

SENATE No. 2456

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Text of amendment (24) offered by Mr. Knapik to the pending Senate Ways and Means amendment (Senate, No. 4) to the House Bill making appropriations for the fiscal year 2010 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements.

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

1 Section X: Chapter 58 of the Acts of 2010 is hereby repealed and replaced with the
2 following:-

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

5 “Board”, a finance control board established under section 4.

6 “Charter”, the charter of the city of Lawrence as provided in chapter 425 of the acts of
7 1983, as amended.

8 “City”, the city of Lawrence.

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

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

11 “Department”, the department of administration and finance established pursuant to
12 section 6.

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

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

15 “Officer”, the chief administrative and financial officer appointed pursuant to section 6.

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

18 “Secretary”, the secretary of administration and finance.

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

22 SECTION 2. (a) Notwithstanding any general or special law, city charter provision or
23 local ordinance to the contrary, the city, with the approval of the commissioner, may borrow, at 1
24 time or from time to time, sums approved by the city council and the commissioner, but in no
25 event in an amount in the aggregate more than \$35,000,000 to maintain and operate the city
26 while it adjusts the level of its expenses and revenues in fiscal years 2010 and 2011. In fiscal
27 year 2011 the city shall not borrow more than one-half of the amount of its deficit in fiscal year
28 2010. The director shall certify the amount of the city’s deficit for fiscal year 2010.

29 (b) The commissioner may limit borrowing by the city pursuant to this act to an amount
30 or amounts less than the amount or amounts approved by the city council. Bonds or notes issued
31 under this act for operating purposes shall be issued for a term of not more than 20 years and

32 shall be backed by the full faith and credit of the city. The bonds and notes shall be eligible to be
33 issued as qualified bonds or notes under chapter 44A of the General Laws. Indebtedness incurred
34 under this act shall not be included in determining the statutory limit of indebtedness of the city
35 under section 10 of chapter 44 of the General Laws but, except as provided in this act, shall
36 otherwise be subject to said chapter 44. Amounts raised to pay indebtedness incurred under
37 authority of this section shall be subject to section 21C of chapter 59 of the General Laws.

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

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

48 (e) Notwithstanding section 57C of chapter 59 of the General Laws and chapter 183 of
49 the acts of 2009, in fiscal year 2010 an actual tax bill issued upon the establishment of the tax
50 rate for the fiscal year, after credit is given for a preliminary tax payment previously made, shall
51 be due and payable in 2 installments. The first installment shall be due and payable on February
52 1, 2010, or 30 days after the actual real estate tax bills are mailed, whichever is later, if the bills
53 are mailed no later than March 15, 2010; provided that if the bills are mailed after March 15,

54 2010, the first installment shall be due and payable at the time the second installment is due and
55 payable; and the second installment shall be due and payable on May 1, 2010, after which dates,
56 if unpaid, they shall become delinquent.

57 SECTION 3. The city shall set up on the books of the city the City of Lawrence Financial
58 Stability Fund wherein all proceeds of any loan issued under section 2 shall be deposited. The
59 board may authorize disbursements from the fund for purposes that it considers appropriate to
60 maintain and continue city operations. Funds borrowed for city operating purposes may be
61 applied as general revenue for purposes of section 23 of chapter 59 of the General Laws. The
62 board shall establish rules and procedures that it considers appropriate relating to disbursements
63 from the fund and the reporting and accounting for these disbursements.

64 SECTION 4. (a) There shall be in the city of Lawrence a finance control board, in this act
65 called the board, which shall consist of 5 members: 3 of whom shall be appointed by a majority
66 vote of the attorney general, the state auditor, and the governor, 1 of whom shall be a resident of
67 the city; the mayor of the city; and, the president of the city council of the city. The board shall
68 act by a majority vote of all its members. The board shall initiate and assure the implementation
69 of appropriate measures to secure the financial stability of the city. The board shall continue in
70 existence until the end of the third complete fiscal year following its inception, unless the
71 members by majority vote shall annually vote to continue the existence of the board from year to
72 year thereafter. The board shall be a state agency for the purposes of chapter 268A of the General
73 Laws.

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

76 (c) Until the board ceases to exist, no appropriation, borrowing authorization, transfer,
77 including transfer from or replenishment of funds into the supplemental reserve fund, the capital
78 reserve fund established under section 7 or other municipal spending authority shall take effect
79 until approved by the board. The board shall approve all appropriations, borrowing
80 authorizations, transfers or any other municipal spending authorizations, in whole or part.

