AN ACT
RELATING TO TOWNS AND CITIES -- DISTRESSED COMMUNITIES

Introduced By: Senators DaPonte, and Bates

Date Introduced: March 22, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

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

CHAPTER 13.2
HIGHLY DISTRESSED COMMUNITY INTERVENTION ACT

45-13.2-1. Short title. – This chapter shall be known and may be cited as the “Highly Distressed Community Intervention Act.”

45-13.2-2. Purpose. – It shall be the policy of the state to provide ongoing resources and tools for, and to intervene on behalf of, cities and towns undergoing extraordinary financial distress. The problems that municipalities with financial challenges experience threaten the fiscal well-being, public safety and welfare of such cities and towns as well as the state as a whole. The state has a right to involve itself in the fiscal affairs of any community that presents multiple symptoms of economic stress. The powers delegated by the general assembly in this chapter shall be carried out by municipalities in such a manner as will best preserve the safety and welfare of citizens of the state and their property and the access of the state and its municipalities to capital markets, all to the public benefit and good.

45-13.2-3. Legislative findings. – (a) The general assembly finds and declares that:

(1) Due to several factors, including, but not limited to, the extreme economic and financial pressures experienced on the state and local levels, reductions in the state’s ability to appropriate funds for municipal governments, certain structural changes to the manner in which
the state supports municipal governments, and large unfunded liabilities attributable to retirement
benefits and other post-employment benefits, the state’s cities and towns face unprecedented
financial challenges.

(2) As of February 2012, several municipalities have perilously and disproportionately
high property tax burdens relative to the wealth of their taxpayers. Without state intervention,
financial instability will continue to pose grave problems for the citizens of those communities
and could introduce additional fiscal problems for other communities as well as the state.

(3) It is in the best interests of municipalities, taxpayers, and the state itself to maintain
the fiscal well-being, public safety, welfare and sovereignty of the municipalities. These
compelling state interests include:

(i) Preserving, to the fullest extent practicable, the principle of home rule as it is
enshrined in Article XIII of the Rhode Island Constitution, without jeopardizing the economic
stability of the various municipalities and the state;

(ii) Empowering municipalities to utilize financial resources and tools that are reasonably
necessary to allow them to achieve self-sufficiency within the shortest possible timeframe; and

(iii) Preventing the financial downgrade of municipalities by rating agencies, which
would make it more difficult to access the capital markets and increase the costs of borrowing.

(b) For the foregoing reasons, the general assembly expressly finds and declares that the
situation confronting several municipalities has reached a stage of emergency requiring state
intervention and relief, and must be addressed without delay and the enactment of this chapter is
reasonable and necessary to achieve and protect the compelling public interests listed herein.

45-13.2-4. Eligibility. – In order for a highly distressed community to be eligible for
relief under this chapter, its municipal council shall have adopted an ordinance or charter
amendment assuming any one, or more than one, of the relief provisions set forth in section 45-
13.2-6, which ordinance or charter amendment shall be supported by:

(1) A finding that the ordinance or charter amendment is reasonable and necessary to
ameliorate the municipality’s property tax burden relative to its citizens’ wealth, thereby
supporting such municipality’s fiscal stability and protecting its property, and the health, welfare
and property of its citizens; and

(2) Findings demonstrating that alternatives to enacting the particular policies set forth in
section 45-13.2-6 have been and/or are being implemented. For purposes of this chapter, “highly
distressed community” means a municipality that falls into the lowest twenty percent (20%) of all
four (4) indices established by section 45-13-12, as determined by the director of revenue on an
annual basis pursuant to section 45-13-12.
45-13.2-5. Collective bargaining contracts. – During any fiscal year in which a municipality has been designated as a highly distressed community and until it is no longer taking advantage of the relief provisions enumerated under section 45-13.2-6, its municipal council shall be required to:

(1) Estimate the financial impact of any collective bargaining contract proposal on the taxpayers of that community;

(2) Balance such financial impact against the community’s ability to pay; and

(3) Take such balance into account before deciding to approve or disapprove the collective bargaining contract.

45-13.2-6. Relief provisions. – During any fiscal year in which a municipality is designated as a highly distressed community pursuant to section 45-13.2-4 and for two (2) years after it is no longer so designated, its municipal council shall be authorized and empowered to adopt an ordinance or charter amendment specifying any of the following relief provisions (which relief provisions shall be automatically repealed, and shall have no legal force or effect, as of two (2) years after the date that the municipality is no longer designated as a highly distressed community):

(1) Purchasing. During any fiscal year that a municipality has been designated as a highly distressed community, its municipal council may adopt an ordinance or charter amendment that requires municipal purchasing to be conducted in accordance with sections 37-2-56 and/or 16-60-7.3.

