

2014 -- S 2778

LC005105

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO TOWNS AND CITIES - BUDGET COMMISSIONS

Introduced By: Senators Ruggerio, Goodwin, Pearson, Lombardi, and Gallo

Date Introduced: March 19, 2014

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-9-1, 45-9-2, 45-9-3, 45-9-5, 45-9-6 and 45-9-7 of the General
2 Laws in Chapter 45-9 entitled "Budget Commissions" are hereby amended to read as follows:

3 **45-9-1. Declaration of policy and legal standard. --** It shall be the policy of the state to
4 provide a mechanism for the state to work with cities, ~~and~~ towns and fire districts undergoing
5 financial distress that threatens the fiscal well-being, public safety and welfare of such cities, ~~and~~
6 towns and fire districts, or other cities and towns or the state, with the state providing varying
7 levels of support and control depending on the circumstances. The powers delegated by the
8 General Assembly in this chapter shall be carried out having due regard for the needs of the
9 citizens of the state and of the city, ~~or town,~~ or fire district, and in such a manner as will best
10 preserve the safety and welfare of citizens of the state and their property, and the access of the
11 state and its municipalities to capital markets, all to the public benefit and good.

12 **45-9-2. Definitions. --** As used in this chapter the following words shall, unless the
13 context clearly requires otherwise, have the following meanings:

14 (1) "Budget commission", means the budget and review commission established under
15 sections 45-9-5 and 45-9-6.

16 (2) "Charter", means the home rule charter or the legislative charter of any city or town.

17 (3) "Division of municipal finance", means the division of municipal finance in the
18 department of revenue or any successor department or agency.

19 (4) "Director of revenue", means the director of the department of revenue.

1 (5) "Elected chief executive officer", means in cities and towns having a popularly
2 elected chief executive officer, the popularly elected chief executive officer, and in cities and
3 towns where there is no popularly elected chief executive officer, the president of the city or town
4 council.

5 (6) "Fiscal overseer", means the financial overseer appointed under section 45-9-3.

6 (7) "General Treasurer", means the general treasurer of the state.

7 (8) "Municipal budget", means the fiscal year operating budget of the city, ~~or~~ town, or
8 fire district, inclusive of the school department budget and all other departments.

9 (9) "Officer", means the chief administrative and financial officer appointed under
10 section 45-9-10 after abolition of a fiscal overseer or a budget commission or a receiver in a city
11 or town.

12 (10) "Receiver", means the receiver appointed pursuant to sections 45-9-7 or 45-9-8.

13 (11) "School committee", means the school committee of the city or town, but shall not
14 mean or include a regional school district committee.

15 (12) "State Aid", means the funds made available to cities and towns:

16 (i) As state aid pursuant to chapter 45-13 of the general laws, but specifically excluding
17 reimbursements to cities and towns for the cost of state mandates pursuant to section 45-13-9;

18 (ii) As school operations aid provided for in sections 16-7-5 -- 16-7-34.3 of the general
19 laws and as school housing aid pursuant to sections 16-7-35 -- 16-7-47 of the general laws, but
20 subject to any pledge to bonds issued to finance school projects by the Rhode Island health and
21 educational building corporation;

22 (iii) In replacement of motor vehicle and trailer excise taxes pursuant to chapter 44-34.1
23 of the general laws;

24 (iv) From the public service corporation tax pursuant to chapter 44-13 of the general
25 laws;

26 (v) From the local meal and beverage tax pursuant to section 44-18-18.1 of the general
27 laws and the hotel tax pursuant to section 44-18-36.1 of the general laws; and

28 (vi) Pursuant to all acts supplementing such chapters listed in subdivisions (i) through (v)
29 above or pursuant to any other law hereafter enacted providing for funds to municipalities in lieu
30 of, or in substitution for, or in addition to the funds provided pursuant to acts supplementing such
31 chapters listed in subdivisions (i) through (v);

32 (13) "City or town" includes fire districts.

33 **45-9-3. Appointment and duties of fiscal overseer.** -- (a) Upon joint request by a city's
34 or town's elected chief executive officer and city or town council, or for a fire district, the

1 [governing body as established by charter](#), which request is approved by the division of municipal
2 finance and the auditor general, or in absence of such a request, in the event that the director of
3 revenue, in consultation with the auditor general, makes any two (2) or more of the findings set
4 forth in subsection (b), the director of revenue may appoint a fiscal overseer for the city or town
5 to assess the ability of the city or town government to manage the city's or town's fiscal
6 challenges.

