

HOUSE No. 4516

The Commonwealth of Massachusetts

By Mr. Murphy of Burlington, for the committee on Ways and Means, on House, No. 4421, a Bill relative to providing for the financial stability of the city of Lawrence (House, No. 4516). February 22, 2010.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Charles Murphy	21st Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act PROVIDING FOR THE FINANCIAL STABILITY OF THE CITY OF LAWRENCE .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. As used in this act the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Board”, a finance control board established under sections 6 and 7.

“Charter”, the charter of the city of Lawrence as provided in chapter 425 of the acts of 1983, as amended.

“City”, the city of Lawrence.

“City council”, the city council for the city of Lawrence established under its charter.

“Commissioner”, the commissioner of the department of revenue.

“Department”, the department of administration and finance established pursuant to section 8.

“Director”, the director of accounts in the department of revenue.

“Fund”, the city of Lawrence Financial Stability Fund required pursuant to section 3.

“Overseer”, the financial overseer appointed pursuant to section 4.

“Officer”, the chief administrative and financial officer appointed pursuant to section 8.

“School committee”, the school committee of the city of Lawrence established under its charter.

“Secretary”, the secretary of administration and finance.

“Supplemental reserve fund”, the supplemental reserve fund to ensure fiscal stability established pursuant to section 4 of chapter 41 of the acts of 1990, and amended by section 5 of chapter 377 of the acts of 1992.

SECTION 2. (a) Notwithstanding any general or special law, city charter provision or local ordinance to the contrary, the city, with the approval of the commissioner, may borrow, at 1 time or from time to time, sums approved by the city council and the commissioner, but in no event in an amount in the aggregate more than \$35,000,000 to maintain and operate the city while it adjusts the level of its expenses and revenues in fiscal years 2010 and 2011. In fiscal year 2011 the city shall not borrow more than one-half of the amount of its deficit in fiscal year 2010. The director shall certify the amount of the city’s deficit for fiscal year 2010.

(b) The commissioner may limit borrowing by the city pursuant to this act to an amount or amounts less than the amount or amounts approved by the city council. Bonds or notes issued under this act for operating purposes shall be issued for a term of not more than 20 years and shall be backed by the full faith and credit of the city. The bonds and notes shall be eligible to be issued as qualified bonds or notes under chapter 44A of the General Laws. Indebtedness incurred under this act shall not be included in determining the statutory limit of indebtedness of the city under section 10 of chapter 44 of the General Laws but, except as provided in this act, shall otherwise be subject to said chapter 44. Amounts raised to pay indebtedness incurred under authority of this section shall be subject to section 21C of chapter 59 of the General Laws.

(c) The maturities of each issue of bonds or notes authorized under this act, including any refunding bonds, may, if approved by the city officers authorized to issue and approve bonds or notes, and the commissioner, be arranged so that for each issue the amounts payable in the several years for principal and interest combined are as nearly equal as is practicable in the opinion of the city officers authorized to issue and approve the bonds or notes and commissioner, or in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

(d) In any year during which a loan issued under this section remains outstanding, the city shall not issue any other bond, note or other form of indebtedness without written notification to, and the approval of, the director.

(e) Notwithstanding section 57C of chapter 59 of the General Laws and chapter 183 of the acts of 2009, in fiscal year 2010 an actual tax bill issued upon the establishment of the tax rate for the fiscal year, after credit is given for a preliminary tax payment previously made, shall be due and payable in 2 installments. The first installment shall be due and payable on February 1, 2010, or 30 days after the actual real estate tax bills are mailed, whichever is later, if the bills are mailed no later than March 15, 2010; provided that if the bills are mailed after March 15, 2010, the first installment shall be due and payable at the time the second installment is due and payable; and the second installment shall be due and payable on May 1, 2010, after which dates, if unpaid, they shall become delinquent.

SECTION 3. The city shall set up on the books of the city the City of Lawrence Financial Stability Fund wherein all proceeds of any loan issued under section 2 shall be deposited. The

city council, with the approval of the commissioner, may authorize disbursements from the fund for purposes that the mayor considers appropriate to maintain and continue city operations. Funds borrowed for city operating purposes may be applied, with the approval of the director, as general revenue for purposes of section 23 of chapter 59 of the General Laws. The director shall establish rules and procedures that he considers appropriate relating to disbursements from the fund and the reporting and accounting for these disbursements.

