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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO TOWNS AND CITIES - BUDGET COMMISSIONS

Introduced By: Representatives Phillips, Silva, Casey, Corvese, and Guthrie

Date Introduced: February 14, 2013

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-9-3, 45-9-6, 45-9-7 and 45-9-10 of the General Laws in
2 Chapter 45-9 entitled "Budget Commissions" are hereby amended to read as follows:

3 **45-9-3. Appointment and duties of fiscal overseer.** -- (a) Upon joint request by a city's
4 or town's elected chief executive officer and city or town council, which request is approved by
5 the division of municipal finance and the auditor general, or in absence of such a request, in the
6 event that the director of revenue, in consultation with the auditor general, makes any two (2) or
7 more of the findings set forth in subsection (b), the director of revenue may appoint a fiscal
8 overseer for the city or town to assess the ability of the city or town government to manage the
9 city's or town's fiscal challenges.

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

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

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

19 (3) The city or town has been downgraded by one of the nationally recognized statistical

1 rating organizations;

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

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

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

10 (d) The fiscal overseer shall without limitation:

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

13 (2) Supervise all financial services and activities;

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

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

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

19 (6) Review all proposed contracts and obligations;

20 (7) Monitor the expenditures of all funds;

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

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

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

28 ~~(f) The city or town shall annually appropriate amounts sufficient for the proper
29 administration of the fiscal overseer and staff, as determined in writing by the division of
30 municipal finance. If the city or town fails to appropriate such amounts, the division of municipal
31 finance shall direct the general treasurer to deduct the necessary funds from the city's or town's
32 distribution of state aid and shall expend those funds directly for the benefit of the fiscal overseer
33 and staff.~~

34 ~~(g)~~ (f) Within one hundred twenty (120) days of being appointed by the director of

1 revenue, the fiscal overseer shall develop a three (3)-year operating and capital financial plan to
2 achieve fiscal stability in the city or town. The plan shall include a preliminary analysis of the
3 city's or town's financial situation and the fiscal overseer's initial recommendations to
4 immediately begin to address the city's or town's operating and structural deficits. The fiscal
5 overseer shall have the power to compel operational, performance or forensic audits, or any other
6 similar assessments. The fiscal overseer shall have the power, at the expense of the city or town,
7 to employ, retain, supervise such managerial, professional and clerical staff as are necessary to
8 carry out the responsibility of fiscal overseer, subject to the approval of the division of municipal
9 finance; provided, however, that the fiscal overseer shall not be subject to chapter 37-2 or chapter
10 45-55 of the general laws in employing such staff.

11 **45-9-6. Composition of budget commission.** -- (a) If a budget commission is established
12 under section 45-9-5 or section 45-12-22.7, it shall consist of five (5) members: three (3) of
13 whom shall be designees of the director of revenue, one of whom shall be the elected chief
14 executive officer of the city and one of whom shall be the president of the city or town council. In
15 cities or towns in which the elected chief executive officer for purposes of this chapter is the
16 president of the city or town council, one member shall be the appointed city or town manager or
17 town administrator (or, if none, the city or town chief financial officer) as the fifth (5th) member.
18 The budget commission shall act by a majority vote of all its members. The budget commission
19 shall initiate and assure the implementation of appropriate measures to secure the financial
20 stability of the city or town. The budget commission shall continue in existence until the director
21 of revenue abolishes it.

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

- 26 (1) Levy and assessment of taxes;
- 27 (2) Rulemaking or suspension of rules;
- 28 (3) Adoption of a municipal budget;
- 29 (4) Approval of collective bargaining agreements and amendments to collective
30 bargaining agreements; and
- 31 (5) Making a determination under section 45-9-7 that the powers of the budget
32 commission are insufficient to restore fiscal stability to the city or town.

33 (b) Action by the budget commission under this chapter shall constitute action by the
34 city or town for all purposes under the general laws, under any special law and under the city or

1 town charter.