7 (b) The director of revenue may appoint a fiscal overseer if the director finds in his or
8 her sole discretion that any two (2) of the following events have occurred which are of such a
9 magnitude that they threaten the fiscal well-being of the city or town, diminishing the city or
10 town's ability to provide for the public safety or welfare of the citizens of the city or town:

11 (1) The city or town projects a deficit in the municipal budget in the current fiscal year
12 and again in the upcoming fiscal year;

13 (2) The city or town has not filed its audits with the auditor general by the deadlines
14 required by law for two (2) successive fiscal years (not including extensions authorized by the
15 auditor general);

16 (3) The city or town has been downgraded by one of the nationally recognized statistical
17 rating organizations;

18 (4) The city or town is otherwise unable to obtain access to credit markets on reasonable
19 terms in the sole judgment of the director of revenue.

20 (5) The city or town does not promptly respond to requests made by the director of
21 revenue, or the auditor general, or the chairpersons of the house and/or senate finance committees
22 for financial information and operating data necessary to assess the fiscal condition of the city or
23 town in the sole judgment of the director of revenue.

24 (c) The director of revenue may also appoint a fiscal overseer if a city or town fails to
25 comply with the requirements of sections 45-12-22.1 -- 45-12-22.5 of the general laws.

26 (d) The fiscal overseer shall without limitation:

27 (1) Recommend to the elected chief executive officer, [fire district board of directors](#), city
28 or town council and school committee sound fiscal policies for implementation;

29 (2) Supervise all financial services and activities;

30 (3) Advise the assessors, director of finance, city or town treasurer, purchasing agent and
31 employees performing similar duties but with different titles;

32 (4) Provide assistance in all matters related to municipal [or fire district](#) financial affairs;

33 (5) Assist in development and preparation of the municipal budget, all department
34 budgets and spending plans;

1 (6) Review all proposed contracts and obligations;
2 (7) Monitor the expenditures of all funds;
3 (8) Approve the annual or supplemental municipal budgets of the city or town and all of
4 its departments; and

5 (9) Report monthly to the director of revenue, the auditor general, the governor and the
6 chairpersons of the house finance and senate finance committees on the progress made towards
7 reducing the municipality's [or fire district's](#) deficit and otherwise attaining fiscal stability.

8 (e) All department budgets and requests for municipal budget transfers shall be
9 submitted to the fiscal overseer for review and approval.

10 (f) The city or town shall annually appropriate amounts sufficient for the proper
11 administration of the fiscal overseer and staff, as determined in writing by the division of
12 municipal finance. If the city or town fails to appropriate such amounts, the division of municipal
13 finance shall direct the general treasurer to deduct the necessary funds from the city's or town's
14 distribution of state aid and shall expend those funds directly for the benefit of the fiscal overseer
15 and staff.

16 (g) Within one hundred twenty (120) days of being appointed by the director of revenue,
17 the fiscal overseer shall develop a three (3)-year operating and capital financial plan to achieve
18 fiscal stability in the city or town. The plan shall include a preliminary analysis of the city's or
19 town's financial situation and the fiscal overseer's initial recommendations to immediately begin
20 to address the city's or town's operating and structural deficits. The fiscal overseer shall have the
21 power to compel operational, performance or forensic audits, or any other similar assessments.
22 The fiscal overseer shall have the power, at the expense of the city or town, to employ, retain,
23 supervise such managerial, professional and clerical staff as are necessary to carry out the
24 responsibility of fiscal overseer, subject to the approval of the division of municipal finance;
25 provided, however, that the fiscal overseer shall not be subject to chapter 37-2 or chapter 45-55 of
26 the general laws in employing such staff.

27 **45-9-5. Reports of fiscal overseer and appointment of budget and review**

28 **commission.** -- (a) The fiscal overseer shall report in writing to the division of municipal finance
29 if the fiscal overseer concludes that the city or town: (1) Is unable to present a balanced municipal
30 budget; (2) Faces a fiscal crisis that poses an imminent danger to the safety of the citizens of the
31 city or town or their property; (3) Will not achieve fiscal stability without the assistance of a
32 budget commission; or (4) That the tax levy of the fiscal year should not be approved.

