

2016 -- H 7214

=====
LC003674
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————
A N A C T

RELATING TO TOWNS AND CITIES -- BUDGET COMMISSIONS

Introduced By: Representatives Nardolillo, Chippendale, Roberts, Morgan, and Nunes

Date Introduced: January 15, 2016

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-9-1, 45-9-2, 45-9-3, 45-9-4, 45-9-5, 45-9-6, 45-9-7, 45-9-8, 45-
2 9-9, 45-9-10, 45-9-10.1, 45-9-11, 45-9-12, 45-9-13, 45-9-14, 45-9-15, 45-9-18, 45-9-19 and 45-9-
3 20 of the General Laws in Chapter 45-9 entitled "Budget Commissions" are hereby amended to
4 read as follows:

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

14 **45-9-2. Definitions.** -- As used in this chapter, the following words shall, unless the
15 context clearly requires otherwise, have the following meanings:

16 (1) "Budget commission" means the budget and review commission established under §§
17 45-9-5 and 45-9-6.

18 (2) "Charter" means the home rule charter or the legislative charter of any city; or town;
19 ~~or fire district.~~

1 (3) "Division of municipal finance" means the division of municipal finance in the
2 department of revenue or any successor department or agency.

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

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

8 (6) ~~"Fire district budget" means the fiscal-year operating budget of the fire district.~~

9 (7) "Fiscal overseer" means the financial overseer appointed under § 45-9-3.

10 (8) "General Treasurer" means the general treasurer of the state.

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

13 (10) "Officer" means the chief administrative and financial officer appointed under § 45-
14 9-10 after abolition of a fiscal overseer or a budget commission or a receiver in a city, or town, ~~or~~
15 ~~fire district~~.

16 (11) "Receiver" means the receiver appointed pursuant to §§ 45-9-7 or 45-9-8.

17 (12) "School committee", means the school committee of the city or town, but shall not
18 mean, or include, a regional school district committee.

19 (13) "State Aid" means the funds made available to cities and towns:

20 (i) As state aid pursuant to chapter 13 of title 45, but specifically excluding
21 reimbursements to cities and towns for the cost of state mandates pursuant to § 45-13-9;

22 (ii) As school operations aid provided for in §§ 16-7-5 -- 16-7-34.3 and as school
23 housing aid pursuant to §§ 16-7-35 -- 16-7-47, but subject to any pledge to bonds issued to
24 finance school projects by the Rhode Island health and educational building corporation;

25 (iii) In replacement of motor vehicle and trailer excise taxes pursuant to chapter 34.1 of
26 title 44;

27 (iv) From the public service corporation tax pursuant to chapter 13 of title 44;

28 (v) From the local meal and beverage tax pursuant to § 44-18-18.1 and the hotel tax
29 pursuant to § 44-18-36.1; and

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

34 **45-9-3. Appointment and duties of fiscal overseer.** -- (a) Upon joint request by a city's

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

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

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

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

18 (3) The city; or town; ~~or fire district~~ has been downgraded by one of the nationally
19 recognized statistical rating organizations;

20 (4) The city; or town; ~~or fire district~~ is otherwise unable to obtain access to credit
21 markets or obtain financing when necessary on reasonable terms in the sole judgment of the
22 director of revenue.

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

27 (c) The director of revenue may also appoint a fiscal overseer if a city; or town; ~~or fire~~
28 ~~district~~ fails to comply with the requirements of §§ 45-12-22.1 -- 45-12-22.5.

29 (d) The fiscal overseer shall without limitation:

30 (1) Recommend to the elected chief executive officer, ~~fire district board of directors~~, city
31 or town council, and school committee sound fiscal policies for implementation;

32 (2) Supervise all financial services and activities;

33 (3) Advise the assessors, director of finance, city or town treasurer, ~~fire district board of~~
34 ~~directors~~, purchasing agent, and employees performing similar duties but with different titles;

1 (4) Provide assistance in all matters related to municipal ~~or fire district~~ financial affairs;

2 (5) Assist in development and preparation of the municipal ~~or fire district~~ budget, all
3 department budgets, and spending plans;

4 (6) Review all proposed contracts and obligations;

5 (7) Monitor the expenditures of all funds;

6 (8) Approve the annual or supplemental ~~fire districts budgets or~~ municipal budgets of the
7 city or town and all of its departments; and

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

11 (e) All department budgets and requests for municipal ~~or fire district~~ budget transfers
12 shall be submitted to the fiscal overseer for review and approval.

