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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO CITIES AND TOWNS -- PROVIDING FINANCIAL STABILITY

Introduced By: Senator Daniel DaPonte

Date Introduced: June 09, 2010

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

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

3 ~~**45-9-1. Composition and powers.** -- If the general assembly at any time vests the
4 authority to impose taxes and the authority to spend money in any town or city in a budget
5 commission, that commission shall consist of not less than five (5) nor more than fifteen (15)
6 electors, of any qualifications and with any powers that the general assembly may prescribe, to be
7 elected by the qualified electors of the town or city.~~

8 ~~**45-9-2. Town approval for establishment.** -- No budget commission shall be created for
9 a town, as distinguished from a city, unless the electors of the town, in a regularly called financial
10 town meeting, notice of the proposition appearing in the call for the meeting, by a majority vote
11 of those present and voting, vote to submit the proposition to the electors of the town qualified to
12 vote upon any proposition to impose a tax or for the expenditure of money, at the next regular
13 election of town officers, and unless the electors at the election by a majority vote of those
14 present and voting approve the proposition.~~

15 ~~**45-9-3. Budget and Review Commission.** -- (a) (1) Notwithstanding the provisions of
16 sections 45-9-1 and 45-9-2 or any other general or special laws of the state or charter provisions,
17 the general assembly vests in the director of the state department of revenue (hereinafter
18 "director") the power to authorize, create, and establish a budget and review commission in any
19 town or city where the director finds that the town or city's bond rating has been assigned by one~~

1 ~~or more recognized rating agencies to a rating which is below investment grade and there is an~~
2 ~~imminent threat of default on any or all of its debt obligations.~~

3 ~~-(2) Whereupon the director of revenue shall authorize said budget and review~~
4 ~~commission, to convene specifically to deal with the aforementioned town or city, that shall~~
5 ~~consist of the chief executive officer of the town or city; the president of the town or city council;~~
6 ~~three (3) public members from the affected municipality, at least one of whom shall be qualified~~
7 ~~by training or experience in the fields of finance or accounting, to be appointed by the governor,~~
8 ~~with the advice and consent of the senate; two (2) ex officio state officials who shall be the~~
9 ~~director, or his or her designee from the department of revenue; and one member of the public~~
10 ~~finance management board to be appointed by the governor who, in making his or her~~
11 ~~appointment, shall give due consideration to the recommendation of the chair of the public~~
12 ~~finance management board, with the advice and consent of the senate.~~

13 ~~-(3) No one shall be eligible for appointment unless he or she is a resident of this state.~~

14 ~~-(4) Where there is no chief executive officer of the town or city, the vice president of the~~
15 ~~town council or city council shall serve on the commission. The director of the state department~~
16 ~~of revenue shall serve as chair of the commission.~~

17 ~~-(5) The commission may elect from among its members such other officers as they deem~~
18 ~~necessary.~~

19 ~~-(6) Four (4) or more members of the commission shall constitute a quorum and the vote~~
20 ~~of a majority of said quorum at any meeting shall be required for action. No vacancy in the~~
21 ~~membership of the commission shall impair the right of a quorum to exercise all of the rights and~~
22 ~~perform all of the duties of the commission.~~

23 ~~-(7) Newly appointed and qualified commission members of the municipality shall,~~
24 ~~within six (6) weeks of their qualification or designation, attend a training course that is~~
25 ~~developed with commission approval and conducted by the chair or his or her designee and shall~~
26 ~~include instruction in the subject area of chapter 9 of this title and chapters 46 of title 42, chapter~~
27 ~~14 of title 36, and chapter 2 of title 38 of Rhode Island general laws; and the commission's rules~~
28 ~~and regulations.~~

29 ~~-(8) Public members of the commission shall be removable by the governor pursuant to~~
30 ~~section 36-1-7 for cause only, and removal solely for partisan or personal reasons unrelated to~~
31 ~~capacity or fitness for the office shall be unlawful.~~

32 ~~-(9) The powers of the budget and review commission shall be to impose taxes and to~~
33 ~~make appropriations for the expenditure of moneys, for the purpose of adopting a budget and, for~~
34 ~~the purpose of maintaining a balanced budget, the budget and review commission shall make~~

