

## Senate, No. 2316

[Senate, March 9, 2010 – Text of the Senate amendment (Senator Tisei and others) to the House Bill providing for the financial stability of the city of Lawrence ([House, No. 4516, amended](#))]



## The Commonwealth of Massachusetts

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IN THE YEAR OF TWO THOUSAND AND NINE

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- 1           **SECTION 1.** As used in this act the following words shall, unless the context  
2 clearly requires otherwise, have the following meanings:-
- 3           “Board”, a finance control board established under section 4.  
4           “Charter”, the charter of the city of Lawrence.  
5           “City”, the city of Lawrence.  
6           “City council”, the city council for the city of Lawrence.  
7           “Commissioner”, the commissioner of revenue.  
8           “Department”, the department of administration and finance established under  
9 section 6.  
10          “Director”, the director of accounts in the department of revenue.  
11          “Fund”, the city of Lawrence Financial Stability Fund required under section 3.  
12          “Officer”, the chief administrative and financial officer appointed under section 6.

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

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

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

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

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

35 Amounts raised to pay indebtedness incurred under authority of this section shall be  
36 subject to section 21C of chapter 59 of the General Laws.

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

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

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

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

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

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

78           (c) Until the board ceases to exist, no appropriation, borrowing authorization,  
79 transfer, including transfer from or replenishment of funds into the supplemental reserve

80 fund, the capital reserve fund established under section 7 or other municipal spending  
81 authority shall take effect unless approved by the board. The board shall determine  
82 whether to approve all appropriations, borrowing authorizations, transfers and other  
83 municipal spending authorizations, in whole or part.

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

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

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

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

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

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

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

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

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

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

119 (10) employ, retain and supervise such managerial, professional and  
120 clerical staff as are necessary to carry out its responsibilities, with the approval of the  
121 secretary; provided, further, that the board, with the approval of the secretary, shall have  
122 authority to set the compensation, terms and conditions of employment of its own staff;  
123 provided, further, that the city shall annually appropriate amounts sufficient for the  
124 compensation of personnel hired under this clause as determined and fixed by the board;

125 provided, further, that if the city fails to appropriate such amounts, the secretary shall  
126 direct the state treasurer to deduct the necessary funds from the city's distribution of  
127 unrestricted general aid and shall expend those funds directly for the benefit of the board;  
128 provided, further, that staff hired under this subsection shall be deemed employees of the  
129 commonwealth, except such employees as the board formally designates independent  
130 contractors, and shall have benefits consistent with those of other state employees;  
131 provided, however, that chapters 31 and 150E of the General Laws shall not apply to  
132 such employees;

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

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

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

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

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

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

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

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

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

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

164 (e) The board shall have the authority to include in the 3-year operating and  
165 capital financial plan to achieve fiscal stability an assessment and analysis of the  
166 financial impact of the city's; (i) acceptance of section 18 of chapter 32B of the  
167 General Laws; and (ii) termination of providing group health insurance coverage by  
168 self-insurance under section 3A of said chapter 32B and acceptance of section 19 of  
169 said chapter 32B for purposes of obtaining group health insurance coverage from the



170 group insurance commission established by section 3 of chapter 32A of the General  
171 Laws or participation in a joint purchasing group or agreement under section 12 of said  
172 chapter 32B for purposes of obtaining such coverage.

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

182 **SECTION 5.** (a) If the board concludes that its powers are insufficient to  
183 restore fiscal stability to the city of Lawrence, it shall so notify the secretary for  
184 administration and finance, and shall forward to the secretary a statement of the  
185 reasons why it has been unable to restore fiscal stability to the city. Upon receipt of  
186 such statement, the secretary for administration and finance may terminate the  
187 existence of the board and may appoint a receiver for the city for a period as the  
188 secretary may determine. The secretary may, at any time and without cause, remove  
189 the receiver and appoint a successor, or terminate the receivership. The secretary shall  
190 determine the salary of the receiver, which salary shall be payable by the city.

191 (b) The receiver shall have:-

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

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

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

200 (c) The zoning powers under this section shall include the power:

201 (1) to order the laying out, locating anew or discontinuing of streets and  
202 ways within the city;

203 (2) to regulate the construction of buildings;

204 (3) to implement such changes to the city's zoning ordinance as are  
205 necessary; provided, however, that the zoning ordinance continues to promote public  
206 safety, health, and welfare; and provided further, that no zoning change shall affect or  
207 interfere with the integrity of existing residential districts; provided, further that no  
208 such proposed zoning changes shall apply to structures or uses lawfully existing or  
209 lawfully begun before the effective date of the zoning change;

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

213 (e) The receiver shall not implement any zoning change until a public hearing  
214 has been held at which interested persons shall have an opportunity to be heard. The  
215 public hearing shall be held within 60 days after the date on which the board originally  
216 proposed the zoning change. Notice of the time and place of the public hearing, of the  
217 subject matter sufficient for identification, and of the place where texts and maps of  
218 the proposed zoning change may be inspected shall be published in a newspaper of  
219 general circulation in the city once in each of 2 successive weeks; but the first  
220 publication shall be not fewer than 14 days before the day of the hearing; and notice  
221 shall also be posted in a conspicuous place in city hall for a period of not fewer than 14  
222 days before the day of the hearing.

223 (f) Notice of such proposed zoning change shall be sent to any nonresident  
224 property owner who files an annual request for such notice with the city clerk no later  
225 than January 1 for the upcoming year. The receiver shall establish a reasonable fee to  
226 cover the cost of providing these notices.