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

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

30 **45-9-4. Approval of tax levy.** -- A city; or town; ~~or fire district~~ that is subject to the
31 jurisdiction of a fiscal overseer or a budget commission, may not levy property taxes or motor
32 vehicle excise taxes without prior approval of the division of municipal finance. Before the city;
33 or town; ~~or fire district~~ that is subject to the jurisdiction of a fiscal overseer or a budget
34 commission, shall send out tax bills, the city; or town; ~~or fire district~~ shall submit to the division

1 of municipal finance a copy of its adopted municipal ~~or fire district~~ budget and such supporting
2 revenue and expenditure information as the division of municipal finance shall prescribe for the
3 succeeding fiscal year. The adopted municipal ~~or fire district~~ budget, and such supporting revenue
4 and expenditure information as the division of municipal finance may prescribe, shall be
5 submitted to the division of municipal finance no later than ten (10) days after the adoption of the
6 budget. The division of municipal finance shall ascertain whether the budget for that fiscal year
7 contains reasonable revenues from taxation and other sources to meet the appropriations and
8 other amounts required by law to be raised, and the division of municipal finance shall report its
9 conclusion to the director of revenue. If the director of revenue determines that the municipal ~~or~~
10 ~~fire district~~ budget as presented does not contain reasonable revenues from taxation and other
11 sources to meet appropriations and other amounts required by law to be raised, the director of
12 revenue shall certify this determination in writing and provide notice of the determination with a
13 copy of the certificate to the auditor general, the governor, and the chairpersons of the house and
14 senate finance committees; and notify the city, or town, ~~or fire district~~ that its tax levy has not
15 been approved and that the city, or town, ~~or fire district~~ is not authorized to mail or otherwise
16 transmit tax bills to city or town taxpayers. If the director of revenue has made the foregoing
17 determination, the city, or town, ~~or fire district~~ shall prepare a revised budget for review and
18 approval by the director of revenue.

19 The city, or town, ~~or fire district~~ shall submit the reports required by § 45-12-22.2 to the
20 director of revenue, the division of municipal finance, the auditor general, the governor, and the
21 chairpersons of the house and senate finance committees.

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

24 **45-9-5. Reports of fiscal overseer and appointment of budget and review**

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

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

33 (c) If the fiscal overseer reports to the division of municipal finance under subsections
34 (a) or (b), the director of revenue may immediately abolish the fiscal overseer and appoint a

1 budget commission.

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

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

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

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

16 **45-9-6. Composition of budget commission.** -- (a) If a budget commission is established
17 under §§ 45-9-5 or 45-12-22.7, it shall consist of five (5) members: three (3) of whom shall be
18 designees of the director of revenue; one of whom shall be the elected chief executive officer of
19 the city; and one of whom shall be a council member of the town or city elected to serve on the
20 budget commission as chosen by a majority vote of said town or city council. In cities or towns in
21 which the elected chief executive officer for purposes of this chapter is the president of the city or
22 town council, one member shall be the appointed city or town manager or town administrator (or,
23 if none, the city or town chief financial officer) as the fifth member. ~~For a fire district, it shall~~
24 ~~consist of five (5) members: three (3) of the members of the budget commission shall be~~
25 ~~designees of the director of revenue; one shall be the chairperson of the district's governing body;~~
26 ~~and one shall be the fire chief of the district.~~ 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, ~~or fire district~~. The
29 budget commission shall continue in existence until the director of revenue abolishes it.