1 ~~reductions or suspensions in the appropriations to any or all departments, offices or other~~
2 ~~agencies of town or city government as will prevent a deficit for the fiscal year. The budget and~~
3 ~~review commission shall be subject to the open meetings and open records law. The budget and~~
4 ~~review commission shall remain in office until that time as the chief executive officer of the town~~
5 ~~or city and the town or city council petitions the director of the state department of revenue to~~
6 ~~disband the budget and review commission.~~

7 ~~-(b) (1) The budget and review commission shall commence its work by examining the~~
8 ~~financial and operating condition of the city or town and shall also advise the chief executive~~
9 ~~officer, city or town council and the fiscal officials of the city or town on the formulation of~~
10 ~~adequate budget and budgetary controls.~~

11 ~~-(2) Reporting Requirements. Within ninety (90) days of its being disbanded as~~
12 ~~provided for in section 45-9-3(a)(9), the budget and review commission shall approve and issue a~~
13 ~~report detailing its findings and recommendations. This report shall be submitted to the governor,~~
14 ~~the speaker of the house of representatives, the president of the senate, and the secretary of state~~
15 ~~of its activities during that fiscal year. The report shall provide: an operating statement~~
16 ~~summarizing meetings or hearings held, subjects addressed, decisions rendered, rules or~~
17 ~~regulations promulgated, studies conducted, policies and plans developed, approved, or modified,~~
18 ~~and programs administered or initiated; a consolidated financial statement of all funds received~~
19 ~~and expended including the source of the funds, a listing of any staff supported by these funds,~~
20 ~~and a summary of any clerical, administrative or technical support received; a summary of~~
21 ~~performance during the course of its existence, including accomplishments, shortcomings and~~
22 ~~remedies; a synopsis of hearings, complaints, suspensions, or other legal matters related to the~~
23 ~~authority of the board; a summary of any training courses held pursuant to section 45-9-3(a)(7); a~~
24 ~~briefing on anticipated activities in the upcoming fiscal year; and findings and recommendations~~
25 ~~for improvements. The report shall be posted electronically on the general assembly and the~~
26 ~~secretary of state's websites as prescribed in section 42-20-8.2.~~

27 ~~-(3) The examination and report shall be completed and published no sooner than three~~
28 ~~(3) weeks after the formation of the budget and review commission. The commission shall~~
29 ~~exercise any of the powers set forth in this section only after the examination and publication of~~
30 ~~the commission's report.~~

31 **45-9-1. Declaration of Policy and Legal Standard.** -- It shall be the policy of the state
32 to provide a mechanism for the state to work with cities and towns undergoing financial distress
33 that threatens the fiscal well-being, public safety and welfare of such cities and towns, or other
34 cities and towns or the state, with the state providing varying levels of support and control

1 depending on the circumstances. The powers delegated by the General Assembly in this chapter
2 shall be carried out having due regard for the needs of the citizens of the state and of the city or
3 town, and in such a manner as will best preserve the safety and welfare of citizens of the state and
4 their property, and the access of the state and its municipalities to capital markets, all to the public
5 benefit and good.

6 **45-9-2. Definitions.** -- As used in this chapter the following words shall, unless the
7 context clearly requires otherwise, have the following meanings:

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

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

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

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

14 (5) "Elected chief executive officer", means in cities and towns having a popularly
15 elected chief executive officer, the popularly elected chief executive officer, and in cities and
16 towns where there is no popularly elected chief executive officer, the president of the city or town
17 council.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **45-9-3. Appointment and duties of fiscal overseer.** – (a) Upon joint request by a city’s
12 or town’s elected chief executive officer and city or town council, which request is approved by
13 the division of municipal finance, or in absence of such a request, in the event that the director of
14 revenue makes any two (2) or more of the findings set forth in subsection (b), the director of
15 revenue may appoint a fiscal overseer for the city or town to assess the ability of the city or town
16 government to manage the city’s or town’s fiscal challenges.

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

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

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

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

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

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

34 (c) The director of revenue may also appoint a fiscal overseer if a city or town fails to

1 comply with the requirements of sections 45-12-22.1 – 45-12-22.5 of the general laws.