227 (g) Upon the appointment of a receiver, the office of mayor shall be abolished,  
228 and the receiver shall exercise all the powers of the mayor under the General Laws,  
229 special laws, the city charter and ordinances. Other elected officials of the city shall  
230 continue to be elected in accordance with the city charter, and shall serve solely in an  
231 advisory capacity to the receiver.

232 **SECTION 6.** (a) Notwithstanding any general or special law or local ordinance  
233 to the contrary, this section shall apply upon abolition of a finance control board or  
234 termination of a receivership established under this act. There shall be in the city a

235 department of administration and finance which shall be responsible for the overall  
236 budgetary and financial administration of the city. The department shall be under the  
237 direction and control of the officer. The officer shall report to and be under the charge  
238 and direction of the mayor. Nothing in this section shall abrogate the powers and  
239 duties of the school committee under any general or special law, except as specifically  
240 provided in this section.

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

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

252 (2) When the office of officer is vacant or it is known that it will become vacant,  
253 the mayor shall initiate the selection process by giving notice of the intention to establish  
254 a screening committee to review applicants for the position and shall send a copy of the  
255 notice to each agency or officer responsible for appointing persons to serve on the  
256 screening committee. The mayor shall appoint the screening committee not earlier than

257 21 days after sending that notice. No screening committee shall be required if the mayor  
258 reappoints an incumbent officer.

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

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

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

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

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

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

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

- 280 (2) assisting in all matters related to municipal financial affairs;
- 281 (3) implementing and maintaining uniform systems, controls and  
282 procedures for all financial activities in all departments, including the school department,  
283 boards, commissions, agencies or other units of city government the operations of which  
284 have a financial impact upon the general fund and enterprise funds of the city, and  
285 including, but not limited to, maintaining of all financial and accounting data and records;
- 286 (4) implementing and maintaining uniform financial data processing  
287 capabilities for all departments;
- 288 (5) supervising all financial data processing activities;
- 289 (6) implementing and maintaining uniform budget guidelines and  
290 procedures;
- 291 (7) assisting in the development and preparation of all department budgets  
292 and spending plans;
- 293 (8) reviewing all proposed contracts and obligations with a term in excess  
294 of 1 year;
- 295 (9) monitoring the expenditure of all funds, including periodic reporting  
296 by and to appropriate agencies of the status of accounts;
- 297 (10) reviewing the spending plan for each department; and
- 298 (11) providing for the allotment of funds on a periodic basis as provided  
299 for in this act.

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

303 (f) All department budgets and requests for budget transfers shall be submitted to  
304 the officer for review and recommendation before submission to the mayor, city council  
305 or school committee, as appropriate. For each proposed appropriation order, lease or  
306 contract arrangement for a term including more than 1 fiscal year, collective bargaining  
307 agreement and with respect to a proposed city council vote necessary to effectuate a  
308 financial transfer, ordinance revision or special legislation which may require the  
309 expenditure of funds or otherwise financially obligate the city for a period in excess of 1  
310 year, or with respect to a vote to authorize a borrowing under a law other than section 4, 6  
311 or 6A of chapter 44 of the General Laws, the officer shall, submit in writing to the mayor,  
312 city council or school committee, as appropriate, a certification that it is the officer 's  
313 professional opinion, after an evaluation of all pertinent financial information reasonably  
314 available, that the city's financial resources and revenues are, and shall continue to be,  
315 adequate to support the proposed expenditures or obligations without a detrimental  
316 impact on the continuous provision of the existing level of municipal services. If the  
317 officer fails to provide this certification within 7 days after a request for the certification  
318 from the mayor, city council or school committee, the appropriation order, financial  
319 transfer, ordinance revision, special legislation or borrowing authorization may  
320 nonetheless be approved, but the absence of the certification of the officer shall be  
321 expressly noted in that order or vote.

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

325 (h) Annually, by March 30, the officer shall submit a 4-year financial plan and a  
326 5-year capital plan to the city council that includes all capital needs of the city.

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

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

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

341 (l) The officer shall comply with all requests of the school department to provide  
342 any information relating to the operation of the school department held within the  
343 authority or control of the officer as the result of the consolidation of school and city  
344 business and financial functions under section 4. If the officer, or an employee thereof,  
345 refuses to provide such information or engages in unreasonable delay, the school  
346 department shall notify the secretary. The secretary shall, within a reasonable time, make  
347 a determination that the information shall be provided to the school department which



348 shall be binding upon the officer and the school department. The secretary's  
349 determination shall not be an adjudicatory proceeding reviewable under chapter 30A of  
350 the General Laws. Nothing in this subsection shall abrogate any of the other powers or  
351 duties of the school committee under chapter 71 of the General Laws.

352         **SECTION 7.** There shall be established by the city a capital reserve fund into  
353 which the city shall appropriate in each fiscal year beginning in fiscal year 2012 at least  
354 1.5 per cent of the amount of property taxes committed for the preceding fiscal year. The  
355 fund may be appropriated only for purposes for which the city could borrow for 10 years  
356 or longer under chapter 44 of the General Laws.

357         **SECTION 8.** (a) No official of the city, except in the case of an emergency  
358 involving the health and safety of the people or their property declared by the city council  
359 under section 31 of chapter 44 of the General Laws, shall knowingly expend or cause to  
360 be expended in any fiscal year any sum in excess of that official's departmental or other  
361 governmental unit's appropriation duly made in accordance with the law, nor commit the  
362 city, nor cause it to be committed, to any obligation for the future payment of money in  
363 excess of that appropriation, with the exception of court judgments.

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

370 further violations of this section. A violation of this section shall be sufficient cause for  
371 removal.

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

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