33 (b) If the fiscal overseer believes, at any time, that a budget commission should be
34 appointed, the fiscal overseer may report that belief to the division of municipal finance.

1 (c) If the fiscal overseer reports to the division of municipal finance under subsections
2 (a) or (b), the director of revenue may immediately abolish the fiscal overseer and appoint a
3 budget commission.

4 (d) A budget commission shall have all of the powers and duties set forth in sections 45-
5 9-3 and 45-9-6.

6 (e) If a budget commission has not been appointed and if the division of municipal
7 finance determines that the city or town has taken steps necessary to achieve long-term fiscal
8 sustainability and no longer requires active state oversight, the director of revenue may abolish
9 the fiscal overseer.

10 (f) If the division of municipal finance notifies the director of revenue in writing that the
11 city or town is unable to achieve a balanced municipal budget, then the director of revenue shall
12 establish a budget commission.

13 (g) Upon joint request by a city's or town's elected chief executive officer and city or
14 town council, [or, for a fire district, the governing body as established by charter](#), which request is
15 approved by the division of municipal finance, the director of revenue, in consultation with the
16 auditor general, may establish a budget commission for such city or town.

17 **45-9-6. Composition of budget commission.** -- (a) If a budget commission is established
18 under section 45-9-5 or section 45-12-22.7, it shall consist of five (5) members: three (3) of
19 whom shall be designees of the director of revenue, one of whom shall be the elected chief
20 executive officer of the city and one of whom shall be the president of the city or town council. In
21 cities or towns in which the elected chief executive officer for purposes of this chapter is the
22 president of the city or town council, one member shall be the appointed city or town manager or
23 town administrator (or, if none, the city or town chief financial officer) as the fifth (5th) member.
24 [For a fire district, it shall consist of five \(5\) members: Three \(3\) of the members of the budget](#)
25 [commission shall be designees of the director of revenue; One shall be the chairperson of the](#)
26 [district's governing body; and one shall be the fire chief of the district.](#) The budget commission
27 shall act by a majority vote of all its members. The budget commission shall initiate and assure
28 the implementation of appropriate measures to secure the financial stability of the city or town.
29 The budget commission shall continue in existence until the director of revenue abolishes it.

30 The budget commission shall be subject to chapter 36-2 of the general laws, "Access to
31 Public Records," and chapter 36-14 of the general laws, "Code of Ethics". The budget
32 commission shall be subject to chapter 42-46 of the general laws "Open Meetings" when meeting
33 to take action on the following matters:

34 (1) Levy and assessment of taxes;

- 1 (2) Rulemaking or suspension of rules;
- 2 (3) Adoption of a municipal budget;
- 3 (4) Approval of collective bargaining agreements and amendments to collective
4 bargaining agreements; and
- 5 (5) Making a determination under section 45-9-7 that the powers of the budget
6 commission are insufficient to restore fiscal stability to the city or town.
- 7 (b) Action by the budget commission under this chapter shall constitute action by the
8 city or town for all purposes under the general laws, under any special law and under the city or
9 town charter.
- 10 (c) Until the budget commission ceases to exist, no appropriation, borrowing
11 authorization, transfer, or other municipal spending authority shall take effect until approved by
12 the budget commission. The budget commission shall approve all appropriations, borrowing
13 authorizations, transfers and other municipal spending authorizations, in whole or part.
- 14 (d) In addition to the authority and powers conferred elsewhere in this chapter, and
15 notwithstanding any city or town charter provision or local ordinance to the contrary, the budget
16 commission shall have the power to:
- 17 (1) Amend, formulate and execute the annual municipal budget and supplemental
18 municipal budgets of the city or town, including the establishment, increase or decrease of any
19 appropriations and spending authority for all departments, budget commissions, committees,
20 agencies or other units of the city or town; provided, however, that notwithstanding sections 16-2-
21 9 and 16-2-18 of the general laws, this clause shall fully apply to the school department and all
22 school spending purposes;
- 23 (2) Implement and maintain uniform budget guidelines and procedures for all
24 departments;
- 25 (3) Amend, formulate and execute capital budgets, including to amend any borrowing
26 authorization, or finance or refinance any debt in accordance with the law;
- 27 (4) Amortize operational deficits in an amount as the director of revenue approves and
28 for a term not longer than five (5) years;
- 29 (5) Develop and maintain a uniform system for all financial planning and operations in
30 all departments, offices, boards, commissions, committees, agencies or other units of the city's or
31 town's government;
- 32 (6) Review and approve or disapprove all proposed contracts for goods or services;
- 33 (7) Notwithstanding any general or special law to the contrary, establish, increase or
34 decrease any fee, rate or charge, for any service, license, permit or other municipal activity,