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

33 (1) Levy and assessment of taxes;

34 (2) Rulemaking or suspension of rules;

- 1 (3) Adoption of a municipal ~~or fire district~~ budget;
- 2 (4) Approval of collective bargaining agreements and amendments to collective
3 bargaining agreements; and
- 4 (5) Making a determination under § 45-9-7 that the powers of the budget commission are
5 insufficient to restore fiscal stability to the city; or town; ~~or fire district~~.
- 6 (b) Action by the budget commission under this chapter shall constitute action by the
7 city; or town; ~~or fire district~~ for all purposes under the general laws, under any special law, and
8 under the city; or town; ~~or fire district~~ charter.
- 9 (c) Until the budget commission ceases to exist, no appropriation, borrowing
10 authorization, transfer, or other municipal ~~or fire district~~ spending authority, shall take effect until
11 approved by the budget commission. The budget commission shall approve all appropriations,
12 borrowing authorizations, transfers, and other municipal or fire district spending authorizations,
13 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; ~~or fire district~~ charter provision, or local ordinance, or rule or
16 regulation to the contrary, the budget commission shall have the power to:
- 17 (1) Amend, formulate, and execute the annual municipal ~~or fire district~~ budget and
18 supplemental municipal ~~or fire district~~ budgets of the city; or town, ~~or fire district~~, including the
19 establishment, increase, or decrease of any appropriations and spending authority for all
20 departments, budget commissions, committees, agencies or other units of the city; or town; ~~or fire~~
21 ~~district~~; provided, however, that notwithstanding §§ 16-2-9 and 16-2-18, this clause shall fully
22 apply to the school department and all 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;
31 or town's; ~~or fire district'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 or fire

1 district activity, otherwise within the authority of the city; or town, ~~or fire district~~;

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

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

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

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

1 predecessor;

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

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

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

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

10 (16) Adopt rules and regulations governing the operation and administration of the city;
11 or town;~~or fire district~~ that permit the budget commission to effectively carry out this chapter
12 under § 42-35-3(b);

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

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

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

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

7 (20) Exercise all powers under the general laws and this chapter, or any special act, any
8 charter provision or ordinance that any elected official of the city; or town; ~~or fire district~~ may
9 exercise, acting separately or jointly; provided, however, that with respect to any such exercise of
10 powers by the budget commission, the elected officials shall not rescind nor take any action
11 contrary to such action by the budget commission so long as the budget commission continues to
12 exist.

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

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

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

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

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

1 school and zoning matters; and

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

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

18 **45-9-8. Appointment of receiver in a fiscal emergency. --** In the event the director of
19 revenue determines, in consultation with the auditor general, that a city; or town; ~~or fire district~~ is
20 facing a fiscal emergency and that circumstances do not allow for appointment of a fiscal
21 overseer or a budget commission prior to the appointment of a receiver, the director of revenue
22 may appoint a receiver without having first appointed a fiscal overseer or a budget commission.

23 **45-9-9. Collective bargaining agreements. --** Notwithstanding chapter 7 of title 28 or
24 any other general or special law or any charter or local ordinance to the contrary, new collective
25 bargaining agreements, and any amendments, to new or existing collective bargaining
26 agreements, (collectively, "collective bargaining agreements") entered into by the city, town; ~~or~~
27 ~~fire district~~ or the school department, shall be subject to the approval of the fiscal overseer,
28 budget commission, or receiver if the fiscal overseer, budget commission, or receiver is in effect
29 at the time. No collective bargaining agreement shall be approved under this section unless the
30 fiscal overseer, budget commission, or receiver has participated in the negotiation of the
31 collective bargaining agreement and provides written certification to the director of revenue that
32 after an evaluation of all pertinent financial information reasonably available, the city's; or town's;
33 ~~or fire district's~~ financial resources and revenues are, and will continue to be, adequate to support
34 such collective bargaining agreement without a detrimental impact on the provision of municipal

1 ~~or fire district~~ services. A decision, by the fiscal overseer, budget commission, or receiver, to
2 disapprove of a collective bargaining agreement under this section shall be made in a report to the
3 parties; provided, however, that the report shall specify the disapproved portions of the agreement
4 and the supporting reasons for the disapproval. This section shall not be construed to authorize a
5 fiscal overseer, a budget commission, or a receiver under this chapter to reject or alter any
6 existing collective bargaining agreement, unless by agreement, during the term of such collective
7 bargaining agreement.

8 **45-9-10. Appointment of administration and finance officer upon abolition of**
9 **receiver where petition filed under Chapter 9 of Title 11 of the United States Code. --** (a)

10 Notwithstanding any general or special law or city or town ordinance to the contrary, this section
11 shall apply upon abolition of a receiver established under this chapter, where petition was filed
12 under Chapter 9 of Title 11 of the United States Code, upon a determination, in writing, by the
13 director of revenue, that the financial condition of the city or town has improved to a level such
14 that a receiver is no longer needed.

