal year. If the local government terminates its election to become liable for payments in lieu of contributions (i.e., elects to convert to “tax contribution” basis), moneys remaining in the fund may be transferred to certain other reserve funds, to the extent moneys in the fund exceed amounts sufficient to pay all pending claims.

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## Insurance Reserve Fund (GML Section 6-n)

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**Purpose:**

To fund certain uninsured losses, claims, actions, or judgments for which the local government is authorized or required to purchase or maintain insurance, with a number of exceptions. An insurance reserve fund may also be used to pay for expert or professional services in connection with the investigation, adjustment, or settlement of claims, actions, or judgments.

An insurance reserve may not be used to pay for uninsured losses, claims, actions, or judgments for which the following types of insurance are authorized:

- Life insurance
- Annuities
- Accident and health insurance
- Workers' compensation and employers' liability insurance (including volunteer firefighters' benefit insurance and volunteer ambulance workers' benefit insurance; but see above discussion of Workers' Compensation Reserve Fund )
- Fidelity and surety insurance
- Credit insurance
- Title insurance
- Residual value insurance
- Mortgage guarantee insurance.

In addition, an insurance reserve may not be used for payments in lieu of unemployment insurance contributions under Article 18 of the Labor Law (but see above discussion of Unemployment Insurance Payment Reserve Fund).

Also, a municipality may not pay from an insurance reserve for any loss, claim, action, or judgment for which it has established a reserve fund under any other provision of law. However, if a local government has previously established a reserve fund under another provision of law for a type of risk for which expenditures may be made under Section 6-n, it may discontinue the other reserve and transfer any unexpended balance to a Section 6-n reserve, subject to certain limitations.

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<b>Who May Create:</b>	Municipal corporations (counties, cities, towns, villages), fire districts and other district corporations, special improvement districts governed by a separate board of commissioners, boards of cooperative educational services, and school districts (except a school district in a city of 125,000 or more).
<b>How to Create and Use:</b>	Created by resolution of the governing board. A referendum is not required either to create or expend moneys from the reserve.
<b>Sources of Funds:</b>	Budgetary appropriations, amounts from any other fund authorized by the General Municipal Law subject to permissive referendum, such other funds as may be legally appropriated.
<b>Special Provisions:</b>	<p>The amount paid into this reserve fund during any fiscal year may not exceed the greater of \$33,000 or 5 percent of the total budget of the fiscal year. There is no limit on the cash balance.</p> <p>Moneys in the fund may be used to fund the payment of actions or claims that have been compromised or settled with judicial approval, except where the amount of the settlement or compromise does not exceed \$25,000.</p> <p>In maintaining accounting records for this fund, the chief fiscal officers must keep a separate account for each kind of risk funded in the Insurance Reserve Fund.</p>
<b>Use of Unexpended Balances:</b>	If it is determined that the fund is no longer needed, the moneys remaining in the fund may be transferred to another reserve fund authorized by the General Municipal Law (supported by the same tax base) or, in the case of a school district, a reserve fund established under Education Law Section 3651 (see discussion below), but only to the extent that the moneys in the fund exceed a sum sufficient to pay all liabilities incurred or accrued against the funds, as certified to the governing board by the fiscal and legal officers of the local government prior to the discontinuance of the fund.

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## Solid Waste Management Facility Reserve (GML Section 6-o)

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- Purpose:** To pay for the design, construction, and operation of solid waste management facilities owned or operated by a municipality, and for closure, or post-closure care, including operation and maintenance expenses of solid waste management facilities owned or operated by or on behalf of such municipality.
- Who May Create:** A municipal corporation (county, town, village, city) or its designated agency, a solid waste management district, and a public authority or public benefit corporation having power to construct, operate, and maintain a solid waste management facility.
- How to Create and Use:** Created by resolution of the governing board. A referendum is not required either to create or expend moneys from the reserve.
- Sources of Funds:** Amounts as the governing board may, from time to time, deem appropriate, including but not limited to a percentage of fees received by the municipality from operation of the solid waste management facilities.
- Use of Unexpended Balances:** The governing board may authorize the transfer of any unexpended balance from the solid waste management facility reserve fund to the credit of a capital reserve fund, if the unexpended balance remaining in the fund “established for a specific capital improvement” has been completed, after deducting from such unexpended balance a sum sufficient to satisfy all outstanding claims arising from the construction, reconstruction, or acquisition of such capital improvement.

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## Employee Benefit Accrued Liability Reserve Fund (GML Section 6-p)

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- Purpose:** To pay for any accrued “employee benefit” due an employee on termination of the employee’s service.<sup>16</sup>
- Expenditures may be made from an employee benefit accrued liability reserve fund for the payment of all or part of the cost, including interest, of:
- (a) The cash payment of the monetary value of accumulated or accrued and unused sick leave, holiday leave, vacation leave, time allowance granted in lieu of overtime compensation and other forms of payment for accrued leave time and benefits due to a municipal employee upon termination of municipal employment and separation from service “as required by ordinance, local law, collective bargaining agreement or Section six of the civil service law”
  - (b) The reasonable costs of the administration of the reserve fund
  - (c) Expert or professional services rendered in connection with the investigation, adjustment or settlement of claims, actions or judgments relating to claims for accrued employee benefits.
- Who May Create:** Municipal corporations (counties, cities, towns, villages), fire districts and other district corporations, school districts (except a school district in a city with a population of 125,000 or more), boards of cooperative educational services, and special improvement districts governed by a separate board of commissioners.
- How to Create and Use:** Created by resolution of the governing board. A referendum is not required either to create or expend moneys from the reserve.
- Sources of Revenue:** Budgetary appropriations, amounts from certain other reserve funds subject to permissive referendum, other funds that may be legally appropriated.
- Special Provisions:** No expenditure shall be made from an employee benefit accrued liability reserve fund for any employee benefit for which a reserve fund has already been established under any other provision of law. However, if a municipal corporation has previously established a reserve fund for a type of accrued employee benefits for which expenditures may be made from the employee benefit accrued liability reserve fund, the municipal corporation may, by resolution, discontinue such other reserve fund and transfer any unexpended balance to the employee benefit accrued liability reserve fund, subject to certain limitations.