1 otherwise within the authority of the city or town;

2 (8) Appoint, remove, supervise and control all city and town employees and have control
3 over all personnel matters other than disciplinary matters; provided, that the budget commission
4 shall hold all existing powers to hire and fire and set the terms and conditions of employment
5 held by other employees or officers of the city or town; provided, further, that the budget
6 commission shall have the authority to exercise all powers otherwise available to a municipality
7 or fire district regarding contractual obligations during a fiscal emergency; provided, further, that
8 no city or town employee or officer shall hire, fire, transfer or alter the compensation or benefits
9 of a city or town employee except with the written approval of the budget commission; and
10 provided, further, that the budget commission may delegate or otherwise assign these powers
11 with the approval of the director of revenue;

12 (9) Alter or eliminate the compensation and/or benefits of elected officials of the city or
13 town to reflect the fiscal emergency and changes in the responsibilities of the officials as
14 provided by this chapter;

15 (10) Employ, retain and supervise such managerial, professional and clerical staff as are
16 necessary to carry out its responsibilities; provided, however, that such employment, retention
17 and supervisory decisions are subject to the approval of the director of revenue; provided, further,
18 that the budget commission shall not be subject to chapter 37-2 or chapter 45-55 of the general
19 laws in employing such staff; provided, further, that the budget commission, with the approval of
20 the director of revenue, shall have authority to set the compensation, terms and conditions of
21 employment of its own staff; provided, further, that the city or town shall annually appropriate
22 amounts sufficient for the compensation of personnel hired under this clause as determined and
23 fixed by the budget commission; provided, further, that if the city or town fails to appropriate
24 such amounts, the director of revenue shall direct the general treasurer to deduct the necessary
25 funds from the city's or town's distribution of state aid and shall expend those funds directly for
26 the benefit of the budget commission;

27 (11) Reorganize, consolidate or abolish departments, commissions, authorities, boards,
28 offices or functions of the city or town, in whole or in part, and to establish such new
29 departments, commissions, authorities, boards, offices or functions as it deems necessary, and to
30 transfer the duties, powers, functions and appropriations of one department, commission, board,
31 office or other unit to another department, commission, authority, board or office and in
32 connection therewith remove and appoint new members for any such commission, authority,
33 board or department which appointees shall serve the remainder of any unexpired term of their
34 predecessor;

1 (12) Appoint, in consultation with the director of revenue, persons to fill vacancies on
2 any authority, board, committee, department or office;

3 (13) Sell, lease or otherwise transfer real property and other assets of the city or town
4 with the approval of the director of revenue;

5 (14) Purchase, lease or otherwise acquire property or other assets on behalf of the city or
6 town with the approval of the director of revenue;

7 (15) Enter into contracts, including, but not limited to, contracts with other governmental
8 entities, and such other governmental entities are hereby authorized to enter into such contracts;

9 (16) Adopt rules and regulations governing the operation and administration of the city
10 or town which permit the budget commission to effectively carry out this chapter under
11 subsection 42-35-3(b) of the general laws;

12 (17) Alter or rescind any action or decision of any municipal officer, employee, board,
13 authority or commission within fourteen (14) days after receipt of notice of such action or
14 decision;

15 (18) Suspend, in consultation with the director of revenue any rules and regulations of
16 the city or town;