SECTION 4. (a) Within 30 days of the effective date of this act the secretary shall appoint a fiscal overseer for the city to assess the ability of the city government to manage the city's fiscal challenges. The overseer shall without limitation:

(1) recommend to the mayor, city council and school committee sound fiscal policies for implementation;

(2) supervise all financial services and activities including the school department;

(3) advise the director of budget and finance, assessors, comptroller, treasurer-collector, purchasing agent and employees performing similar duties but with different titles;

(4) provide assistance in all matters related to municipal financial affairs including the school department;

(5) assist in development and preparation of all department budgets and spending plans;

(6) review all proposed contracts and obligations with a term in excess of 1 year;

(7) monitor the expenditures of all funds; and

(8) report to the secretary.

(b) All department budgets and request for budget transfers shall be submitted to the fiscal overseer for review and recommendation before submission to the mayor, city council or school committee.

(c) The city shall annually appropriate amounts sufficient for the proper administration of the fiscal overseer and staff, as determined in writing by the secretary. If the city fails to appropriate such amounts, the secretary shall direct the state treasurer to deduct the necessary funds from the city's distribution of unrestricted general aid and shall expend those funds directly for the benefit of the overseer and staff.

(d) The city shall be deemed to have accepted section 37M of chapter 71 of the General Laws for the purpose of consolidating the business and financial operations and functions of the school department with those of the city under the authority of the director of the department of budget and finance for the city. This acceptance may be revoked; provided, however that the city may not revoke acceptance of said section 37M of said chapter 71 in any year during which a loan issued under section 2 remains outstanding. Upon consolidation of the business and financial

operations and functions of the school department with those of the city, the fiscal overseer shall advise the new consolidated department of budget and finance.

(e) Within 120 days of appointment the overseer shall develop a 3-year operating and capital financial plan to achieve fiscal stability in the city□

(f) (1) Within 60 days of appointment the overseer shall determine the financial impact to the city should it: (i) accept section 18 of chapter 32B of the General Laws; (ii) terminate the provision of group health insurance coverage by self-insurance under section 3A of said chapter 32B; and (iii) accept section 19 of said chapter 32B for purposes of obtaining group health insurance coverage from the group insurance commission established by section 3 of chapter 32A of the General Laws or participate in a joint purchasing group or agreement under section 12 of said chapter 32B for purposes of obtaining such coverage□

(2) Upon determination by the overseer that such acceptance or action would result in cost savings, the city shall, effective July 1, 2010, be deemed to have accepted: (i) section 18 of chapter 32B of the General Laws; and (ii) section 19 of said chapter 32B; provided, however, that notwithstanding subsection (a) of said section 19 of said chapter 32B, acceptance shall not be conditioned upon written agreement between the appropriate public authority and the public employee committee; provided further, that employees who were covered by a collective bargaining agreement as of July 1, 2010 shall continue to receive the group insurance benefits pursuant to their respective collective bargaining agreement until the expiration date of such agreement; and provided, further, that upon the effective date of clause (ii) employees shall be subject to the group insurance premiums for state employees established pursuant to section 8 of said chapter 32A; or (iii) chapter 32B for purposes of participating in a joint purchasing group or agreement under section 12 of said chapter 32B, and shall take all other actions needed by law to implement these provisions□

SECTION 5. (a) Before setting a tax rate under section 23 of the chapter 59 of the General Laws for fiscal year 2011 or for any subsequent fiscal year in which a loan issued under section 2 remains outstanding, the city shall submit to the director a pro forma tax rate for the succeeding fiscal year, which shall contain all information required to set the tax rate under said section 23 of said chapter 59 except for the assessed valuation of all real and personal property subject to taxation for the fiscal year. The pro forma tax rate recapitulation, together with a copy of the adopted budget and such supporting revenue and expenditure information as the director may prescribe, shall be submitted no later than 10 days after the adoption of the city budget, or July 1, whichever is earlier. The director shall ascertain whether the city budget for that fiscal year contains reasonable revenues from taxation and other sources to meet the appropriations and other amounts required by law to be raised under said section 23 of said chapter 59, and the director shall report his conclusion to the commissioner□ For fiscal year 2010 or for any subsequent fiscal year in which a loan issued under section 2 remains outstanding, upon submission of the annual tax rate recapitulation by the city, the director shall also ascertain whether the city budget for that fiscal year contains reasonable revenues from taxation and other sources to meet the appropriations and other amounts required by law to be raised under said section 23 of said chapter 59 and the director shall report his conclusion to the commissioner□ If the commissioner determines that the city budget as presented on the pro forma or annual tax rate

recapitulation would not permit certification of the tax rate for the applicable fiscal year, the commissioner shall certify this determination in writing and provide notice of the determination with a copy of the certificate to the secretary and the house and senate committees on ways and means. In this case, no tax rate for the year shall be approved until submission of an annual tax rate recapitulation based on the actions taken to achieve a balanced budget.