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

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

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

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

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

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

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

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

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

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

114 (10) employ, retain and supervise such managerial, professional and clerical staff as are
115 necessary to carry out its responsibilities, with the approval of the secretary; provided further,
116 that the board, with the approval of the secretary, shall have authority to set the compensation,
117 terms and conditions of employment of its own staff; provided further, that the city shall

118 annually appropriate amounts sufficient for the compensation of personnel hired under this
119 clause as determined and fixed by the board; provided further, that if the city fails to appropriate
120 such amounts, the secretary shall direct the state treasurer to deduct the necessary funds from the
121 city's distribution of unrestricted general aid and shall expend those funds directly for the benefit
122 of the board; and provided further, that staff hired under this subsection shall be deemed
123 employees of the commonwealth, except such employees as the board formally designates
124 independent contractors, and shall have benefits consistent with those of other state employees;
125 provided, however, that chapters 31 and 150E of the General Laws shall not apply to such
126 employees;

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

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

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

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

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

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

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

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

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

147 (20) exercise all powers under the General Laws and this or any other special act, any
148 charter provision or ordinance that any elected official of the city may exercise, acting separately
149 or jointly; provided, however, that with respect to any such exercise of powers by the board, the
150 elected officials shall not rescind or take any action contrary to such action by the board so long
151 as the board continues to exist.

152 (e) The board shall have the authority to include in the 3-year operating and capital
153 financial plan to achieve fiscal stability an assessment and analysis of the financial impact of the
154 city's (a) acceptance of section 18 of chapter 32B of the General Laws and (b) termination of
155 providing group health insurance coverage by self-insurance under section 3A of said chapter
156 32B and acceptance of section 19 of said chapter 32B for purposes of obtaining group health
157 insurance coverage from the group insurance commission established by section 3 of chapter
158 32A of the General Laws or participation in a joint purchasing group or agreement under section
159 12 of said chapter 32B for purposes of obtaining such coverage.

160 (f) The city shall be deemed to have accepted section 37M of chapter 71 of the General
161 Laws for the purpose of consolidating the business and financial operations and functions of the
162 school department with those of the city under the authority of the director of the department of
163 budget and finance. This acceptance may be revoked, but no revocation of acceptance shall be
164 valid or effective in any year during which a loan issued under section 2 remains outstanding,
165 without the written approval of the secretary. Upon consolidation of the business and financial
166 operations and functions of the school department with those of the city, the board shall advise
167 the new consolidated department of budget and finance.

168 SECTION 5. (a) If the board concludes that its powers are insufficient to restore fiscal
169 stability to the city of Lawrence, it shall so notify the secretary for administration and finance,
170 and shall forward to him a statement of the reasons why it has been unable to restore fiscal
171 stability to the city. Upon receipt of such statement, the secretary for administration and finance
172 may terminate the existence of the board and may appoint a receiver for the city for a period as
173 he may determine. The secretary may at any time and without cause remove the receiver and
174 appoint a successor, or terminate the receivership. The secretary shall determine the salary of the
175 receiver, which salary shall be payable by the city.

176 (b) The receiver shall have the following powers:-

177 (1) all powers of the finance control board under section 4. Such powers shall continue in
178 the receiver and shall remain through the period of any receivership;

179 (2) the power to exercise any function or power of any municipal officer or employee,
180 whether elected or otherwise, specifically including the following powers relative to building and
181 zoning;

182 (A) to order the laying out, locating anew or discontinuing of streets and ways within the
183 city;

184 (B) to regulate the construction of buildings;

185 (C) to implement such changes to the city's zoning ordinance as are necessary; provided,
186 however, that the zoning ordinance continues to promote public safety, health, and welfare; and
187 provided further, that no zoning change shall affect or interfere with the integrity of existing
188 residential districts. No such proposed zoning changes shall apply to structures or uses lawfully
189 existing or lawfully begun before the effective date of the zoning change;

190 (i) The procedure for implementing changes in zoning ordinances as provided in section
191 5 of chapter 40A of the General Laws shall not govern such changes in the city during the time
192 the receiver is in operation.

193 (ii) The receiver shall not implement any zoning change until a public hearing has been
194 held at which interested persons shall have an opportunity to be heard. The public hearing shall
195 be held within 60 days after the date on which the board originally proposed the zoning change.
196 Notice of the time and place of the public hearing, of the subject matter sufficient for
197 identification, and of the place where texts and maps thereof may be inspected shall be published
198 in a newspaper of general circulation in the city once in each of 2 successive weeks; but the first
199 publication shall be not less than 14 days before the day of the hearing; and notice shall also be
200 posted in a conspicuous place in city hall for a period of not less than 14 days before the day of
201 the hearing.