(2) Continuance of contractual provisions. During any fiscal year that a municipality has been designated as a highly distressed community, its municipal council may adopt an ordinance or charter amendment that suspends sections 28-9.1-17 and/or 28-9.2-17.

(3) Retirement of sick or injured police officers and fire fighters. During any fiscal year that a municipality has been designated as a highly distressed community, its municipal council may adopt an ordinance or charter amendment that revises the disability retirement allowance provided under section 45-19-19 to between fifty percent (50%) and sixty-six and two-thirds percent (66 2/3%) of a retiree's annual salary at the time of retirement, subject to the provisions of section 45-21-31.

(4) Educational incentive pay. During any fiscal year that a municipality has been designated as a highly distressed community, its municipal council may adopt an ordinance or charter amendment that suspends chapter 28.1 of title 42.

(5) Consolidation of administrative functions. During any fiscal year that a municipality has been designated as a highly distressed community, its municipal council may adopt an
ordinance or charter amendment that authorizes and empowers its chief executive officer or the
town manager or town administrator to consolidate some or all responsibilities with respect to the
following under a single person or a unified position, as may be most appropriate: municipal
administrative functions and non-educational functions that are or may be included under chapter
2 of title 16, including, but not limited to, human resources, information technology, budgetary
and financial management, procurement, disbursement, and/or facilities management.

(6) Municipal budget and contract approvals. During any fiscal year that a municipality
has been designated as a highly distressed community, its municipal council may adopt an
ordinance or charter amendment that, notwithstanding the provisions of section 16-2-9, requires
the approval of the municipality’s chief executive officer or the town manager or town
administrator with respect to: (i) Any school budget, with line item veto power in respect thereto;
(ii) Any changes to the school budget during the course of the school year; and/or (iii) Any and
all contractual arrangements entered into by the school committee.

(7) Teacher step increases. During any fiscal year that a municipality has been designated
as a highly distressed community, its municipal council may adopt an ordinance or charter
amendment that suspends section 16-7-29.

(8) Certified nurses. During any fiscal year that a municipality has been designated as a
highly distressed community, its municipal council may adopt an ordinance or charter
amendment that suspends section 16-21-8 and requires that the functions performed by such
nurse-teachers be performed by certified nurses, consistent with policies, procedures and
regulations promulgated by the board of regents for elementary and secondary education.

(9) School bus monitors. During any fiscal year that a municipality has been designated
as a highly distressed community, its municipal council may adopt an ordinance or charter
amendment that suspends section 16-21-1. Any such ordinance or charter amendment may
require the functions performed by school bus monitors be fulfilled on a volunteer basis.

(10) Transportation to nonpublic schools. During any fiscal year that a municipality has
been designated as a highly distressed community, its municipal council may adopt an ordinance
or charter amendment that suspends any mandate pursuant to chapter 21.1 of title 16 to provide
bus transportation to pupils who attend nonpublic nonprofit schools that are consolidated,
regionalized, or otherwise established to serve residents of a specific area within the state.

(11) Health insurance cost sharing and plan design. During any fiscal year that a
municipality has been designated as a highly distressed community, its municipal council may
adopt an ordinance or charter amendment that requires future negotiated changes for active
employees under chapters 9.1, 9.2, 9.3 and/or 9.4 of title 28, relating to cost sharing and plan
design of health insurance, be applicable to new and existing retirements under the same chapters.

(12) Public safety collective bargaining. During any fiscal year that a municipality has been designated as a highly distressed community, its municipal council may adopt an ordinance or charter amendment that amends sections of the general laws of Rhode Island as set forth in subdivisions (1) and/or (2) of this section related to fire fighters’ or police officers’ collective bargaining rights, respectively.

45-13.2-7. Mandatory reinvestment; Annual certifications. – (a) At least fifty percent (50%) of funds resulting from enacting an ordinance or charter amendment pursuant to this chapter shall be reinvested exclusively to reduce a highly distressed community’s property tax burden or to limit growth of a highly distressed community’s property tax burden, at least until such municipality is no longer designated as a highly distressed community and is no longer taking advantage of the relief provisions enumerated under section 45-13.2-6.