15 (b) For a period of five (5) years after the abolition of a receiver in any such city; or
16 town; ~~or fire district~~, there shall be in the city; or town; ~~or fire district~~ a department of
17 administration and finance that shall be responsible for the overall budgetary and financial
18 administration of the city; or town; ~~or fire district~~. The department shall be under the direction
19 and control of the officer appointed pursuant to subsection (c) below. The officer shall report to,
20 and be under the charge and direction of, the elected chief executive officer, or in the case of a
21 municipality without an elected chief executive officer, then the city or town council; ~~or in the~~
22 ~~case of a fire district, the governing body of the fire district~~. Nothing in this section shall abrogate
23 the powers and duties of the school committee under any general or special law, except as
24 specifically provided in this section.

25 Whenever the term "department of finance" or "finance department" appears in a general
26 or special law or an ordinance, regulation, contract, or other document with reference to the city;
27 or town; ~~or fire district~~, it shall mean the department of administration and finance of the city; or
28 town; ~~or fire district~~. Whenever the term "chief financial officer", "director of finance", "financial
29 director", or "treasurer" appears in a general or special law or an ordinance, regulation, contract,
30 or other document with reference to the city; or town; ~~or fire district~~, it shall mean the officer of
31 the city; or town; ~~or fire district~~.

32 (c) The elected chief executive officer, or in the case of a municipality without an elected
33 chief executive officer then the city or town council; ~~or in the case of a fire district, the governing~~
34 ~~body of the fire district~~, shall appoint the officer from a list of three (3) names submitted by the

1 division of municipal finance, for a term of not more than five (5) years, as provided in this
2 subsection. The officer shall be an employee of the city; or town; ~~or fire district~~ who shall be
3 appointed solely on the basis of administrative and executive qualifications and shall be a person
4 especially fitted by education, training, and experience to perform the duties of the office. The
5 officer need not be a resident of the city; or town; ~~or fire district~~, or the state. In the event of a
6 vacancy in the office of officer the same process will be used.

7 (d) While the process of appointing an officer under subsection (c) is proceeding, the
8 elected chief executive officer, or in the case of a municipality without an elected chief executive
9 officer then the city or town council, may appoint an acting officer; ~~or in the case of a fire district,~~
10 ~~then the governing body of the fire district may appoint an acting officer.~~

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

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

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

15 (2) Assisting in all matters related to municipal ~~or fire district~~ financial affairs;

16 (3) Implementing and maintaining uniform systems, controls, and procedures for all
17 financial activities in all departments, boards, commissions, agencies, offices, or other units of
18 city; or town; ~~or fire district~~ government the operations of which have a financial impact upon the
19 general fund and enterprise funds of the city; or town, ~~or fire district~~, and including, but not
20 limited to, maintaining all financial and accounting data and records;

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

23 (5) Supervising all financial data processing activities;

24 (6) Implementing and maintaining uniform budget guidelines and procedures within all
25 departments, boards, commissions, agencies, offices, and other units of city; or town; ~~or fire~~
26 ~~district~~ government;

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

29 (8) Reviewing all proposed contracts to which the city; or town; ~~or fire district~~ is party;

30 (9) Monitoring the expenditure of all city; or town; ~~or fire district~~ funds, including
31 periodic reporting by and to appropriate agencies of the status of accounts;

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

34 (11) Providing for the allotment of funds on a periodic basis as provided for in this

1 chapter.

2 In all cases where the duty is not expressly charged to any other department, board,
3 commission, agency, or office, it shall be the duty of the officer to promote, secure, and preserve
4 the financial interests of the city; or town, ~~or fire district~~.

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

26 (h) All departments, officers, boards, commissions, agencies, and other units of the city;
27 or town, ~~or fire district~~ shall submit budget requests to the elected chief executive officer, or
28 appropriate authority under applicable charter and ordinance provisions, upon the schedule and in
29 the form established by the officer.