2 (c) Until the budget commission ceases to exist, no appropriation, borrowing
3 authorization, transfer, or other municipal spending authority shall take effect until approved by
4 the budget commission. The budget commission shall approve all appropriations, borrowing
5 authorizations, transfers and other municipal spending authorizations, in whole or part.

6 (d) In addition to the authority and powers conferred elsewhere in this chapter, and
7 notwithstanding any city or town charter provision or local ordinance to the contrary, the budget
8 commission shall have the power to:

9 (1) Amend, formulate and execute the annual municipal budget and supplemental
10 municipal budgets of the city or town, including the establishment, increase or decrease of any
11 appropriations and spending authority for all departments, budget commissions, committees,
12 agencies or other units of the city or town; provided, however, that notwithstanding sections 16-2-
13 9 and 16-2-18 of the general laws, this clause shall fully apply to the school department and all
14 school spending purposes;

15 (2) Implement and maintain uniform budget guidelines and procedures for all
16 departments;

17 (3) Amend, formulate and execute capital budgets, including to amend any borrowing
18 authorization, or finance or refinance any debt in accordance with the law;

19 (4) Amortize operational deficits in an amount as the director of revenue approves and
20 for a term not longer than five (5) years;

21 (5) Develop and maintain a uniform system for all financial planning and operations in
22 all departments, offices, boards, commissions, committees, agencies or other units of the city's or
23 town's government;

24 (6) Review and approve or disapprove all proposed contracts for goods or services;

25 (7) Notwithstanding any general or special law to the contrary, establish, increase or
26 decrease any fee, rate or charge, for any service, license, permit or other municipal activity,
27 otherwise within the authority of the city or town;

28 (8) Appoint, remove, supervise and control all city and town employees and have control
29 over all personnel matters other than disciplinary matters; provided, that the budget commission
30 shall hold all existing powers to hire and fire and set the terms and conditions of employment
31 held by other employees or officers of the city or town; provided, further, that the budget
32 commission shall have the authority to exercise all powers otherwise available to a municipality
33 regarding contractual obligations during a fiscal emergency; provided, further, that no city or
34 town employee or officer shall hire, fire, transfer or alter the compensation or benefits of a city or

1 town employee except with the written approval of the budget commission; and provided, further,
2 that the budget commission may delegate or otherwise assign these powers with the approval of
3 the director of revenue;

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

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

19 (11) Reorganize, consolidate or abolish departments, commissions, authorities, boards,
20 offices or functions of the city or town, in whole or in part, and to establish such new
21 departments, commissions, authorities, boards, offices or functions as it deems necessary, and to
22 transfer the duties, powers, functions and appropriations of one department, commission, board,
23 office or other unit to another department, commission, authority, board or office and in
24 connection therewith remove and appoint new members for any such commission, authority,
25 board or department which appointees shall serve the remainder of any unexpired term of their
26 predecessor;

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

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

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

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

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

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

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

9 (19) Notwithstanding any other general law, special act, charter provision or ordinance,
10 and in conformity with the reserved powers of the general assembly pursuant to Article XIII,
11 section 5 of the Constitution of the state, a budget commission is authorized to issue bonds, notes
12 or certificates of indebtedness to fund the deficit of a city or town without regard to section 45-
13 12-22.4 of the general laws, to fund cash flow and to finance capital projects. Bonds, notes or
14 certificates of indebtedness issued under authority of this chapter shall be general obligation
15 bonds backed by the full faith and credit and taxing power of the city or town; provided, however,
16 that the budget commission may pledge future distributions of state aid for the purpose of retiring
17 such bonds, notes or certificates of indebtedness. If any state aid is so pledged, the budget
18 commission shall execute on behalf of the city or town a trust agreement with a corporate trustee,
19 which may be any bank or trust company having the powers of a trust company within the state,
20 and any state aid so pledged shall be paid by the general treasurer directly to the trustee to be held
21 in trust and applied to the payment of principal and interest on such bonds, notes or certificates of
22 indebtedness; any earnings derived from the investment of such pledged aid shall be applied as
23 needed to the payment of that principal and interest and for trustee's fees and related expenses,
24 with any excess to be paid to the city or town. Bonds, notes or certificates of indebtedness
25 authorized under authority of this chapter shall be executed on behalf of the city or town by a
26 member of the commission and, except as provided for in this chapter, may be subject to the
27 provisions of chapter 45-12 of the general laws so far as apt, or may be subject to the provisions
28 of any special bond act enacted authorizing the issuance of bonds of a city or town so far as apt,
29 provided, however that any bonds or notes issued for school purposes must be approved by the
30 general assembly in order to qualify for school housing aid as set forth in chapter 16-7 of the
31 general laws; and