(b) Every highly distressed community shall submit a certification to the auditor general and the director of revenue no later than one year after the date of passage of the ordinance or charter amendment declaring that the municipality has assumed such designation, which certification shall contain budgetary and numerical data sufficient to substantiate the satisfaction of subsection (a) of this section. This certification requirement shall continue, on an annual basis as measured from the date of passage of the ordinance or charter amendment, until a municipality is no longer designated as a highly distressed community and is no longer taking advantage of the relief provisions enumerated under section 45-13.2-6.

45-13.2-8. Failure to comply. – With respect to any municipality that fails to comply with section 45-13.2-4 or 45-13.2-7:

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

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

45-13.2-9. Supersession; Exclusivity. – Notwithstanding any general or special law to the contrary, unless otherwise specified, the provisions of this chapter shall supersede any conflicting provisions of a local ordinance, collective bargaining agreement, interest arbitration award, or municipal charter; further, the inclusion of any particular provision in this chapter shall not be construed in a manner indicating that a municipality has no right to take action with respect to the substance of such provision but for this chapter.

28-9.1-3. Definitions. -- As used in this chapter the following terms, unless the context requires a different interpretation, shall have the following meanings:

(1) "Base salaries" means the annual salary pursuant to the salary schedule or salary chart contained in the collective bargaining agreement between the corporate authorities and the bargaining unit exclusive of any monies provided for length of service or longevity, overtime payments, incentive pay payments, special duty payments, detail payments and any non-salary economic issues such as pensions, health and medical insurance costs.

(2) "Corporate authorities" means the proper officials within any city or town whose duty or duties it is to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of fire fighters, whether they are the mayor, city manager, town manager, town administrator, city council, town council, director of personnel, personnel board or commission, or by whatever other name or combination of names they may be designated.

(3) "Firefighter" means the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, any fire dispatchers of any city or town, and all employees with the exception of fire chiefs of any paid fire department in any city or town within the state. No assistant chief, deputy chief, battalion chief, captain or lieutenant shall be excluded from the collective bargaining solely by virtue of his or her title or position.

(4) "Unresolved issues" means any and all contractual provisions specifically addressing base salaries which have not been agreed upon by the bargaining agent and the corporate authorities within the thirty (30) day period referred to in section 28-9.1-7. Any contractual provision not presented by either the bargaining agent or the corporate authority within the thirty (30) day period shall not be submitted to arbitration as an unresolved issue; provided, that if either party or both parties are unable to present their respective proposals to the other party during the thirty (30) day period, they shall have the opportunity to submit their proposals by registered mail by midnight of the 30th day from and including the date of their first meeting.

28-9.1-9. Hearings. -- (a) The arbitration board shall, acting through its chairperson, call a hearing to be held within ten (10) days after the date of the appointment of the chairperson, and shall, acting through its chairperson, give at least seven (7) days notice in writing to each of the other two (2) arbitrators, the bargaining agent, and the corporate authorities of the time and place.
of the hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any documentary evidence and other data deemed relevant by the arbitrators may be received in evidence.

(b) The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of books, records, and other evidence relative or pertinent to the issues presented to them for determination.

(c) All parties to arbitration shall present, at the formal hearings before the issuance of the award, written estimates to the arbitration panel of the financial impact of their contract proposal on the taxpayers of the city or town that employs the members of the bargaining unit.

(d) Each arbitration decision shall be accompanied by a written report explaining how each of the statutory factors contained in section 28-9.1-10 played into the arbitrators’ determination of the final award. The report shall certify that the arbitration board gave primary weight to the community’s ability to pay and a comparison of the wages and other benefits of employment of employees with the economic conditions of residents of the community, and that it took into account the statutory limitations imposed on the local levy cap in making the award.

(e) The hearing conducted by the arbitrators shall be concluded within twenty (20) days of the time of commencement, and within ten (10) days after the conclusion of the hearings, the arbitrators shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the bargaining agent or its attorney or otherwise designated representative and the corporate authorities. The chairperson may require briefs of the parties, in which case the time for issuance of the award shall be extended by no more than ten (10) days.

(f) The chairperson of the arbitration board shall be required to render an arbitration award within the aforementioned timeframes and under no circumstances shall the timeframes provided for in this section be exceeded. Any chairperson who fails to render an award within the time requirements set forth in this section shall be fined one thousand dollars ($1,000) by the courts for each day that the award is late.

(g) A majority decision of the arbitrators shall be binding upon both the bargaining agent and the corporate authorities.

(h) Any arbitration board created pursuant to this chapter shall not issue a decision which increases the aggregate base salaries of the employees in the bargaining unit in an amount greater than two percent (2%).