(b) In any year in which a loan issued under section 2 remains outstanding, the commissioner shall not certify the annual tax rate of the city until an audit report and balance sheet for the preceding fiscal year has been received and accepted by the director. The audit report shall be prepared by a certified public accountant in accordance with generally accepted auditing standards and shall include accompanying financial statements.

(c) In any year in which a loan issued under section 2 remains outstanding, the city shall submit to the director quarterly reports presenting a budget to actual comparison of revenues and expenditures. The written reports shall be submitted within 30 days after the conclusion of each fiscal quarter and shall be in the form and include the information and detail that the director may prescribe.

(d) The director may waive any reporting or filing requirements contained in this section.

SECTION 6. If the city cannot set a tax rate for fiscal year 2011 by January 31, 2011, the fiscal overseer shall report this, as well as the underlying reasons, to the secretary. At any time after January 31, 2011, if the overseer concludes that the city is unable to achieve a balanced budget and fiscal stability, the overseer shall report this in writing to the secretary, and the secretary shall abolish the overseer and appoint a finance control board. The board shall have all of the powers and duties set forth in section 7. At any time after July 1, 2011 and while debt issued under this act is outstanding, if a finance control board has not been appointed and if the secretary, in his sole discretion, determines that the city has taken steps necessary to achieve long-term fiscal sustainability and no longer requires active state oversight, the secretary may abolish the overseer. If the director notifies the secretary in writing that the city is unable to achieve a balanced budget or set a tax rate at any time after the removal of the overseer and while the debt issued under this act is still outstanding, then the secretary shall establish a finance control board in accordance with section 7.

SECTION 7. (a) If a finance control board is established in accordance with section 6, it shall consist of 5 members: 3 of whom shall be designees of the secretary, 1 of whom shall be the mayor of the city and 1 of whom shall be the president of the city council of the city. The board shall act by a majority vote of all its members. The board shall initiate and assure the implementation of appropriate measures to secure the financial stability of the city. The board shall continue in existence until the secretary abolishes it. The board shall be a state agency for the purposes of chapter 268A of the General Laws.

(b) Action by the board under this act shall in all respects constitute action by the city for all purposes under the General Laws and under any special law.

(c) Until the board ceases to exist, no appropriation, borrowing authorization, transfer, including transfer from or replenishment of funds into the supplemental reserve fund, the capital reserve fund established under section 9 or other municipal spending authority shall take effect until approved by the board. The board shall approve all appropriations, borrowing authorizations, transfers or any other municipal spending authorizations, in whole or part.

(d) In addition to the authority and powers conferred elsewhere in this act, and notwithstanding any city charter provision or local ordinance to the contrary, the board shall have the power to:

(1) amend, formulate and execute the annual or supplemental budgets of the city and the school committee, including the establishment, increase or decrease of any appropriations and spending authority for all departments, boards, committees, agencies or other units of the city and the school committee; provided, however, that notwithstanding section 34 of chapter 71 of the General Laws, this clause shall fully apply to the school department and all school spending purposes;

(2) implement and maintain uniform budget guidelines and procedures for all departments;

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

(4) amortize operational deficits in an amount and for such term as the secretary approves on an annual basis;

(5) develop and maintain a uniform system for all financial planning and operations in all departments, offices, boards, commissions, committees, agencies or other units of the city's government, including the school department;

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

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

(8) notwithstanding the charter or any city ordinance to the contrary, appoint, remove, supervise and control all city employees and have control over all personnel matters; provided that the board shall hold all existing powers to hire and fire and set the terms and conditions of employment held by other employees or officers of the city, whether or not elected; and provided further that the board shall have the authority to exercise all powers otherwise available to a municipality regarding contractual obligations during a fiscal emergency; provided further that no city employee or officer shall hire, fire, transfer or alter the compensation or benefits of any employee except with the written approval of the board; and provided further that the board may delegate or otherwise assign these powers with the approval of the secretary;

(9) alter the compensation of elected officials of the city to reflect the fiscal emergency and changes in the responsibilities of the officials as provided by this act;

(10) employ, retain and supervise such managerial, professional and clerical staff as are necessary to carry out its responsibilities, with the approval of the secretary; provided further, that the board, with the approval of the secretary, shall have authority to set the compensation, terms and conditions of employment of its own staff; provided further, that the city shall annually appropriate amounts sufficient for the compensation of personnel hired under this clause as determined and fixed by the board; provided further, that if the city fails to appropriate such amounts, the secretary shall direct the state treasurer to deduct the necessary funds from the city's distribution of unrestricted general aid and shall expend those funds directly for the benefit of the board; and provided further, that staff hired under this subsection shall be deemed employees of the commonwealth, except such employees as the board formally designates independent contractors, and shall have benefits consistent with those of other state employees; provided, however, that chapters 31 and 150E of the General Laws shall not apply to such employees;