30 (i) Annually, not later than ninety (90) days prior to the beginning of the municipality's
31 ~~or fire district's~~ fiscal year, the officer shall submit a four-year (4) financial plan and a five-year
32 (5) capital plan to the city or town council ~~or fire district governing body~~ that includes all capital
33 needs of the city; or town, ~~or fire district~~.

34 (j) The assessor, treasurer, finance director, controller, purchasing agent, labor relations

1 director, and employees performing similar duties but with different titles shall report to, and be
2 under the direction of, the officer. The officer, with the approval of the elected chief executive
3 officer or appropriate authority under applicable charter and ordinance provisions, shall appoint
4 all such officers and employees. The elected chief executive officer, or in the case of a
5 municipality without an elected chief executive officer then the city or town council, ~~or in the~~
6 ~~case of a fire district, the governing body of the fire district,~~ 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, ~~or fire district~~ shall annually appropriate amounts sufficient for the
12 proper administration of the department. If the city, or town, ~~or fire district~~ fails to appropriate
13 such amounts, the division of municipal finance shall direct the general treasurer to deduct the
14 necessary funds from the city's, or town's, ~~or fire district's~~ distribution of the city's, or town's, ~~or~~
15 ~~fire district's~~ state aid and shall expend those funds directly for the benefit of the department. The
16 city or town shall annually appropriate amounts sufficient to cover the costs of the administration
17 and finance officer. The state shall annually reimburse the city, or town, ~~or fire district~~ for fifty
18 percent (50%) share of such costs. The city, or town, ~~or fire district~~ at its expense shall provide
19 office space and adequate resources needed by the administration and finance officer in the
20 performance of his/her duties.

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

32 **45-9-10.1. Appointment of administration and finance officer upon abolition of a**
33 **fiscal overseer, or a budget commission or a receiver where no chapter 9, title 11 petition**
34 **filed.** -- (a) Notwithstanding any general or special law, or city or town ordinance, or rule or

1 regulation to the contrary, this section shall apply upon the abolition of the fiscal overseer, budget
2 commission, or receiver where the receiver has not filed a petition for Chapter 9, Title 11 of the
3 United States Code, upon a determination, in writing, by the director of revenue that the financial
4 condition of the city; or town; ~~or fire district~~ has improved to a level such that a fiscal overseer,
5 budget commission, or receiver is no longer needed.

6 (b) For a period of five (5) years after the abolition of a fiscal overseer, or a budget
7 commission, or a receiver, where the receiver has not filed a petition for Chapter 9, Title 11 of the
8 United States Code, a finance advisor shall be appointed for the city; or town; ~~or fire district~~ by
9 the director of revenue. The finance advisor shall be an employee of the city; or town; ~~or fire~~
10 ~~district~~. The finance advisor shall be responsible for monitoring the overall budgetary and
11 financial administration and fiscal health of the city; or town; ~~or fire district~~. The finance advisor
12 shall report to the director of revenue.

13 (c) The finance advisor shall be appointed solely on the basis of his or her qualifications
14 and shall be a person especially fitted by education, training, or experience to perform the
15 functions of the position.

16 (d) The finance advisor shall have complete access to the financial books and records of
17 all offices, departments, and other agencies of the municipal ~~fire district~~ government and, without
18 limitations:

19 (1) Recommend to the elected chief executive officer, city or town council, ~~or fire~~
20 ~~district governing body~~, and school committee sound fiscal policies for implementation and
21 monitor implementation;

22 (2) Monitor and oversee all financial operations and activities including the city's; or
23 town's; ~~or fire district's~~ operating and capital financial plans to maintain fiscal stability;

24 (3) Review operational results of various city; or town; ~~or fire district~~ funds and evaluate
25 the structural soundness of each;

26 (4) Advise the assessor, director of finance, city or town treasurer, purchasing agent, and
27 employees performing similar duties but with different titles;

28 (5) Provide assistance in all matters related to municipal ~~or fire district~~ financial affairs;

29 (6) Review and approve the development and preparation of the annual municipal ~~or fire~~
30 ~~district~~ budget, all department operating and capital budgets, and spending plans;

31 (7) Review and approve all proposed labor contracts and obligations to determine if
32 consistent with a structurally balanced, five-year (5) plan;