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<sup>16</sup> “Employee benefits” for this purpose means the authorized “cash payment of the monetary value of accrued and accumulated but unused and unpaid sick leave, personal leave, holiday leave, vacation time, time allowances granted in lieu of overtime compensation and any other forms of payment for accrued but unliquidated time earned by municipal employees and payable to municipal employees upon termination of service, whether by retirement or otherwise ...” (GML Section 6-p[1][b]). Note that lump sum payments upon separation from service that are calculated in a manner unrelated to accrued, unliquidated leave time credits are not payable from the employee benefit accrued liability reserve fund (2006 Op St Comp No. 2006-8, at 19). The fund also may not be used to pay a local government’s cost for health insurance for retirees (see 2004 Ops St Comp No. 2004-8, at 23).

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**Use of Unexpended Balances:** If the governing body determines that such fund is no longer needed, any remaining moneys may be transferred to any other reserve fund authorized by the General Municipal Law (supported by the same tax base) or, in the case of school districts, a reserve fund established under Education Law Section 3651, but only to the extent that the moneys in the employee benefit accrued liability reserve fund exceed a sum sufficient to pay all liabilities incurred or accrued against the employee benefit accrued liability fund, as certified to the governing board by the fiscal and legal officers of the local government prior to the discontinuance of the fund.

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### Retirement Contribution Reserve Fund (GML Section 6-r)

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**Purpose:** For the payment of “retirement contributions,” which are defined as all or any portion of the amount payable to either the New York State and Local Employees’ Retirement System or the New York State and Local Police and Fire Retirement System, pursuant to Sections 17 or 317 of the Retirement and Social Security Law.

**Who May Create:** Municipal corporations (counties, cities, towns, villages), school districts (except a school district in a city with a population of 125,000 or more), boards of cooperative educational services, fire districts and other district corporations, police districts, and special improvement districts governed by a separate board of commissioners, which are “participating employers,” as defined in Retirement and Social Security Law Sections 2(20) or 302(20).

**How to Create and Use:** Created, and expenditures authorized, by resolution of the governing board to finance retirement contributions. A referendum is not required either to create or expend moneys from the reserve.

**Sources of Funds:**

- (a) Budgetary appropriations or taxes raised for the reserve
- (b) Revenues that are not required by law to be paid into any other fund or account
- (c) Amounts from reserve funds established pursuant to Sections 6-c, 6-d, 6-e, 6-f or 6-g of the General Municipal Law (supported by the same tax base), or pursuant to Education Law Section 3651 subject to public hearing requirements
- (d) Other funds that may be legally appropriated.

**Use of Unexpended Balances:** The board may authorize the transfer of a portion of the moneys in the retirement contribution reserve to a reserve fund established pursuant to Sections 6-c, 6-d, 6-e, 6-f or 6-g of the General Municipal Law (supported by the same tax base), or in the case of a school district, a reserve fund established pursuant to Section 3651 of the Education Law. Such a transfer is subject to a public hearing. If the board determines that the retirement contribution reserve is no longer needed, the board may terminate the fund by resolution. The resolution must transfer any moneys remaining in the retirement contribution reserve to one or more reserve funds established pursuant to Sections 6-c, 6-d, 6-e, 6-f or 6-g of the General Municipal Law (supported by the same tax base), or in the case of a school district, one or more reserve funds established pursuant to Section 3651 of Education Law.

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## Reserves Authorized by Other Statutes

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### Education Law – School Districts/BOCES

- Property Loss and Liability Claims - Sections 1709 [8-c] (school districts), 1950[4][cc] (BOCES)
- Reserve (Capital Purposes/Tax Certiorari) - Section 3651 (school districts)
- Tax Reduction (sale of real property) - Sections 1604[36], 1709[37] (school districts)
- Career Education Instructional Equipment - Section 1950 [4] [cc] (BOCES)

### Town Law – Suburban Towns Only

- General Reserve - For Capital Purposes - Section 55
- Reserve for Improvement Districts - For Capital Purposes - Section 55-a
- Judgments and Claims - Section 55-b

### County Law – Counties Only

- Tax and Revenue Anticipation Revolving Fund – Section 372

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### Property Loss Reserve and Liability Reserve Fund (Education Law Sections 1709[8-c], 1950[4][cc])

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**Purpose:** To establish and maintain a program of reserves to cover property loss and liability claims.

**Who May Create:** Most school districts, boards of cooperative educational services (BOCES).

**How to Create and Use:** Created by resolution of the governing board and used to pay for property loss and liability claims. Separate funds must be established for property loss and for liability claims and the separate identity of each fund must be maintained. There are no referendum requirements to create the funds or expend money from the funds for property loss and liability claims.

**Source of Funds:** Budgetary appropriations.

**Special Provisions:** For school districts, the total amount of reserves cannot exceed 3 percent of the annual budget (exclusive of any planned balance presently authorized) or \$15,000, whichever is larger. For BOCES, the total amount of reserves cannot exceed 3 percent of the annual budget. Neither a school district nor a BOCES reserve may be reduced below total amounts estimated to be necessary to cover incurred but unsettled claims or suits, including related expenses, other than by payment of losses for which such amounts were established.