17 (19) Notwithstanding any other general law, special act, charter provision or ordinance,
18 and in conformity with the reserved powers of the general assembly pursuant to Article XIII,
19 section 5 of the Constitution of the state, a budget commission is authorized to issue bonds, notes
20 or certificates of indebtedness to fund the deficit of a city or town without regard to section 45-
21 12-22.4 of the general laws, to fund cash flow and to finance capital projects. Bonds, notes or
22 certificates of indebtedness issued under authority of this chapter shall be general obligation
23 bonds backed by the full faith and credit and taxing power of the city or town; provided, however,
24 that the budget commission may pledge future distributions of state aid for the purpose of retiring
25 such bonds, notes or certificates of indebtedness. If any state aid is so pledged, the budget
26 commission shall execute on behalf of the city or town a trust agreement with a corporate trustee,
27 which may be any bank or trust company having the powers of a trust company within the state,
28 and any state aid so pledged shall be paid by the general treasurer directly to the trustee to be held
29 in trust and applied to the payment of principal and interest on such bonds, notes or certificates of
30 indebtedness; any earnings derived from the investment of such pledged aid shall be applied as
31 needed to the payment of that principal and interest and for trustee's fees and related expenses,
32 with any excess to be paid to the city or town. Bonds, notes or certificates of indebtedness
33 authorized under authority of this chapter shall be executed on behalf of the city or town by a
34 member of the commission and, except as provided for in this chapter, may be subject to the

1 provisions of chapter 45-12 of the general laws so far as apt, or may be subject to the provisions
2 of any special bond act enacted authorizing the issuance of bonds of a city or town so far as apt,
3 provided, however that any bonds or notes issued for school purposes must be approved by the
4 general assembly in order to qualify for school housing aid as set forth in chapter 16-7 of the
5 general laws; and

6 (20) Exercise all powers under the general laws and this chapter or any special act, any
7 charter provision or ordinance that any elected official of the city or town may exercise, acting
8 separately or jointly; provided, however, that with respect to any such exercise of powers by the
9 budget commission, the elected officials shall not rescind or take any action contrary to such
10 action by the budget commission so long as the budget commission continues to exist.

11 (21) Certify to the Rhode Island department of revenue the need to advance payments of
12 the state's basic education program under chapter 7 of title 16 of the Rhode Island general laws in
13 the amount determined by the budget commission. Said amount shall be advanced, subject to
14 approval of the director of the department of revenue, notwithstanding any general or public law
15 to the contrary. The director of the department of revenue shall provide notice of any advance
16 payments to the fiscal advisors of the house and senate finance committees. The state general
17 treasurer shall deduct the estimated cost to the state's general fund resulting from any advance
18 payments.

19 **45-9-7. Appointment of receiver.** -- If the budget commission established by section 45-
20 9-5 concludes that its powers are insufficient to restore fiscal stability to the city or town, it shall
21 so notify the director of revenue, and shall forward to the director of revenue a statement of the
22 reasons why it has been unable to restore fiscal stability to the city or town. Upon receipt of such
23 statement, the director of revenue shall terminate the existence of the budget commission,
24 notwithstanding section 45-9-5, and the director of revenue shall appoint a receiver for the city or
25 town for a period as the director of revenue may determine. The director of revenue may, at any
26 time, and without cause, remove the receiver and appoint a successor, or terminate the
27 receivership.

28 (b) The receiver shall have the following powers:

29 (1) All powers of the fiscal overseer and budget commission under sections 45-9-2 and
30 45-9-6. Such powers shall remain through the period of any receivership;

31 (2) The power to exercise any function or power of any municipal [or fire district](#) officer
32 or employee, board, authority or commission, whether elected or otherwise relating to or
33 impacting the fiscal stability of the city or town including, without limitation, school and zoning
34 matters; and

1 (3) The power to file a petition in the name of the city or town under Chapter 9 of Title
2 11 of the United States Code, and to act on the city's or town's behalf in any such proceeding.

3 (c) Upon the appointment of a receiver, the receiver shall have the right to exercise the
4 powers of the elected officials under the general laws, special laws and the city or town charter
5 and ordinances relating to or impacting the fiscal stability of the city or town including, without
6 limitation, school and zoning matters; provided, further, that the powers of the receiver shall be
7 superior to and supersede the powers of the elected officials of the city or town shall continue to
8 be elected in accordance with the city or town charter, and shall serve in an advisory capacity to
9 the receiver. The receiver shall allow the city's or town's elected officials to serve their
10 constituents by providing advice to the receiver on the matters relating to the operation of the city
11 or town. In the event a conflict arises between the chief elected official or city or town council
12 and the receiver, the receiver's decision shall prevail. The director of revenue shall determine the
13 salary of the receiver, which salary shall be payable by the city or town.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TOWNS AND CITIES - BUDGET COMMISSIONS

1 This act would provide distressed fire districts with financial assistance through the
2 appointment of a fiscal overseer, budget commission, or receiver.

3 This act would take effect upon passage.

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