33 (8) Monitor the receipt of revenues and expenditures of all funds with the assistance of
34 city; or town; ~~or fire district~~ staff;

- 1 (9) Participate in rating agency calls pertaining to the city; or town; ~~or fire district~~;
- 2 (10) Determine compliance with the various ordinances, laws (federal and state), and
3 rules and regulations related to receipt and expenditure of city; or town; ~~or fire district~~ funds;
- 4 (11) Provide comment to the local governing body on the annual or supplemental
5 municipal ~~or fire district~~ budgets of the city; or town; ~~or fire district~~ and all of its departments;
- 6 (12) Report quarterly to the chief elected officer, city or town council; ~~fire district~~
7 ~~governing body~~, director of revenue, the auditor general, the governor, and the chairpersons of the
8 house finance and senate finance committees on the progress made towards maintaining fiscal
9 stability and all financial operations of the city; or town; ~~or fire district~~;
- 10 (13) Make recommendations to the elected chief executive officer, city or town council;
11 ~~fire district governing body~~, school committee, and the director of revenue, as appropriate, to
12 begin to address any operational and/or structural deficit;
- 13 (14) Make recommendations to the elected chief executive officer, city or town council;
14 ~~fire district governing body~~, and school committee, as appropriate, to have operational,
15 performance, or forensic audits, or similar assessments conducted;
- 16 (15) Report any: (i) Inappropriate expenditure; (ii) Any improper accounting procedure;
17 (iii) All failures to properly record financial transactions; and (iv) Other inaccuracies,
18 irregularities, and shortages, as soon as practical to the elected chief executive officer, or in the
19 case of a municipality without an elected chief executive officer, the city or town council; ~~or in~~
20 ~~the case of a fire district, the fire district governing body~~; and
- 21 (16) Notify in writing as soon as practical, the elected chief executive officer or the city
22 or town council; ~~or the fire district governing body~~; if the finance advisor discovers any errors,
23 unusual practices, or any other discrepancies in connection with his or her work.
- 24 (f) The city or town, including the school department ~~or fire district~~, shall provide the
25 finance advisor with any and all information requested in a timely fashion.
- 26 (g) The city; or town; ~~or fire district~~ shall annually appropriate amounts sufficient to
27 cover the costs of the administration and finance officer. The state shall annually reimburse the
28 city or town for fifty percent (50%) share of such costs.
- 29 (h) The city; or town, ~~or fire district~~, at its expense, shall provide office space and
30 adequate resources needed by the administration and finance officer in the performance of his/her
31 duties.
- 32 (i) Nothing contained herein removes duties from existing positions in the city; or town;
33 ~~or fire district~~.

34 **45-9-11. Expenditures in excess of appropriations prohibited.** -- (a) No official of a

1 city, [or](#) town, ~~or fire district~~ that is subject to the jurisdiction of a fiscal overseer, budget
2 commission, or receiver, except in the case of an emergency involving the health and safety of the
3 people or the people's property declared by the city or town council ~~or fire district governing~~
4 ~~body~~, shall knowingly expend, or cause to be expended, in any fiscal year any sum in excess of
5 that official's departmental or other governmental unit's appropriation duly made in accordance
6 with the law, nor commit the city, [or](#) town, ~~or fire district~~, nor cause it to be committed, to any
7 obligation for the future payment of money in excess of that appropriation, with the exception of
8 court judgments.

9 (b) An official who intentionally violates this section shall be personally liable to the
10 city, [or](#) town, ~~or fire district~~ for any amounts expended in excess of an appropriation to the extent
11 that the city, [or](#) town, ~~or fire district~~ does not recover such amounts from the person or persons to
12 whom such amounts were paid and shall not be indemnified by the city, [or](#) town, ~~or fire district~~
13 for any such amounts. The superior court shall have jurisdiction to adjudicate claims brought by
14 the city, [or](#) town, ~~or fire district~~, or on the city's, [or](#) town's, ~~or fire district's~~ behalf by a budget
15 commission established under this chapter, and to order relief that the court finds appropriate to
16 prevent further violations of this section. A violation of this section shall be sufficient cause for
17 removal.