202 (iii) Notice of such proposed zoning change shall be sent to any nonresident property
203 owner who files an annual request for such notice with the city clerk no later than January 1 of

204 each year. The receiver shall establish a reasonable fee to cover the cost of providing these
205 notices; and

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

208 (c) Upon the appointment of a receiver, the office of mayor shall be abolished, and the
209 receiver shall exercise all the powers of the mayor under the General Laws, special laws, the city
210 charter and ordinances. Other elected officials of the city shall continue to be elected in
211 accordance with the city charter, and shall serve solely in an advisory capacity to the receiver.

212 SECTION 6. (a) Notwithstanding any general or special law or local ordinance to the
213 contrary, this section shall apply upon abolition of a finance control board or termination of a
214 receivership established under this act. There shall be in the city a department of administration
215 and finance which shall be responsible for the overall budgetary and financial administration of
216 the city. The department shall be under the direction and control of the officer. The officer shall
217 report to and be under the charge and direction of the mayor. Nothing in this section shall
218 abrogate the powers and duties of the school committee under any general or special law, except
219 as specifically provided in this section.

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

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

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

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

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

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

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

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

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

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

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

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

262 (4) implementing and maintaining uniform financial data processing capabilities for all
263 departments;

264 (5) supervising all financial data processing activities;

265 (6) implementing and maintaining uniform budget guidelines and procedures;

266 (7) assisting in the development and preparation of all department budgets and spending
267 plans;

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

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

271 (10) reviewing the spending plan for each department; and

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

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

275 (f) All department budgets and requests for budget transfers shall be submitted to the
276 officer for review and recommendation before submission to the mayor, city council or school
277 committee, as appropriate. For each proposed appropriation order, lease or contract arrangement
278 for a term including more than 1 fiscal year, collective bargaining agreement and with respect to
279 any proposed city council vote necessary to effectuate a financial transfer, ordinance revision or
280 special legislation which may require the expenditure of funds or otherwise financially obligate
281 the city for a period in excess of 1 year, or with respect to a vote to authorize a borrowing
282 pursuant to a provision of law other than section 4, 6 or 6A of chapter 44 of the General Laws,
283 the officer shall, if it be the case, submit in writing to the mayor, city council or school
284 committee, as appropriate, a certification that it is the officer 's professional opinion, after an
285 evaluation of all pertinent financial information reasonably available, that the city's financial
286 resources and revenues are, and will continue to be, adequate to support such proposed

287 expenditures or obligations without a detrimental impact on the continuous provision of the
288 existing level of municipal services. If the officer fails to provide this certification within 7 days
289 after a request for such certification from the mayor, city council or school committee, the
290 appropriation order, financial transfer, ordinance revision, special legislation or borrowing
291 authorization may nonetheless be approved, but the absence of the certification of the officer
292 shall be expressly noted in that order or vote.

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

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

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

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

306 (k) The city shall annually appropriate amounts sufficient for the proper administration of
307 the department, as determined in writing by the secretary. If the city fails to appropriate such
308 amounts, the secretary shall direct the state treasurer to deduct the necessary funds from the

309 city's distribution of the city's unrestricted general aid and shall expend those funds directly for
310 the benefit of the department.

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

321 SECTION 7. There shall be established by the city a capital reserve fund into which the
322 city shall appropriate in each fiscal year beginning in fiscal year 2012 at least 1.5 per cent of the
323 amount of property taxes committed for the preceding fiscal year. The fund may be appropriated
324 only for purposes for which the city could borrow for 10 years or longer under chapter 44 of the
325 General Laws.

326 SECTION 8. (a) No official of the city, except in the case of an emergency involving the
327 health and safety of the people or their property declared by the city council under section 31 of
328 chapter 44 of the General Laws, shall knowingly expend or cause to be expended in any fiscal
329 year any sum in excess of that official's departmental or other governmental unit's appropriation
330 duly made in accordance with the law, nor commit the city, nor cause it to be committed, to any

331 obligation for the future payment of money in excess of that appropriation, with the exception of
332 court judgments.

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

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

347 SECTION 9. Notwithstanding any general or special law to the contrary, unless
348 otherwise specified, the provisions of this act shall supersede any conflicting provisions of the
349 city's charter or local ordinance.