2 (d) The fiscal overseer shall without limitation:

3 (1) Recommend to the elected chief executive officer, city or town council and school
4 committee sound fiscal policies for implementation;

5 (2) Supervise all financial services and activities;

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

8 (4) Provide assistance in all matters related to municipal financial affairs;

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

11 (6) Review all proposed contracts and obligations;

12 (7) Monitor the expenditures of all funds;

13 (8) Approve the annual or supplemental municipal budgets of the city or town and all of
14 its departments; and

15 (9) Report monthly to the director of revenue, the auditor general, the governor and the
16 chairpersons of the house finance and senate finance committees on the progress made towards
17 reducing the municipality's deficit and otherwise attaining fiscal stability.

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

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

26 (g) Within one hundred twenty (120) days of being appointed by the director of revenue,
27 the fiscal overseer shall develop a three (3)-year operating and capital financial plan to achieve
28 fiscal stability in the city or town. The plan shall include a preliminary analysis of the city's or
29 town's financial situation and the fiscal overseer's initial recommendations to immediately begin
30 to address the city's or town's operating and structural deficits. The fiscal overseer shall have the
31 power to compel operational, performance or forensic audits, or any other similar assessments.
32 The fiscal overseer shall have the power, at the expense of the city or town, to employ, retain,
33 supervise such managerial, professional and clerical staff as are necessary to carry out the
34 responsibility of fiscal overseer, subject to the approval of the division of municipal finance;

1 provided, however, that the fiscal overseer shall not be subject to chapter 37-2 of chapter 45-55 of
2 the general laws in employing such staff.

3 **45-9-4. Approval of tax levy.** – A city or town which is subject to the jurisdiction of a
4 fiscal overseer, or a budget commission may not levy property taxes or motor vehicle excise taxes
5 without prior approval of the division of municipal finance. Before the city or town which is
6 subject to the jurisdiction of a fiscal overseer, or a budget commission shall send out tax bills, the
7 city or town shall submit to the division of municipal finance a copy of its adopted municipal
8 budget and such supporting revenue and expenditure information as the division of municipal
9 finance shall prescribe for the succeeding fiscal year. The adopted municipal budget and such
10 supporting revenue and expenditure information as the division of municipal finance may
11 prescribe, shall be submitted to the division of municipal finance no later than ten (10) days after
12 the adoption of the budget. The division of municipal finance shall ascertain whether the budget
13 for that fiscal year contains reasonable revenues from taxation and other sources to meet the
14 appropriations and other amounts required by law to be raised, and the division of municipal
15 finance shall report its conclusion to the director of revenue. If the director of revenue determines
16 that the municipal budget as presented does not contain reasonable revenues from taxation and
17 other sources to meet appropriations and other amounts required by law to be raised, the director
18 of revenue shall certify this determination in writing and provide notice of the determination with
19 a copy of the certificate to the auditor general, the governor and the chairpersons of the house and
20 senate finance committees; and notify the city or town that its tax levy has not been approved and
21 that the city or town is not authorized to mail or otherwise transmit tax bills to city or town
22 taxpayers. If the director of revenue has made the foregoing determination, the city or town shall
23 prepare a revised budget for review and approval by the director of revenue.

24 The city or town shall submit the reports required by section 45-12-12.2 to the director of
25 revenue, the division of municipal finance, the auditor general, the governor and the chairpersons
26 of the house and senate finance committees.

27 The director of revenue may waive any reporting or filing requirements contained in this
28 section.

29 **45-9-5. Reports of fiscal overseer and appointment of budget and review**
30 **commission.** – (a) The fiscal overseer shall report in writing to the division of municipal finance
31 if the fiscal overseer concludes that the city or town: (1) Is unable to present a balanced
32 municipal budget; (2) Faces a fiscal crisis that poses an imminent danger to the safety of the
33 citizens of the city or town or their property; (3) Will not achieve fiscal stability without the

1 assistance of a budget commission; or (4) That the tax levy of the fiscal year should not be
2 approved.

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

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

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

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

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

17 (g) Upon joint request by a city's or town's elected chief executive officer and city or
18 town council, which request is approved by the division of municipal finance, the director of
19 revenue may establish a budget commission for such city or town.