18 (c) For the purposes of this section, the word "official" ~~shall mean~~ [means](#) a city, [or](#) town,
19 ~~or fire district~~ department head, permanent, temporary, or acting, including the superintendent of
20 schools, and all members of municipal boards, committees, including the school committee, and
21 commissions that recommend, authorize, or approve the expenditure of funds, and the word
22 "emergency" shall mean a major disaster, including, but not limited to, flood, drought, fire,
23 hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, that poses an
24 unexpected and immediate threat to the health and safety of persons or property.

25 **45-9-12. Conflicts with other laws.** -- Notwithstanding any general or special law to the
26 contrary, unless otherwise specified, the provisions of this chapter shall supersede any conflicting
27 provisions of the city's, [or](#) town's, ~~or fire district's~~ charter, local ordinance, rule or regulation.

28 **45-9-13. Other state receivership laws inapplicable.** -- No city, [or](#) town, ~~or fire district~~
29 shall be placed into, or made subject to, either voluntarily or involuntarily, a state judicial
30 receivership proceeding, and nothing in this act shall in any way pre-empt or restrict the powers
31 and remedies available to a state-appointed receiver under Chapter 9 of Title 11 of the United
32 States Code and the receiver's ability to exercise such powers and remedies on a city's, [or](#) town's,
33 ~~or fire district's~~ behalf in a federal proceeding filed under Chapter 9 of Title 11 of the United
34 States Code.

1 **45-9-14. No state guarantee.** -- Nothing in this chapter shall be construed to pledge the
2 credit and assets of the state to pay the obligations or indebtedness, including bonded
3 indebtedness, of any municipality ~~or fire district.~~

4 **45-9-15. Inconsistent provisions.** -- Insofar as the provisions of this chapter are
5 inconsistent with the provisions of any charter, other laws, or ordinances, general, special, or
6 local, or of any rule or regulation of the state or any municipality ~~or fire district~~, the provisions of
7 this chapter are controlling.

8 **45-9-18. Additional powers of receiver.** -- The receiver shall be entitled to exercise all
9 powers under the general laws, this chapter, the state constitution, any special act, any charter
10 provision or ordinance that any elected official or any body of the city; ~~or town;~~ ~~or fire district~~
11 may exercise, acting separately or jointly; provided, however, that with respect to any such
12 exercise of powers by the receiver, the elected officials or the body shall not rescind, nor take any
13 action contrary to, such action by the receiver so long as the receivership continues to exist.

14 **45-9-19. Expenditures by elected officials in excess of appropriations prohibited.** --

15 (a) No elected official of a city, town, or fire district that is subject to the jurisdiction of a fiscal
16 overseer, budget commission, or receiver, except in the case of an emergency involving the health
17 and safety of the people or the people's property declared by the city or town council ~~or fire~~
18 ~~district governing body~~, shall knowingly expend, or cause to be expended, in any fiscal year any
19 sum in excess of that official's departmental or other governmental unit's appropriation duly made
20 in accordance with the law, nor commit the city; ~~or town;~~ ~~or fire district~~, nor cause it to be
21 committed, to any obligation for the future payment of money in excess of that appropriation,
22 with the exception of court judgments.

23 (b) An elected official who intentionally violates this section shall be personally liable to
24 the city; ~~or town;~~ ~~or fire district~~ for any amounts expended in excess of an appropriation to the
25 extent that the city; ~~or town;~~ ~~or fire district~~ does not recover such amounts from the person or
26 persons to whom such amounts were paid and shall not be indemnified by the city; ~~or town;~~ ~~or~~
27 ~~fire district~~ for any such amounts. The superior court shall have jurisdiction to adjudicate claims
28 brought by the city or town, or on the city's; ~~or town's;~~ ~~or fire district's~~ behalf by a budget
29 commission established under this chapter, and to order relief that the court finds appropriate to
30 prevent further violations of this section.

31 **45-9-20. Orders of the receiver.** -- In the event a receiver is appointed pursuant to the
32 provisions of this chapter, ~~powers of the fire district governing body or~~ powers of the city or town
33 council exercisable by resolution or ordinance shall be exercised by order of the receiver.

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

=====
LC003674
=====

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

- 1 This act would remove fire districts from budget commission oversight.
- 2 This act would take effect upon passage.

=====
LC003674
=====