(11) reorganize, consolidate or abolish departments, commissions, boards, offices or functions of the city, in whole or in part, and to establish such new departments, commissions, boards, offices or functions as it deems necessary, and to transfer the duties, powers, functions and appropriations of 1 department, commission, board or other unit to another;

(12) appoint, in consultation with the secretary, persons to fill vacancies on any board, committee, department or office acting in an advisory capacity to the board;

(13) sell, lease or otherwise transfer real property and other assets of the city with the approval of the secretary;

(14) purchase, lease or otherwise acquire property or other assets on behalf of the city with the approval of the secretary;

(15) adopt rules and regulations governing the operation and administration of the city;

(16) seek voter approval of general override, debt exclusion or capital expenditure exclusion ballot questions as provided in section 21C of chapter 59 of the General Laws;

(17) to approve the allocation of the tax levy through the selection of a residential factor pursuant to section 56 of chapter 40 of the General Laws; provided, however that no choice of a residential factor under said section 56 shall be valid until it has been approved by the board;

(18) alter or rescind any action or decision of any municipal officer, employee, board or commission within 14 days after receipt of notice of such action or decision;

(19) suspend in consultation with the secretary any rules and regulations of the city and to adopt rules and regulations to carry out this act; and

(20) exercise all powers under the General Laws and this or any other special act, any charter provision or ordinance that any elected official of the city may exercise, acting separately or jointly; provided, however, that with respect to any such exercise of powers by the board, the

elected officials shall not rescind or take any action contrary to such action by the board so long as the board continues to exist.

SECTION 8. (a) Notwithstanding any general or special law or local ordinance to the contrary, this section shall apply upon abolition of a finance control board established under this act. There shall be in the city a department of administration and finance which shall be responsible for the overall budgetary and financial administration of the city. The department shall be under the direction and control of the officer. The officer shall report to and be under the charge and direction of the mayor. Nothing in this section shall abrogate the powers and duties of the school committee under any general or special law, except as specifically provided in this section.

Whenever the term “department of budget and finance” appears in any general or special law or any ordinance, regulation, contract or other document with reference to the city, it shall mean the department of administration and finance of the city. Whenever the term “chief financial officer” or “director of budget and finance” appears in any general or special law or any ordinance, regulation, contract or other document with reference to the city, it shall mean the officer of the city.

(b)(1) The mayor shall appoint the officer for a term of not more than 3 years, as provided in this subsection. The officer shall be appointed solely on the basis of administrative and executive qualifications and shall be a person especially fitted by education, training and experience to perform the duties of the office. The officer need not be a resident of the city.

(2) When the office of officer is vacant or it is known that it will become vacant, the mayor shall initiate the selection process by giving notice of the intention to establish a screening committee to review applicants for the position and shall send a copy of the notice to each agency or officer responsible for appointing persons to serve on the screening committee. The mayor shall appoint the screening committee not earlier than 21 days after sending that notice. No screening committee shall be required if the mayor reappoints an incumbent officer.

(3) The screening committee shall consist of 7 members: 1 of whom shall be appointed by the school committee; 1 of whom shall be appointed by the city council; 1 of whom shall be appointed by the secretary; and 4 of whom shall be appointed by the mayor, 2 of whom shall be experts in municipal management.

(4) The screening committee shall recommend to the mayor the names of not less than 2 or more than 5 candidates whom it believes to be best suited to perform the duties of the officer. If the screening committee determines that there are not at least 2 candidates qualified to perform the duties of the officer, the screening committee shall report to the mayor that it is unable to complete its assigned task, and the mayor shall direct the screening committee to reopen the search.

(5) The mayor shall appoint 1 of the candidates recommended by the screening committee as the officer or, if the mayor finds that no candidate is qualified for the office, the mayor shall direct the screening committee to reopen the search.

(c) While the process of appointing an officer under subsection (b) is proceeding, the mayor may appoint an acting officer.

(d) If a loan issued under section 2 remains outstanding, the appointment, including an acting appointment, or removal of the officer shall not take effect until it has been approved in writing by the secretary.