20 **45-9-6. Composition of budget commission.** – (a) If a budget commission is established
21 under section 45-9-5 or section 45-12-22.7, it shall consist of five (5) members: three (3) of
22 whom shall be designees of the director of revenue, one of whom shall be the elected chief
23 executive officer of the city and one of whom shall be the president of the city or town council.
24 In cities or towns in which the elected chief executive officer for purposes of this chapter is the
25 president of the city or town council, one member shall be the appointed city or town manager or
26 town administrator as the fifth (5th) member. The budget commission shall act by a majority vote
27 of all its members. The budget commission shall initiate and assure the implementation of
28 appropriate measures to secure the financial stability of the city or town. The budget commission
29 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 45-9-6 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 city
8 or town for all purposes under the general laws, under any special law and under the city or town
9 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 and for such term as the director of
28 revenue approves on an annual basis;
- 29 (5) Develop and maintain a uniform system for all financial planning and operations in all
30 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, whether or not elected; provided, further,
6 that the budget commission shall have the authority to exercise all powers otherwise available to
7 a municipality 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 or
10 town which permit the budget commission to effectively carry out this chapter under subsection
11 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 the
16 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 a deficit of a city or town, to fund cash flow and to finance
21 capital projects. Bonds, notes or certificates of indebtedness issued under authority of this chapter
22 shall be general obligation bonds backed by the full faith and credit and taxing power of the city
23 or town; provided, however, that the budget commission may pledge future distributions of state
24 aid for the purpose of retiring such bonds, notes or certificates of indebtedness. If any state aid is
25 so pledged, the budget commission shall execute on behalf of the city or town a trust agreement
26 with a corporate trustee, which may be any bank or trust company having the powers of a trust
27 company within the state, and any state aid so pledged shall be paid by the general treasurer
28 directly to the trustee to be held in trust and applied to the payment of principal and interest on
29 such bonds, notes or certificates of indebtedness; any earnings derived from the investment of
30 such pledged aid shall be applied as needed to the payment of that principal and interest and for
31 trustee's fees and related expenses, with any excess to be paid to the city or town. Bonds, notes or
32 certificates of indebtedness authorized under authority of this chapter shall be executed on behalf
33 of the city or town by a member of the commission and, except as provided for in this chapter,
34 may be subject to the provisions of chapter 45-12 of the general laws so far as apt, or may be

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

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

10 **45-9-7. Appointment of Receiver.** – (a) If the budget commission established by section
11 45-9-5 concludes that its powers are insufficient to restore fiscal stability to the city or town, it
12 shall so notify the director of revenue, and shall forward to the director of revenue a statement of
13 the reasons why it has been unable to restore fiscal stability to the city or town. Upon receipt of
14 such statement, the director of revenue shall terminate the existence of the budget commission,
15 notwithstanding section 45-9-5, and the director of revenue shall appoint a receiver for the city or
16 town for a period as the director of revenue may determine. The director of revenue may, at any
17 time, and without cause, remove the receiver and appoint a successor, or terminate the
18 receivership.

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

20 (1) All powers of the fiscal overseer and budget commission under sections 45-9-2 and
21 45-9-6. Such powers shall remain through the period of any receivership;

22 (2) The power to exercise any function or power of any municipal officer or employee,
23 board, authority or commission, whether elected or otherwise relating to or impacting the fiscal
24 stability of the city or town; and

25 (3) The power to file a petition in the name of the city or town under Chapter 9 of Title
26 11 of the United States Code, and to act on the city's or town's behalf in any such proceeding.

27 (c) Upon the appointment of a receiver, the office of the elected chief executive officer
28 shall be abolished and the receiver shall exercise all the powers of the elected chief executive
29 officer under the general laws, special laws and the city or town charter and ordinances; provided,
30 however, that other elected officials of the city or town shall continue to be elected in accordance
31 with the city or town charter, and shall serve solely in an advisory capacity to the receiver.

32 The director of revenue shall determine the salary of the receiver, which salary shall be
33 payable by the city or town.

1 **45-9-8. Appointment of receiver in a fiscal emergency.** – In the event the director of
2 revenue determines his or her sole discretion, that a city or town is facing a fiscal emergency and
3 that circumstances do not allow for appointment of a fiscal overseer or a budget commission prior
4 to the appointment of a receiver, the director of revenue may appoint a receiver without having
5 first appointed a fiscal overseer or a budget commission.

