

2012 -- S 2825

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TOWNS AND CITIES - CRITICAL PLAN EMPOWERMENT ACT -
MUNICIPAL PENSIONS

Introduced By: Senators DaPonte, and Bates

Date Introduced: March 22, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 45 of the General Laws entitled "TOWNS AND CITIES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 65.1

4 CRITICAL PLAN EMPOWERMENT ACT

5 **45-65.1-1. Short title. --** This chapter shall be known as and may be cited as the "Critical
6 Plan Empowerment Act."

7 **45-65.1-2. Legislative findings. --** (a) The general assembly finds and declares that:

8 (1) A significant portion of the unfunded liability for locally administered pension plans,
9 in the aggregate, is attributable to benefits provided to employees who have already retired, and
10 includes projected benefited adjustments for these retirees. In order to ensure: (i) Retirement
11 security for all plan members; (ii) The long-term viability of locally administered plans; and (iii)
12 Retirement benefit programs that offer adequate benefit levels to attract and retain a highly
13 qualified workforce, administrators for locally administered plans must examine the benefits that
14 retirees currently receive under their plans.

15 (2) There is a subset of cities and towns whose financial situations are endangered
16 specifically and disproportionately by the payment of benefit adjustments.

17 (3) In order to maintain the sovereignty and fiscal stability of as many municipalities as
18 possible, as well as safeguard the well-being, public safety, and welfare of the citizens of the state

1 and their property, it is essential that the state take immediate and proactive steps.

2 (b) For the foregoing reasons, the general assembly expressly finds and declares that the
3 critical financial situation currently confronting certain locally administered plans must be
4 addressed with all deliberate speed; each of the locally administered plans has unique features,
5 offers distinctive benefits, and is presented with its own opportunities and challenges, and their
6 administrators are in the best position to understand the financial condition of such plans and
7 choose the tools best suited to remediate them; and the enactment of this chapter is reasonable
8 and necessary to achieve and protect the compelling public interests listed herein.

9 **45-65.1-3. Definitions.** -- As used in this chapter, the following terms shall have the
10 following meanings:

11 (1) “Actuarial experience study” means a report provided by an actuary that includes a
12 recent discussion of plan experience, recommendations for actuarial assumptions and methods,
13 and information about the actuarial impact of these recommendations on the liabilities and other
14 key actuarial measures.

15 (2) “Annual actuarial valuation study” means a valuation of a locally administered plan
16 completed by an actuary, and a certification based on that valuation indicating whether such plan
17 is or is not in critical status, on an annual basis.

18 (3) “Critical status” means that, as determined by its actuary, as of the beginning of the
19 plan year, a plan’s funded percentage for such plan year is less than sixty percent (60%).

20 (4) “Locally administered plan” or “plan” means any defined benefit pension plan
21 established by a municipality for its employees, other than: (i) A plan that is part of the
22 employees’ retirement system of Rhode Island as defined in chapter 36-8 or the municipal
23 employees’ retirement system of Rhode Island as defined in chapter 45-21; or (ii) A plan
24 established by a municipality that has filed for bankruptcy protection pursuant to chapter 9 of title
25 11 of the United States code, a plan established by a municipality for which a receiver has been
26 appointed pursuant to chapter 45-9.

27 (5) “Municipality” means any town or city in the state of Rhode Island, any city or town
28 housing authority, fire, water, sewer district, regional school district or public building authority
29 as established by chapter 14 of title 37.

30 **45-65.1-4. Eligibility.** -- In order for a locally administered plan in critical status to be
31 eligible for relief under this chapter, its municipal council shall have adopted an ordinance
32 assuming the provisions of this chapter, which ordinance shall be supported by: (1) Numerical
33 data, including, but not limited to, its most recent actuarial experience study, its annual actuarial
34 valuation study, and its annual required contribution of the following plan year, both as reported

1 (pursuant to section 45-10-15) and as adjusted (demonstrating the financial value of suspending
2 benefit adjustments, as such term is used in section 45-21-52); (2) Findings demonstrating that
3 alternatives to suspending benefit adjustments have been considered and/or are being
4 implemented; and (3) A finding that the ordinance is reasonable and necessary to achieve the
5 municipality's fiscal stability and protect its property, and the health, welfare and property of its
6 citizens.

7 **45-65.1-5. Benefit adjustment suspension.** -- Notwithstanding the provisions of any
8 other statute, ordinance, interest arbitration award, or collective bargaining agreement to the
9 contrary, a municipality in critical status shall not be required to provide benefit adjustments,
10 pursuant to the provisions of this chapter. Once the municipality is no longer in critical status, it
11 shall resume providing cost of living adjustments, but such adjustments shall not exceed the
12 consumer price index for all urban consumers (CPI-U) as published by the United States
13 department of labor statistics determined as of September 30 of the prior calendar year until the
14 actuarial value of the locally administered plan's assets is one hundred percent (100%) of the
15 actuarial value of such plan's liabilities, using actuarial assumptions made by the actuary in good
16 faith and in accordance with accepted actuarial standards.

17 **45-65.1-6. Mandatory reinvestment.** -- At least fifty percent (50%) of funds resulting
18 from benefit adjustments suspended pursuant to this chapter shall be reinvested exclusively to
19 increase a plan's funded percentage, at least until the plan is no longer in critical status.

20 **45-65.1-7. Failure to comply.** -- With respect to any municipality that fails to comply
21 with section 45-65.1-4 or 45-65.1-6:

22 (1) The general treasurer is authorized to withhold moneys due from the state for any
23 purpose other than education, including, but not limited to, municipal aid and other aid provided
24 under sections 45-13-5.1, 45-13-12, 44-13-13, 44-34.1-2, 44-18-18.1, 44-18-36.1(b) and 42-63.1-
25 3;

26 (2) Such failure shall be deemed to be an event that threatens the fiscal well-being of the
27 municipality in which it is located, thus subjecting the municipality to the state's powers under
28 chapter 45-9; and

29 (3) The auditor general shall have the power to compel a performance audit in connection
30 with such municipality, as provided under section 22-13-4.

31 **45-65.1-8. Conflicts with other laws.** -- Notwithstanding any general or special law to
32 the contrary, unless otherwise specified, the provisions of this chapter shall supersede any
33 conflicting provisions of a local ordinance, collective bargaining agreement, interest arbitration
34 award or municipal charter.

1 **45-65.1-9. Severability.** -- [The holding of any section or sections or parts hereof to be](#)
2 [void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section](#)
3 [or part hereof.](#)

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO TOWNS AND CITIES - CRITICAL PLAN EMPOWERMENT ACT -
MUNICIPAL PENSIONS

- 1 This act would allow a municipality with a locally administered pension which is in
- 2 critical status, to suspend future benefit adjustments to retirees after certain findings are made.
- 3 This act would take effect upon passage.

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