32 (20) Exercise all powers under the general laws and this chapter or any special act, any
33 charter provision or ordinance that any elected official of the city or town may exercise, acting
34 separately or jointly; provided, however, that with respect to any such exercise of powers by the

1 budget commission, the elected officials shall not rescind or take any action contrary to such
2 action by the budget commission so long as the budget commission continues to exist.

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

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

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

21 (1) All powers of the fiscal overseer and budget commission under sections 45-9-2 and
22 45-9-6. Such powers shall remain through the period of any receivership;

23 (2) The power to exercise any function or power of any municipal officer or employee,
24 board, authority or commission, whether elected or otherwise relating to or impacting the fiscal
25 stability of the city or town including, without limitation, school and zoning matters; and

26 (3) The power to file a petition in the name of the city or town under Chapter 9 of Title
27 11 of the United States Code, and to act on the city's or town's behalf in any such proceeding.

28 (c) Upon the appointment of a receiver, the receiver shall have the right to exercise the
29 powers of the elected officials under the general laws, special laws and the city or town charter
30 and ordinances relating to or impacting the fiscal stability of the city or town including, without
31 limitation, school and zoning matters; provided, further, that the powers of the receiver shall be
32 superior to and supersede the powers of the elected officials of the city or town shall continue to
33 be elected in accordance with the city or town charter, and shall serve in an advisory capacity to
34 the receiver. The receiver shall allow the city's or town's elected officials to serve their

1 constituents by providing advice to the receiver on the matters relating to the operation of the city
2 or town. In the event a conflict arises between the chief elected official or city or town council
3 and the receiver, the receiver's decision shall prevail. The director of revenue shall determine the
4 salary of the receiver, which salary shall be payable by the ~~city or town~~ state.

5 **45-9-10. Appointment of administration and finance officer upon abolition of fiscal**
6 **overseer, budget commission or receiver.** -- (a) Notwithstanding any general or special law or
7 city or town ordinance to the contrary, this section shall apply upon abolition of the fiscal
8 overseer or a budget commission or a receiver established under this chapter, upon a
9 determination, in writing, by the director of revenue that the financial condition of the city or
10 town has improved to a level such that a fiscal overseer, a budget commission or a receiver is no
11 longer needed.

12 (b) For a period of five (5) years after the abolition of a fiscal overseer, or a budget
13 commission or a receiver in any city or town, there shall be in the city or town a department of
14 administration and finance which shall be responsible for the overall budgetary and financial
15 administration of the city or town. The department shall be under the direction and control of the
16 officer appointed pursuant to subsection (c) below. The officer shall report to and be under the
17 charge and direction of the elected chief executive officer. Nothing in this section shall abrogate
18 the powers and duties of the school committee under any general or special law, except as
19 specifically provided in this section.

20 Whenever the term "department of finance" or "finance department" appears in a general
21 or special law or an ordinance, regulation, contract or other document with reference to the city or
22 town, it shall mean the department of administration and finance of the city or town. Whenever
23 the term "chief financial officer", "director of finance", "financial director" or "treasurer" appears
24 in a general or special law or an ordinance, regulation, contract or other document with reference
25 to the city or town, it shall mean the officer of the city or town.

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

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

34 (e) The appointment, including an acting appointment, or removal of the officer shall not

1 take effect until it has been approved in writing by the division of municipal finance.