6 **45-9-9. Collective bargaining agreements.** – Notwithstanding chapter 28-7 of the
7 general laws or any other general or special law or any charter or local ordinance to the contrary,
8 new collective bargaining agreements and any amendments to new or existing collective
9 bargaining agreements (collectively, “collective bargaining agreements”) entered into by the city
10 or town or the school department shall be subject to the approval of the fiscal overseer, budget
11 commission or receiver if the fiscal overseer, budget commission or receiver is in effect at the
12 time. No collective bargaining agreement shall be approved under this section unless the fiscal
13 overseer, budget commission or receiver provides written certification to the director of revenue
14 that after an evaluation of all pertinent financial information reasonably available, the city’s or
15 town’s financial resources and revenues are, and will continue to be, adequate to support such
16 collective bargaining agreement without a detrimental impact on the provision of municipal
17 services. A decision, by the fiscal overseer, budget commission or receiver, to disapprove of a
18 collective bargaining agreement under this section shall be made in a report to the parties;
19 provided, however, that the report shall specify the disapproved portions of the agreement and the
20 supporting reasons for the disapproval.

21 **45-9-10. Appointment of administration and finance officer upon abolition of fiscal**
22 **overseer, budget commission or receiver.** – (a) Notwithstanding any general or special law or
23 city or town ordinance to the contrary, this section shall apply upon abolition of the fiscal
24 overseer or a budget commission or a receiver established under this chapter, upon a
25 determination, in writing, by the director of revenue that the financial condition of the city or
26 town has improved to a level such that a fiscal overseer, a budget commission or a receiver is no
27 longer needed. In the event that a budget commission or receiver has removed elected officials
28 from office under the authority of section 45-9-6, there shall be a special election, unless the next
29 general election is less than six (6) months from the date of the director’s determination.

30 (b) For a period of five (5) years after the abolition of a fiscal overseer, or a budget
31 commission or a receiver in any city or town, there shall be in the city or town a department of
32 administration and finance which shall be responsible for the overall budgetary and financial
33 administration of the city or town. The department shall be under the direction and control of the
34 officer appointed pursuant to subsection (c) below. The officer shall report to and be under the

1 charge and direction of the elected chief executive officer. Nothing in this section shall abrogate
2 the powers and duties of the school committee under any general or special law, except as
3 specifically provided in this section.

4 Whenever the term “department of finance” or “finance department” appears in a general
5 or special law or an ordinance, regulation, contract or other document with reference to the city or
6 town, it shall mean the department of administration and finance of the city or town. Whenever
7 the term “chief financial officer”, “director of finance”, “financial director” or “treasurer” appears
8 in a general or special law or an ordinance, regulation, contract or other document with reference
9 to the city or town, it shall mean the officer of the city or town.

10 (c) The elected chief executive officer shall appoint the officer from a list of three (3)
11 names submitted by the division of municipal finance, for a term of not more than five (5) years,
12 as provided in this subsection. The officer shall be appointed solely on the basis of administrative
13 and executive qualifications and shall be a person especially fitted by education, training and
14 experience to perform the duties of the office. The officer need not be a resident of the city or
15 town or the state. In the event of a vacancy in the office of officer the same process will be used.

16 (d) While the process of appointing an officer under subsection (c) is proceeding, the
17 elected chief executive officer may appoint an acting officer.

18 (e) The appointment, including an acting appointment, or removal of the officer shall not
19 take effect until it has been approved in writing by the division of municipal finance.

- 20 (f) The powers and duties of the officer shall include the following:
21 (1) Coordinating, administering and supervising all financial services and activities;
22 (2) Assisting in all matters related to municipal financial affairs;
23 (3) Implementing and maintaining uniform systems, controls and procedures for all
24 financial activities in all departments, boards, commissions, agencies, offices or other units of city
25 or town government the operations of which have a financial impact upon the general fund and
26 enterprise funds of the city or town, and including, but not limited to, maintaining all financial
27 and accounting data and records;
28 (4) Implementing and maintaining uniform financial data processing capabilities for all
29 departments, boards, commissions, agencies and offices;
30 (5) Supervising all financial data processing activities;
31 (6) Implementing and maintaining uniform budget guidelines and procedures within all
32 departments, boards, commissions, agencies, offices and other units of city or town government;
33 (7) Assisting in the development and preparation of all department, board, commission,
34 agency and office budgets and spending plans;

1 (8) Reviewing all proposed contracts to which the city or town is party;

2 (9) Monitoring the expenditure of all city or town funds, including periodic reporting by
3 and to appropriate agencies of the status of accounts;

4 (10) Reviewing the spending plan for each department, board, commission, agency and
5 office; and

6 (11) Providing for the allotment of funds on a periodic basis as provided for in this
7 chapter.