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

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

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

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

(4) Implementing and maintaining uniform financial data processing capabilities for all departments;

(5) Supervising all financial data processing activities;

(6) Implementing and maintaining uniform budget guidelines and procedures;

(7) Assisting in the development and preparation of all department budgets and spending plans;

(8) Reviewing all proposed contracts and obligations with a term in excess of 1 year;

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

(10) Reviewing the spending plan for each department; and

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

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

(f) All department budgets and requests for budget transfers shall be submitted to the officer for review and recommendation before submission to the mayor, city council or school committee, as appropriate. For each proposed appropriation order, lease or contract arrangement for a term including more than 1 fiscal year, collective bargaining agreement and with respect to any proposed city council vote necessary to effectuate a financial transfer, ordinance revision or special legislation which may require the expenditure of funds or otherwise financially obligate

the city for a period in excess of 1 year, or with respect to a vote to authorize a borrowing pursuant to a provision of law other than section 4, 6 or 6A of chapter 44 of the General Laws, the officer shall, if it be the case, submit in writing to the mayor, city council or school committee, as appropriate, a certification that it is the officer's professional opinion, after an evaluation of all pertinent financial information reasonably available, that the city's financial resources and revenues are, and will continue to be, adequate to support such proposed expenditures or obligations without a detrimental impact on the continuous provision of the existing level of municipal services. If the officer fails to provide this certification within 7 days after a request for such certification from the mayor, city council or school committee, the appropriation order, financial transfer, ordinance revision, special legislation or borrowing authorization may nonetheless be approved, but the absence of the certification of the officer shall be expressly noted in that order or vote.

(g) All departments, officers, boards, commissions, agencies and other units of the city, including the school department, shall submit budget requests to the mayor upon the schedule and in the form established by the officer.

(h) Annually, not later than March 30, the officer shall submit a 4-year financial plan and a 5-year capital plan to the city council that includes all capital needs of the city.

(i) The board of assessors, treasurer-collector, budget director, comptroller, director of information technology, purchasing agent, director of human resources, labor relations director and employees performing similar duties but with different titles shall report to and be under the direction of the officer. The officer shall appoint all such officers and employees with the approval of the mayor. The mayor may also place other positions and departments under the direction of the officer.

(j) The officer shall not assume the duties or responsibilities of the treasurer-collector and shall not hold an elective office and shall devote his full time and attention to his duties.

(k) The city shall annually appropriate amounts sufficient for the proper administration of the department, as determined in writing by the secretary. If the city fails to appropriate such amounts, the secretary shall direct the state treasurer to deduct the necessary funds from the city's distribution of the city's unrestricted general aid and shall expend those funds directly for the benefit of the department.

(l) The officer shall comply with all requests of the school department to provide any information relating to the operation of the school department held within the authority or control of the officer as the result of the consolidation of school and city business and financial functions under section 4. If the officer, or any employee thereof, refuses to provide such information or engages in unreasonable delay, the school department shall notify the secretary. The secretary shall, within a reasonable time, make a determination that any such information shall be provided to the school department which shall be binding upon the officer and the school department. The secretary's determination shall not be an adjudicatory proceeding reviewable under chapter 30A of the General Laws. Nothing in this subsection shall abrogate any of the other powers or duties of the school committee under chapter 71 of the General Laws.

(m) In any year in which a loan issued under section 2 remains outstanding, the officer shall submit to the director all reports required under section 5.

SECTION 9. There shall be established by the city a capital reserve fund into which the city shall appropriate in each fiscal year beginning in fiscal year 2012 at least 1.5 per cent of the amount of property taxes committed for the preceding fiscal year. The fund may be appropriated only for purposes for which the city could borrow for 10 years or longer under chapter 44 of the General Laws.

SECTION 10. (a) No official of the city, except in the case of an emergency involving the health and safety of the people or their property declared by the city council under section 31 of chapter 44 of the General Laws, shall knowingly expend or cause to be expended in any fiscal year any sum in excess of that official's departmental or other governmental unit's appropriation duly made in accordance with the law, nor commit the city, nor cause it to be committed, to any obligation for the future payment of money in excess of that appropriation, with the exception of court judgments.

(b) An official who intentionally violates this section shall be personally liable to the city for any amounts expended in excess of an appropriation to the extent that the city does not recover such amounts from the person or persons to whom such amounts were paid. The superior court or a single justice of the supreme judicial court shall have jurisdiction to adjudicate claims brought by the city, or on the city's behalf by a finance control board established under this act, and to order relief that the court finds appropriate to prevent further violations of this section. A violation of this section shall be sufficient cause for removal.

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

SECTION 11. Notwithstanding any general or special law to the contrary, unless otherwise specified, the provisions of this act shall supersede any conflicting provisions of the city's charter or local ordinance.