

130-RICR-00-00-1

TITLE 130 – AUDITOR GENERAL

CHAPTER 00 – N/A

SUBCHAPTER 00 – N/A

PART 1 – Maximum Levy - Standards and Procedures for Certification of an Emergency Situation in Accordance with R.I. Gen. Laws § 44-5-2 (as amended) for Rhode Island Cities and Towns and for Certain Fire Districts (when specified by law)

1.1 General

- A. Under the provision of R.I. Gen. Laws § 44-5-2 (as amended), a municipal entity (see Definitions) may not adopt a levy that exceeds four percent (4%) of the prior year tax levy unless certain statutory conditions are met.
- B. Statutory Conditions: A municipal entity subject to R.I. Gen. Laws § 44-5-2 (as amended), may experience financial conditions in the nature of an emergency that require an increase in the tax levy in excess of the four percent (4%) statutory limit. The existence of the emergency must be certified by the Auditor General.
- C. The Department of Revenue has established procedures for monitoring compliance with R.I. Gen. Laws § 44-5-2 (as amended) and for certifying such conditions as require the Department's certification under the law.
- D. In accordance with R.I. Gen. Laws § 44-5-2 (as amended) and the Administrative Procedures Act, the Auditor General adopts the following standards and procedures for the certification of an emergency situation.

1.2 Definitions

- A. For purposes of this regulation, the following terms shall have the following meanings:
 - 1. "Municipal entity" means cities and towns and certain fire districts (when specified by law).
 - 2. "General fund budget" means those amounts appropriated by a municipal entity for its annual financial operations, including debt service and appropriations to the school district (including regional).

3. "Statutory property tax limit" means the maximum municipal percentage tax levy increase of 4% is available without an approved exemption.
4. "Maximum property tax levy" means the maximum dollar value of the tax levy on real estate and tangible personal property available by application of the statutory property tax limit increase.
5. "Emergency situation" is an event in which the municipal entity incurred or expects to incur, in the upcoming fiscal year, expenditures of an emergency nature which caused or will cause the tax levy to increase by an amount which exceeds the percentage increase as specified in R.I. Gen. Laws § 44-5-2(a) or (b), as amended. Expenditures in the nature of an emergency are those extraordinary in nature, and/or not reasonably foreseeable. The municipal entity shall request that the Auditor General certify the emergency and approve its request to exceed the maximum property tax levy based on said emergency.
 - a. To qualify as an emergency, the financial impact of the event on the proposed property tax levy shall be equal to or greater than one quarter of one percent (1/4%) of the general fund budget or \$100,000, whichever is lower, and must require financing from that general fund budget. The decision as to whether an event is an emergency situation should be based on a consideration and evaluation of all relevant and pertinent facts, including the legislative intent of R.I. Gen. Laws § 44-5-2, as amended, and the standards and procedures set forth herein.
 - b. The chief executive officer and finance director of the municipal entity subject to R.I. Gen. Laws § 44-5-2 (as amended) (as well as, the school superintendent and school business manager, when applicable) shall provide a written certification as to the financial facts in support of the request to the Auditor General. The municipal entity shall also certify that no other line items in the budget can be reduced, thereby avoiding the need to exceed the specified statutory limit. This certification shall be in a form prescribed by the Auditor General.
 - c. Pursuant to R.I. Gen. Laws § 44-5-2 as amended, an emergency shall be deemed to exist when the municipal entity experiences or anticipates health insurance costs, retirement contributions or utility expenditures which exceed the prior fiscal year's health insurance costs, retirement contributions or utility expenditures by a percentage greater than three (3) times the percentage increase as specified in R.I. Gen. Laws § 44-5-2(b). In these cases, the amount

of the budget item expenditure to be considered as an emergency is the amount of the increase which exceeds three times the amount of the statutory limit. [Example: For the fiscal 2020 budget year, an increase in health insurance costs in excess of 12% of the amount in the fiscal year 2019 budget would categorically qualify for emergency approval.]

- d. In addition to § 1.2(A)(5)(c) of this Part above, other events may be evaluated and deemed an emergency if they satisfy the criteria listed below. The following is a non-exhaustive list of the type of events which could be considered as an emergency situation:
- (1) Extraordinary judgment on a claim against the municipal entity.
 - (2) Natural disaster (e.g., flood, fire, blizzard) or vandalism causing loss beyond insured amounts.
 - (3) Regulatory order requiring improvement of deficiencies in violation of safety, health standards, etc. (e.g., toxic wastes found in water, asbestos in schools).
 - (4) Court order.
 - (5) Unforeseen significant increase in budgeted cost of widely used product due to national or regional price increase (e.g., oil) requiring supplemental tax levy.
 - (6) Requirement that a municipal entity undertakes a new state or federally mandated program not funded by the state or federal government.
 - (7) Change in requirements of Generally Accepted Accounting Principles which would result in an accumulated deficit in excess of state statute (e.g., changes in how expenditures are recognized, property tax revenue recognition, etc.).
 - (8) Sudden demographic shifts which would require a change in services rendered (e.g., a significant change in school enrollment).
 - (9) Other unforeseen or unexpected events which are not the result of managerial decisions but are rather beyond the control of management, similar to those listed. The events

must be identified as emergencies by the municipal entity and certified as such by the Auditor General.

1.3 Notification of an Emergency Situation

- A. The municipal entity shall notify the Auditor General if it experiences or anticipates an emergency situation or situations.
- B. The notification shall be given at least sixty (60) days prior to the date for approval of the budget, or upon occurrence if less than sixty (60) days.
- C. The notification shall be in writing and signed by the chief executive officer of the municipal entity.
- D. The notification shall identify each emergency situation.
- E. The notification shall be suitably documented (including forms required by the Office of the Auditor General):
 - 1. The documentation shall include, at a minimum, the facts considered by the municipal entity; the amount of the general fund budget; the amount of the maximum property tax levy allowed under R.I. Gen. Laws § 44-5-2, as amended (i.e., prior year levy plus the statutory limit); the dollar impact on the general fund budget of each emergency situation; availability of other revenue sources; and the amount by which the maximum levy would be exceeded.
 - 2. The municipal entity shall also identify any levy in excess of the statutory limit resulting from conditions allowed under R.I. Gen. Laws § 44-5-2 and which have been certified by the Department of Revenue. Such conditions include a loss of non-property tax revenue, an increase in debt service expenditures, or a substantial growth in the tax base.

1.4 Certification by the Auditor General

The Auditor General will respond in writing, no later than thirty (30) days after receipt of the notification by the municipal entity. The Auditor General shall either certify the existence of the emergency situation to the Department of Revenue or deny certification. The Auditor General shall state the reasons for denial.

1.5 Appeals

- A. Appeals to Rules - Any person may petition the Auditor General, requesting the amendment or repeal of any rule herein adopted.

- B. Appeals to Decisions - Any official may petition the Auditor General for review of his decision on any request filed in accordance with the rules herein adopted.
- C. Filing of Appeals - All appeals to rules or decisions shall be made in writing to the Auditor General stating the nature and reason for said appeal.
- D. Hearings - Within five (5) calendar days of the receipt of an appeal, the Auditor General shall notify the petitioner of a date upon which said appeal shall be heard.
- E. Administrative Procedures - All hearings and procedures shall comply with the requirements of R.I. Gen. Laws Chapter 42-35 entitled "Administrative Procedures".