8 In all cases where the duty is not expressly charged to any other department, board,
9 commission, agency or office, it shall be the duty of the officer to promote, secure and preserve
10 the financial interests of the city or town.

11 (g) All department, board, commission, agency and office budgets and requests for
12 budget transfers shall be submitted to the officer for review and recommendation before
13 submission to the elected chief executive officer, city or town council or school committee, as
14 appropriate. For each proposed appropriation order, lease or contract arrangement for a term,
15 including more than one fiscal year, collective bargaining agreement and with respect to any
16 proposed city or town council vote necessary to effectuate a financial transfer, ordinance revision
17 or special legislation which may require the expenditure of funds or otherwise financially obligate
18 the city or town for a period in excess of one year, or with respect to a vote to authorize a
19 borrowing under a law other than sections 45-12-4.1, 45-12-4.2 or 45-12-4.3 of the general laws,
20 the officer shall, if it be the case, submit in writing to the elected chief executive officer, city or
21 town council or school committee, as appropriate, a certification that it is the officer's
22 professional opinion, after an evaluation of all pertinent financial information reasonably
23 available, that the city's or town's financial resources and revenues are, and will continue to be,
24 adequate to support such proposed expenditures or obligations without a detrimental impact on
25 the provision of municipal services. If the officer fails to provide this certification within seven
26 (7) days after a request for such certification from the elected chief executive officer, city or town
27 council or school committee, the appropriation order, financial transfer, ordinance revision,
28 special legislation or borrowing authorization may nonetheless be approved, but the absence of
29 the certification of the officer shall be expressly noted in that order or vote.

30 (h) All departments, officers, boards, commissions, agencies and other units of the city or
31 town, shall submit budget requests to the elected chief executive officer upon the schedule and in
32 the form established by the officer.

33 (i) Annually, not later than March 30, the officer shall submit a four (4)-year financial
34 plan and a five (5)-year capital plan to the city or town council that includes all capital needs of

1 the city or town.

2 (j) The assessor, treasurer, finance director, controller, director of information
3 technology, purchasing agent, director of human resources, labor relations director and employees
4 performing similar duties but with different titles shall report to and be under the direction of the
5 officer. The officer, with the approval of the elected chief executive officer shall appoint all such
6 officers and employees. The elected chief executive officer may also place other positions and
7 departments under the direction of the officer.

8 (k) The officer shall not assume the duties or responsibilities of the treasurer or the
9 finance director and shall not hold an elective office and shall devote the officer's full-time and
10 attention to the officer's duties.

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

16 (m) The officer shall comply with all requests of the school department to provide any
17 information relating to the operation of the school department held within the authority or control
18 of the officer as the result of the consolidation of school and city or town business and financial
19 functions under sections 45-9-3 or 45-9-6. If the officer, or any employee under the control of the
20 officer, refuses to provide such information or engages in unreasonable delay, the school
21 department shall notify the division of municipal finance. The division of municipal finance shall,
22 within a reasonable time, make a determination whether any such information shall be provided
23 to the school department which shall be binding upon the officer and the school department. The
24 division of municipal finance's determination shall not be an adjudicatory proceeding reviewable
25 under chapter 42-35 of the general laws. Nothing in this subsection shall abrogate any of the other
26 powers or duties of the school committee under the general laws.

27 **45-9-11. Expenditures in excess of appropriations prohibited.** – (a) No official of a
28 city or town which is subject to the jurisdiction of a fiscal overseer, budget commission or
29 receiver, except in the case of an emergency involving the health and safety of the people or the
30 people's property declared by the city or town council, shall knowingly expend or cause to be
31 expended in any fiscal year any sum in excess of that official's departmental or other
32 governmental unit's appropriation duly made in accordance with the law, nor commit the city or
33 town, nor cause it to be committed, to any obligation for the future payment of money in excess
34 of that appropriation, with the exception of court judgments.