28-9.1-10. Factors to be considered by arbitration board. – The arbitrators shall conduct the hearings and render their decision upon the basis of a prompt, peaceful, and just
settlement of wage or hour disputes between the fire fighters and the city or town by which they are employed. The factors, among others, to be given weight by the arbitrators in arriving at a decision shall include:

1. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received while in the employ of the city or town or from the city or town upon the retirement of any member of the bargaining unit as compared with the economic conditions of residents of the community.

2. (1) Comparison of wage rates or hourly conditions of employment of the fire department in question with prevailing wage rates or hourly conditions of employment of skilled employees of the building trades and industry in the local operating area involved.

3. (2) Comparison of wage rates or hourly conditions of employment of the fire department in question with wage rates or hourly conditions of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

4. (3) Comparison of wage rates or hourly conditions of employment of the fire department in question with wage rates or hourly conditions of employment of fire departments in cities or towns of comparable size.

5. (4) Interest and welfare of the public. Among the items the panel of arbitrators shall assess when considering this factor is the limitation imposed upon the employers by section 44-5-2.

6. (5) Comparison of peculiarities of employment in regard to other trades or professions, specifically:

   (i) Hazards of employment.

   (ii) Physical qualifications.

   (iii) Educational qualifications.

   (iv) Mental qualifications.

   (v) Job training and skills.

7. (6) Comparison of community's ability to pay.

28-9.1-16. Attorneys' fees -- Costs -- Interest. – (a) In the event either the bargaining agent or the corporate authorities files a petition for writ of certiorari to the supreme court of the state of Rhode Island for a review or modification of a majority decision of the arbitrators, which by the provisions of section 28-9.1-9 is binding upon both the bargaining agent and the corporate authorities, the party against whom the decision of the supreme court is adverse, if the supreme
court finds the appeal or petition to be frivolous, shall pay reasonable attorneys' fees and costs to
the successful party as determined by the supreme court, and the supreme court shall in its final
decision or judgment award costs and reasonable attorneys' fees. If the final decision affirms the
award of money, the award, if retroactive, shall bear interest at the rate of eight percentum
percent (8%) per annum from the effective retroactive date.

(b) In the event either the bargaining agent or the corporate authorities files a petition for
writ of certiorari to the supreme court, said petition shall be filed within sixty (60) days from the
date the parties were in receipt of the written decision of the arbitration board.

in Chapter 28-9.2 entitled "Municipal Police Arbitration" are hereby amended to read as follows:

28-9.2-3. Definitions. — As used in this chapter the following terms, unless the context
requires a different interpretation, have the following meanings:

(1) "Base salaries" means the annual salary pursuant to the salary schedule or salary chart
contained in the collective bargaining agreement between the corporate authorities and the
bargaining unit exclusive of any monies provided for length of service or longevity, overtime
payments, incentive pay payments, special duty payments, detail payments and any non-salary
economic issues such as pensions, health and medical insurance costs.

(2) "Corporate authorities" means the proper officials within any city or town whose
duty or duties it is to establish the wages, salaries, rates of pay, hours, working conditions, and
other terms and conditions of employment of police officers, whether they are the mayor, city
manager, town manager, town administrator, city council, town council, director of personnel,
personnel board or commission, or by whatever other name they may be designated, or any
combination thereof.

(3) "Police officer" means a full-time police officer from the rank of patrolman up to
and including the rank of chief, including policewomen, of any particular police department in
any city or town within the state.

(4) "Unresolved issues" means any and all contractual provisions specifically addressing
base salaries which have not been agreed upon by the bargaining agent and the corporate
authorities within the thirty (30) day period referred to in section 28-9.2-7. Any contractual
provision not presented by either the bargaining agent or the corporate authority within the thirty
(30) day period shall not be submitted to arbitration as an unresolved issue; provided, that if
either party or both parties are unable to present their respective proposals to the other party
during the thirty (30) day period, they shall have the opportunity to submit their proposals by
registered mail by midnight of the thirtieth (30th) day from and including the date of their first
28-9.2-9. **Hearings.** -- (a) The arbitration board shall, acting through its chairperson, call a hearing to be held within ten (10) days after the date of the appointment of the chairperson, and shall, acting through its chairperson, give at least seven (7) days notice in writing to each of the other two (2) arbitrators, the bargaining agent, and the corporate authorities of the time and place of the hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any documentary evidence and other data deemed relevant by the arbitrators may be received in evidence.

(b) The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of books, records, and other evidence relative or pertinent to the issues presented to them for determination.