2 (f) The powers and duties of the officer shall include the following:

3 (1) Coordinating, administering and supervising all financial services and activities;

4 (2) Assisting in all matters related to municipal financial affairs;

5 (3) Implementing and maintaining uniform systems, controls and procedures for all
6 financial activities in all departments, boards, commissions, agencies, offices or other units of city
7 or town government the operations of which have a financial impact upon the general fund and
8 enterprise funds of the city or town, and including, but not limited to, maintaining all financial
9 and accounting data and records;

10 (4) Implementing and maintaining uniform financial data processing capabilities for all
11 departments, boards, commissions, agencies and offices;

12 (5) Supervising all financial data processing activities;

13 (6) Implementing and maintaining uniform budget guidelines and procedures within all
14 departments, boards, commissions, agencies, offices and other units of city or town government;

15 (7) Assisting in the development and preparation of all department, board, commission,
16 agency and office budgets and spending plans;

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

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

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

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

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

27 (g) All department, board, commission, agency and office budgets and requests for
28 budget transfers shall be submitted to the officer for review and recommendation before
29 submission to the elected chief executive officer, city or town council or school committee, as
30 appropriate. For each proposed appropriation order, lease or contract arrangement for a term,
31 including more than one fiscal year, collective bargaining agreement and with respect to any
32 proposed city or town council vote necessary to effectuate a financial transfer, ordinance revision
33 or special legislation which may require the expenditure of funds or otherwise financially obligate
34 the city or town for a period in excess of one year, or with respect to a vote to authorize a

1 borrowing under a law other than sections 45-12-4.1, 45-12-4.2 or 45-12-4.3 of the general laws,
2 the officer shall, if it be the case, submit in writing to the elected chief executive officer, city or
3 town council or school committee, as appropriate, a certification that it is the officer's
4 professional opinion, after an evaluation of all pertinent financial information reasonably
5 available, that the city's or town's financial resources and revenues are, and will continue to be,
6 adequate to support such proposed expenditures or obligations without a detrimental impact on
7 the provision of municipal services. If the officer fails to provide this certification within seven
8 (7) days after a request for such certification from the elected chief executive officer, city or town
9 council or school committee, the appropriation order, financial transfer, ordinance revision,
10 special legislation or borrowing authorization may nonetheless be approved, but the absence of
11 the certification of the officer shall be expressly noted in that order or vote.

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

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

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

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

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

32 (m) (l) The officer shall comply with all requests of the school department to provide any
33 information relating to the operation of the school department held within the authority or control
34 of the officer as the result of the consolidation of school and city or town business and financial

1 functions under sections 45-9-3 or 45-9-6. If the officer, or any employee under the control of the
2 officer, refuses to provide such information or engages in unreasonable delay, the school
3 department shall notify the division of municipal finance. The division of municipal finance shall,
4 within a reasonable time, make a determination whether any such information shall be provided
5 to the school department which shall be binding upon the officer and the school department. The
6 division of municipal finance's determination shall not be an adjudicatory proceeding reviewable
7 under chapter 42-35 of the general laws. Nothing in this subsection shall abrogate any of the other
8 powers or duties of the school committee under the general laws.

9 SECTION 2. Chapter 45-9 of the General Laws entitled "Budget Commissions" is hereby
10 amended by adding thereto the following section:

11 **45-9-24. Payment of costs.** – The state shall pay all costs and expenses incurred by the
12 fiscal overseer, budget and review commission, receiver or administration and finance officer
13 including, without limitation, all costs and expenses incurred with respect to any managerial,
14 professional or clerical staff hired, retained, or employed by the fiscal overseer, budget and
15 review commission, receiver, or administration and finance officer under this chapter.

16 SECTION 3. This act shall take effect upon passage and shall be retroactive to January 1,
17 2012.

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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 require the state to pay all costs and expenses incurred by a fiscal
2 overseer, budget and review commission, receiver, or administration and finance officer.

3 This act would take effect upon passage and would be retroactive to January 1, 2012.

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