1 (b) An official who intentionally violates this section shall be personally liable to the city
2 or town for any amounts expended in excess of an appropriation to the extent that the city or town
3 does not recover such amounts from the person or persons to whom such amounts were paid and
4 shall not be indemnified by the city or town for any such amounts. The superior court shall have
5 jurisdiction to adjudicate claims brought by the city or town, or on the city's or town's behalf by a
6 budget commission established under this chapter, and to order relief that the court finds
7 appropriate to prevent further violations of this section. A violation of this section shall be
8 sufficient cause for removal.

9 (c) For the purposes of this section, the word "official" shall mean a city or town
10 department head, permanent, temporary or acting, including the superintendent of schools, and all
11 members of municipal boards, committees, including the school committee, and commissions
12 which recommend, authorize or approve the expenditure of funds, and the word "emergency"
13 shall mean a major disaster, including, but not limited to, flood, drought, fire, hurricane,
14 earthquake, storm or other catastrophe, whether natural or otherwise, which poses an unexpected
15 and immediate threat to the health and safety of persons or property.

16 **45-9-12. Conflicts with other laws.** – Notwithstanding any general or special law to the
17 contrary, unless otherwise specified, the provisions of this chapter shall supersede any conflicting
18 provisions of the city's or town's charter or local ordinance.

19 **45-9-13. Other state receivership laws inapplicable.** – No city or town shall be
20 authorized to file a petition in a state receivership proceeding nor shall a city or town be placed
21 involuntarily into a receivership proceeding. The superior court shall have no jurisdiction to hear
22 a receivership proceeding in which a city or town is the debtor. This chapter shall pre-empt all
23 other state case law and statutory law relating to receiverships as such case law or statutory law
24 may relate to municipalities.

25 **45-9-14. No state guarantee.** – Nothing in this chapter shall construed to pledge the
26 credit and assets of the state to pay the obligations or indebtedness, including, bonded
27 indebtedness, of any municipality.

28 **45-9-15. Inconsistent provisions.** – Insofar as the provisions of this chapter are
29 inconsistent with the provisions of any charter or other laws or ordinances, general, special, or
30 local, or of any rule or regulation of the state or any municipality, the provisions of this chapter
31 are controlling.

32 **45-9-16. Liberal construction.** – This chapter being necessary for the welfare of the
33 state and its inhabitants shall be liberally construed in order to effectuate its purposes.

1 **45-9-17. Severability.** – The provisions of this chapter are severable, and if any of its
2 provisions are held unconstitutional or invalid for any other reason by any court of competent
3 jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions. In
4 carrying out the purposes and provisions of this chapter, all steps shall be taken which are
5 necessary to meet constitutional requirements whether or not the steps are required by this
6 chapter.

7 SECTION 2. Section 45-12-22.7 of the General Laws in Chapter 45-12 entitled
8 "Indebtedness of Towns and Cities" is hereby amended to read as follows:

9 **45-12-22.7. Enforcement and remedies.** -- In the event that a municipality does not
10 comply with the requirements of this law the state auditor general or the division ~~or property~~
11 ~~valuation~~ of municipal finance through the director of revenue may elect any or all of the
12 following remedies:

13 (1) Petition the superior court for mandatory injunctive relief seeking compliance with
14 the provisions of this section. The superior court shall make a finding of fact as to whether there
15 has been compliance with the provisions of this section. As herein before stated, the approval or
16 disapproval of a plan shall be conclusive upon the court in making its finding as to compliance.

17 (2) In the event a municipality fails to provide a year-end deficit elimination plan under
18 section 45-12-22.3, such noncompliance shall allow for the implementation of a financial review
19 commission pursuant to section ~~45-9-3~~ 45-9-5.

20 (3) Withholding of state aid. In the event that the state director of revenue with the
21 concurrence of the auditor general elect to withhold state aid, said amounts shall be placed in a
22 special account within the general fund. At such time the municipality comes into compliance
23 with the reporting requirements of this section, said funds shall be released to the municipality by
24 order of the state director of revenue and state auditor general.