(c) All parties to arbitration shall present, at the formal hearings before the issuance of the award, written estimates to the arbitration panel of the financial impact of their contract proposal on the taxpayers of the city or town that employs the members of the bargaining unit.

(d) Each arbitration decision shall be accompanied by a written report explaining how each of the statutory factors contained in section 28-9.2-10 played into the arbitrators' determination of the final award. The report shall certify that the arbitration board gave primary weight to the community's ability to pay and a comparison of the wages and other benefits of employment of employees with the economic conditions of residents of the community, and that it took into account the statutory limitations imposed on the local levy cap in making the award.

(e) The hearing conducted by the arbitrators shall be concluded within twenty (20) days of the time of commencement, and within ten (10) days after the conclusion of the hearings, the arbitrators shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the bargaining agent or its attorney or otherwise delegated representative and to the corporate authorities. The chairperson may require briefs of the parties, in which case the time for issuance of the award shall be extended by no more than ten (10) days.

(f) The chairperson of the arbitration board shall be required to render an arbitration award within the aforementioned timeframes and under no circumstances shall the timeframes provided for in this section be exceeded. Any chairperson who fails to render an award within the time requirements set forth in this section shall be fined one thousand dollars ($1,000) by the courts for each day that the award is late.

(g) A majority decision of the arbitrators is binding on both the bargaining agent and the corporate authorities.
(h) Any arbitration board created pursuant to this chapter shall not issue a decision which increases the aggregate base salaries of the employees in the bargaining unit in an amount greater than two percent (2%).

28-9.2-10. Factors to be considered by arbitration board. -- The arbitrators shall conduct the hearings and render their decision on the basis of a prompt, peaceful, and just settlement of wage or hour disputes between the police officers and the city or town by which they are employed. The factors, among others, to be given weight by the arbitrators in arriving at a decision shall include:

(1) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received while in the employ of the city or town or from the city or town upon the retirement of any member of the bargaining unit as compared with the economic conditions of residents of the community.

(2) Comparison of wage rates or hourly conditions of employment of the police department in question with prevailing wage rates or hourly conditions of employment of skilled employees of the building trades and industry in the local operating area involved.

(3) Comparison of wage rates or hourly conditions of employment of the police department in question with wage rates or hourly conditions of employment of police departments in cities or towns of comparable size.

(4) Interest and welfare of the public. Among items the panel of arbitrators shall assess when considering this factor is the limitation imposed upon the employer by section 44-5-2.

(5) Comparison of peculiarities of employment in regard to other trades or professions, specifically:

(i) Hazards of employment.

(ii) Physical qualifications.

(iii) Educational qualifications.

(iv) Mental qualifications.

(v) Job training and skills.

(6) Comparison of community's ability to pay.

28-9.2-16. Attorney's fees -- Costs -- Interest. -- If either the bargaining agent or the corporate authorities files a petition for writ of certiorari to the supreme court of the state of Rhode Island for a review or modification of a majority decision of the arbitrators, which by the provisions of section 28-9.2-9 is binding upon both the bargaining agent and the corporate
authorities, the party against whom the decision of the supreme court is adverse, if the supreme court finds the appeal or petition to be frivolous, shall pay reasonable attorney's fees and costs to the successful party as determined by the supreme court, and the supreme court shall in its final decision or judgment award costs and reasonable attorney's fees. If the final decision affirms the award of money, the award, if retroactive, shall bear interest at the rate of eight percent (8%) per annum from the effective retroactive date.

(b) In the event either the bargaining agent or the corporate authorities files a petition for writ of certiorari to the supreme court, said petition shall be filed within sixty (60) days from the date the parties were in receipt of the written decision of the arbitration board.

SECTION 4. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act, which can be given effect without the invalid provision or applications, and to this end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect upon passage; provided, however, that the provisions and amendments to the general laws contained in Sections 2 and 3 of this act shall only apply to municipalities that are highly distressed, as defined under sections 45-13-12 and 45-13.2-4 of the general laws and that have invoked the provisions of chapter 45-13.2 of the general laws by the adoption of an ordinance or charter amendment.

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This act would extend to communities which have been determined to be “highly
distressed communities” by reference to section 45-13-12 of the general laws additional
authorization to act in modification of police and fire labor contracts.

This act would take effect upon passage, provided; however, that the provisions and
amendments to the general laws contained in Sections 2 and 3 of this act would only apply to
municipalities that are highly distressed, as defined under sections 45-13-12 and 45-13.2-4 of the
general laws and that have invoked the provisions of chapter 45-13.2 of the general laws by the
adoption of an ordinance or charter amendment.