25 SECTION 3. Chapter 45-12 of the General Laws entitled "Indebtedness of Cities and
26 Towns" is hereby amended by adding the following section:

27 **45-12-32. Inability to pay interest or principal of bonds, notes or certificates of**
28 **indebtedness; notice; certification to general treasurer; payment general treasurer.** – (a) If it
29 appears to the treasurer or finance director of a city, town or district, including a regional school
30 district, that the city, town or district is, or is likely to be, unable to pay in whole or in part the
31 principal or interest, or both, on any of its bonds, notes or certificates of indebtedness when due,
32 the treasurer or finance director shall forthwith notify the city manager, town manager, town
33 administrator or mayor, the city council or town council, the regional district school committee in
34 a regional school district, or the board of any other type of district, of the inability or likely

1 inability. If the city manager, town manager, town administrator, mayor, town council or city
2 council, committee or board, whether or not so notified, finds upon investigation that the payment
3 cannot or is not likely to be made when due, he, she or they shall certify the inability or likely
4 inability to the director of revenue. Upon receipt of the certificate, the director of revenue shall
5 immediately investigate the circumstances and, if the director finds that the city, town or district
6 is, or in the director's opinion will be, unable to make the payment when due, the director shall
7 forthwith certify the inability, the amount of the due or overdue payment and the name of the
8 paying agent for the bonds, notes or certificates of indebtedness to the general treasurer.

9 (b) Notwithstanding any provision of general or special law or any rules or regulations
10 with respect to the timing of payment of state aid payments, not later than three (3) days after
11 receipt of the certification from the director of revenue or one business day prior to the date on
12 which the principal or interest, or both, becomes due, whichever is later, the general treasurer
13 shall pay to the paying agent the amount of the due or overdue payment certified to him/her to the
14 extent of the sums otherwise then payable and the sums estimated to become payable during the
15 remainder of the fiscal year, from the treasury, to the city, town or district.

16 (c) The amounts so paid to the paying agent shall be in trust and shall be exempt from
17 being levied upon, taken, sequestered or applied for any purpose other than paying principal or
18 interest, or both, on bonds, notes or certificates of indebtedness of the city, town or district.

19 (d) Any amounts paid by the general treasurer under the provisions of this section,
20 together with all costs accruing to the state as a result of actions undertaken pursuant to this
21 section, including administrative costs as well as loss of interest income, shall be charged against
22 the amounts otherwise payable or becoming payable from the treasury to the city, town or district.

23 (e) For purposes of this section, the sums otherwise payable from the treasury to a city or
24 town shall be the funds made available to cities and towns:

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

27 (2) As school housing aid pursuant to sections 16-7-35 through 16-7-47 of the general
28 laws, but subject to any pledge to bonds issued to finance school projects by the Rhode Island
29 health and educational building corporation, and specifically excluding school operations aid
30 provided for in sections 16-7-15 through 17-7-34.3 of the general laws;

31 (3) In replacement of motor vehicle and trailer excise taxes pursuant to chapter 44-34.1 of
32 the general laws;

33 (4) From the public service corporation tax pursuant to chapter 44-13 of the general laws;
34 and

1 (5) From the local meal and beverage tax pursuant to section 44-18-18.1 and the hotel tax
2 pursuant to section 44-18-36.1; and

3 (6) Pursuant to all acts supplementing such chapters listed in subdivisions (1) through (5)
4 above or pursuant to any other law hereafter enacted providing for funds to municipalities in lieu
5 of or in substitution for the funds provided pursuant to acts supplementing such chapters listed in
6 (1) through (5).

7 SECTION 4. This act shall take effect upon passage and shall apply retroactively to May
8 15, 2010.

9 Notwithstanding the effective date of this act, in order to ensure an orderly transition, the
10 superior court shall have the jurisdiction to ratify the actions taken by a receiver prior to the date
11 of enactment of this legislation at the request of the director of revenue, and to take such further
12 actions as may be necessary to ensure an orderly transition.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CITIES AND TOWNS -- PROVIDING FINANCIAL STABILITY

1 This act would provide a mechanism for the state to work with cities and towns
2 undergoing financial distress that threatens the fiscal well-being, public safety and welfare of
3 such cities and towns, or other cities and towns or the state, with the state providing varying
4 levels of support and control depending on the circumstances.

5 This act would take effect upon passage and would apply retroactively to May 15, 2010.

6 Notwithstanding the effective date of this act, in order to ensure an orderly transition, the
7 superior court shall have the jurisdiction to ratify the actions taken by a receiver prior to the date
8 of enactment of this legislation at the request of the director of revenue, and to take such further
9 actions as may be necessary to ensure an orderly transition.

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